

FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report

California Department of Industrial Relations



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I. Executive Summary

The purpose of this report is to assess California's Occupational Safety and Health program performance for Fiscal Year (FY) 2021 and its progress in resolving outstanding findings from the FY 2020 Follow-Up Federal Annual Monitoring and Evaluation (FAME) report. The achievement of the annual performance plan and five-year strategic goals is addressed in their FY 2021 State OSHA Annual Report (SOAR). The Division of Occupational Safety and Health (DOSH), commonly known as Cal/OSHA, is the agency responsible for the enforcement of regulations protecting workers from health and safety hazards in California's workplaces. The Department of Industrial Relations (DIR) administers the California State Plan and is comprised of several divisions, as discussed in State Plan Background.

Cal/OSHA conducted a total of 5,282 inspections, below their goal of 5,775 inspections. This resulted in over 11,011 hazards cited and created safer working conditions for 1.9 million employees. Their enforcement efforts, combined with numerous outreach activities, contributed to a Calendar Year (CY) 2020 fatality rate of 2.9 per 100,000 Full-Time Equivalent (FTE) workers, which was lower than the national rate of 3.4 (data from Bureau of Labor Statistics, BLS).

Cal/OSHA received an unprecedented number of complaints, referrals, and related activities during the evaluation period, approximately 30% (7,500) of which were associated with the pandemic. The state continued to prioritize hiring and staffing, taking several actions to bolster their enforcement and administrative workforce, as well as to fill other positions. Considerable effort in the regulatory sphere was directed toward responding to the ongoing COVID-19 threat.

The State Plan made progress to address the previous six findings and six observations from the FY 2020 Follow-Up FAME Report. A total of seven findings and two observations were identified during this evaluation. Two findings and three observations were completed from the 2020 Follow-Up FAME report. Four findings and two observations were carried over from the FY 2020 report. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of previous findings with associated completed corrective action.

II. State Plan Background

A. Background

The DIR administers the California State Plan and is comprised of several divisions. Katie Hagen is the Director of DIR and the State Plan Designee. For the period evaluated, Douglas Parker served as the Cal/OSHA Chief. The Cal/OSHA Chief position is supported by Debra Lee, Deputy Chief for Field Enforcement, and Eric Berg, Deputy Chief for Research and Standards. Cora Gherga served as the Assistant Chief of Enforcement Administration for the period under review. Eugene Glendenning is the Acting Consultation Program Manager.

The California Occupational Safety and Health Standards Board (OSHSB) under the DIR, promulgates occupational safety and health standards for the State of California. The Board consists of seven members, who were appointed by the governor and led by David Thomas, Chairperson, and Christina Shupe, Executive Officer.

The California Occupational Safety and Health Appeals Board (OSHAB) adjudicates contested cases. The Board is comprised of three members; Ed Lowry, Chairperson; Judith Freyman, Management Member; and Marvin Kropke, Labor Member. Patty Hapgood is the Acting Executive Officer.

The Department of Labor Standards Enforcement (DLSE) investigates allegations of retaliation. The Labor Commissioner was Lilia Garcia-Brower, and the Assistant Chief was Patti Huber. The Regional Manager position was vacant from September 2020 to August 2021 when it was filled by Victor Lao. The Senior Deputies for the period under review were Kim Van Tran and Kimberly Kaufman, who oversaw the work of Deputy Labor Commissioners dedicated to Occupational Safety Health (OSH) Act Section 11(c) retaliation investigations.

There are 28 enforcement offices (known as district offices), with 17 of these offices separated into four geographical regions, each headed by a regional manager. Additionally, there are two High Hazard Unit offices (HHUs), one located in Oakland (HHU North) and another in Santa Ana (HHU South), which conducted programmed inspections of employers in high hazard industries. The Process Safety Management (PSM) Unit has four offices, two located in Concord (PSM North) and two located in Santa Ana (PSM South). There are three Mining and Tunneling (MT) Unit offices in California whose mandate was to inspect tunnels under construction. There are two Labor Enforcement Task Force (LETF) Unit offices, one located in Oakland (LETF North) and another in Santa Ana (LETF South), which targeted employers in the underground economy in partnership with other state agencies. The Crane Unit assisted compliance safety and health officers (CSHOs) by providing technical expertise for cranes and hoisting equipment with staff co-located in the Santa Ana, American Canyon, and San Diego district offices. The PSM, MT, LETF, and Crane Units are 100% state funded.

The initial federal base award to fund the FY 2021 23(g) program was \$28,268,400. California matched the federal funds and contributed an additional \$37,000,000 in 100% state funds, bringing the total award to \$93,536,800. The State Plan matched an amendment increase of \$277,300 and a one-time only award of \$53,134 in federal funds and reduced \$4,308,420 in 100% state funds, decreasing the total federal and state funds to \$89,611,948.

In addition to the 23(g) grant, California received \$7,500,000 in American Rescue Plan (ARP) federal funds for activities aimed at protecting workers during the COVID-19 pandemic and post pandemic recovery for the performance period of October 1, 2020 through September 30, 2023. California matched the federal funds, bringing the total federal and state funds to \$15,000,000. Costs will be allocated to the ARP grant after the FY 2021 23(g) grant is closed.

A FY 2021 financial review of the 23(g) program resulted in 10 new findings and one carryover finding from previous years. Findings included delays on cost reporting, incorrect classification and recording of costs, insufficient costs outside grant period, insufficient documentation to support payroll and contract expenditures, and insufficient management controls on funding, payment, inventory, and OIS account access. DIR transitioned to the Financial Information System for California (FI\$CAL) on July 1, 2018 and has experienced challenges during the system conversion that resulted in requests for extensions to submit financial closeout reports from FY 2018 through FY 2021. The delay of closing the financial information is compounded by lack of staff resources and enhancement releases issued by the State Comptroller's Office. The extension for the FY 2021 23(g) grant closeout financial report was approved from December 29, 2021, to February 28, 2022. Another extension was submitted to April 29, 2022 and is pending approval.

State and local government consultation services are provided under the 23(g) grant, while private sector consultation is provided under the 21(d) cooperative agreement. This report only covers services provided to state and local government. The private sector consultation program is evaluated separately in the FY 2021 Regional Annual Consultation Evaluation Report (RACER).

B. New Issues

The DIR has focused heavily on establishing and filling new positions in support of enforcement. One notable example was when the state opened more than 40 new Safety Engineer and Industrial Hygienist positions on July 1, 2021. These new positions were supported by the addition of corresponding supervisory, administrative, and program support staff. The holistic, concerted staffing effort has led to the filling of many of these positions, as well as existing vacancies, with skilled professionals.

To ensure continued positive progress in the staffing goals of the agency, the Cal/OSHA Recruiting Committee met regularly to discuss current vacancies, developed recruitment strategies to quickly fill them, and anticipated future personnel needs. This cross-sectional group considered various strategies, from advertisement in numerous different media and events, to the creation of dedicated internet resources to help shepherd

applicants through the hiring process. A specific e-mail address, CalOSHAJobs@dir.ca.gov, was created to encourage dialogue between prospective applicants and a recruiter from Cal/OSHA. The [DOSH Recruitment and Hiring website](https://www.dir.ca.gov/dosh/DOSH-Recruitment-Hiring.html) (<https://www.dir.ca.gov/dosh/DOSH-Recruitment-Hiring.html>) highlights current staffing as well as open positions.

Finally, DIR has continued to direct extensive efforts towards addressing the workplace implications of the ongoing COVID-19 pandemic, shifting resources and focus to address the ongoing public and occupational safety and health crisis. Standards and enforcement strategies were put into place to support the state-wide response to the ongoing issue.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. The FY 2021 report is a comprehensive year report where OSHA conducted an on-site program evaluation and case file review utilizing a 13-person OSHA team, which included whistleblower protection investigators. On-site reviews for enforcement were conducted in the Concord and Santa Ana district offices. Case files were randomly selected from the Fremont, Sacramento, San Diego, and Bakersfield district offices, as well as the Santa Ana PSM office.

A total of 158 safety and health inspection case files and 100 unprogrammed activity (complaints or referrals) files were reviewed from November 8 - November 30, 2021. Safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period October 1, 2019 through September 30, 2021. Sample size for file categories was determined by applying the percentage of file types completed during the evaluation period to the total sample size. The selected population included:

- Thirty (30) fatality case files
- One hundred eighteen (118) unprogrammed case files (inspections resulting from fatalities, complaints, or referrals)
- Ten (10) programmed case files
- One hundred (100) unprogrammed activities (complaints and referrals)

A total of 422 retaliation investigations were completed and 509 complaints were administratively closed. The case file review was conducted remotely from November 22 – December 8, 2021. A random selection of a statistically significant number of the completed and administratively closed investigation files were reviewed. Sample size for file categories was determined by applying the percentage of file types completed during the evaluation period to the total sample size. A total of 210 electronic case files were selected as follows:

- Four (4) litigation/merit
- Thirty-three (33) withdrawn
- Thirty-five (35) dismissed
- Zero (0) settled
- Thirty-eight (38) settled other
- One hundred (100) administratively closed

The analyses and conclusions described in this report were based on information obtained from a variety of monitoring sources, including:

- State Activity Mandated Measures Report (SAMM, Appendix D dated 11/08/2021)
- California SAMM (CA SAMM, dated 11/08/2021)
- State Information Report (SIR, dated 11/08/2021)
- Mandated Activities Report for Consultation (MARC, date 12/06/2021)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan
- FY 2021 State Plan 23(g) Grant Application
- OSHA Information System (OIS)
- Web Integrated Management Information System (WebIMIS)
- OSHAB Appeals Scheduling and Information System (OASIS)
- Quarterly monitoring meetings between OSHA and the State Plan
- Complaint About State Program Administration (CASPA) investigation
- State Plan Application (SPA) Portal

Each SAMM has an agreed-upon Further Review Level (FRL) which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D represents the State Plan's FY 2021 SAMM Report and includes the FRL for each measure.

B. Review of State Plan Performance

This section is an assessment of California's performance in meeting mandated activities and program elements. California's progress in achieving the five-year strategic and annual performance plan goals is addressed in their FY 2021 SOAR.

1. Program Administration

a) Training

The Professional Development and Training Unit (PDTU) is responsible for administering and tracking the development and training of staff. Technical training and professional certification opportunities were provided to staff to enhance their professional development. This program incorporated self-study, on-the-job training, and formal training on a variety of safety and health topics, while accommodating different levels of competency and experience. Training included formal courses and

online webinars taught by experienced enforcement staff and outside experts. Approximately 1,737 DOSH staff attended 18 courses produced by PDTU.

DLSE continued to provide in-house training specific to retaliation investigations for the whistleblower protection investigators. In addition, related training topics were covered on a quarterly basis. DLSE's training program is equivalent to the Mandatory Training Program for OSHA Whistleblower Investigators, TED 01-00-020.

b) OSHA Information System

All enforcement and whistleblower protection investigation data were captured in OIS and WebIMIS and used to assess the effectiveness of the program. The data retrieved from the systems provided indicators that helped identify potential performance deficiencies, analyze trends, and formulate corrective actions. The results were discussed in the quarterly meetings. The issues with SAMM 1 and 2 not correctly reflecting unique complaint response requirements resulted in the development of the CA SAMM report. This eliminated the need to do a manual count to assess performance. The challenges with data integrity between the OSHA and California databases for tracking retaliation complaints have mostly been resolved and are discussed in the Whistleblower Protection Program in Section III.B.7. OSHAB uses the OASIS case management system to track inspections that have been appealed and the information is provided to the district offices for input into OIS. This is discussed further in the Review Procedures in Section III.B.3.

c) State Internal Evaluation Report

The Cal/OSHA State Internal Evaluation Program (SIEP) consists of an internal review of randomly selected case files to assess enforcement performance on various indicators including case lapse time, response time to address complaints, union/non-union involvement in inspections, worker interviews, and next-of-kin letters. Internal audits were not conducted during FY 2020 and FY 2021 due to the impact of the COVID-19 pandemic. Plans have been made to conduct an audit of FY 2021 in FY 2022 with the goal of establishing a new baseline audit after the disruption. Audit topics addressed are broad with consideration of recommendations from the FY 2019 Comprehensive FAME report. Additionally, the Division plans to assess inspection forms used by district offices to ensure they are current and uniform. The upcoming audit will assess approximately 200 on-site inspections and 100 investigations by letter for Regions 1 through 4.

d) Staffing

There were approximately 540 employees throughout DIR dedicated to the occupational safety and health program, the largest in the nation. As of September 30, 2021, there were 179 vacancies, more than double the 84 in FY 2019. The increase was due to a combination of employee attrition, the addition of 40 compliance positions, and changes in the hiring process. Staffing continues to be a top priority for the agency.

2. Enforcement

The Policy and Procedures Manual (P&P), Cal/OSHA's version of the Field Operations Manual (FOM), provides staff with guidance on how to conduct field enforcement.

a) Complaints

Cal/OSHA received nearly 25,000 complaints, referrals, and other related activities in FY 2021, approximately 7,500 (30%) were related to the COVID-19 pandemic. While not all these activities were found to be under the jurisdiction of the agency, more than 15,500 were responded to via an investigation by letter, on-site inspection, or a combination of both.

The California Labor Code requires that an inspection for a serious complaint is initiated within three working days, while an inspection for a non-serious complaint is initiated within 14 calendar days. These differences were not accounted for in the calculations for SAMM 1 and 2 of the OIS report, so a specific CA SAMM report was developed to capture this data. The CA SAMM data revealed that serious complaints were inspected within 12.54 working days and non-serious complaints within 20.53 calendar days, both higher than the negotiated response times and a significant increase from 3.42 and 14.35 respectively in FY 2020. The case file review revealed that 16 of 100 (16%) unprogrammed activities that did not result in an inspection (known as investigation by letter) were sent outside the 14-calendar day allotted time frame.

Finding FY 2021-01: The average time to initiate an inspection for formal serious was 12.54 working days and non-serious complaints was 20.53 calendar days, which exceeded the negotiated measure of 3 and 14 days, respectively.

Recommendation FY 2021-01: Cal/OSHA should determine the cause of the extended response time to complaints and implement corrective action to ensure that complaints are responded to timely.

In complaint inspection case files reviewed, only one of 36 (3%) lacked required notification letters to a complainant. As a result, Observation FY2020-OB-01 is closed.

Imminent danger complaints and referrals were responded to within one day 99.24% (SAMM 3) of the time, higher than the national average of 95.93% and slightly below the 100% FRL. There were no instances of denial of entry (SAMM 4).

b) Fatalities

The civilian worker fatality rate increased from 2.5 in CY 2019 to 2.9 in CY 2020 but remains lower than the national rate of 3.4 per 100,000 full time equivalent (FTE) workers. BLS data shows California was lower than the national average in all but three industries: transportation and utilities, financial activities, and education and health services.

Of the FY 2021 fatalities, 63.64% (SAMM 10) were responded to within one day, below the national average of 86.56% and the FRL of 100%. According to state data, fatalities increased more than 70% in FY 2021, primarily driven by the COVID-19 pandemic. The case file review revealed inspections were not opened within one day in seven of 30 (23%) fatalities, all seven of which were related to COVID-19. The discrepancy does

not rise to the level of a finding, due to the difficulties in answering work-related exposure questions concerning COVID-19 fatalities coupled with the resource constraints introduced by the significant increase of complaints, referrals, and related activities.

In the fatality and accident case files reviewed, 12 of 59 (20%) did not contain OSHA 170 Fatality and Catastrophe Investigation Summaries, and 3 of 59 (5%) did not contain OSHA 36 Initial Fatality/Catastrophe Report Forms.

Finding FY 2021-02: In the fatality and catastrophe case files reviewed, 12 of 59 (20%) did not contain OSHA 170 Fatality and Catastrophe Investigation Summaries.

Recommendation FY 2021-02: Cal/OSHA should ensure that the OSHA 170 Fatality and Catastrophe Investigation Summaries are maintained in the fatality and catastrophe case files.

c) Targeting and Programmed Inspection

A total of 5,282 (SAMM 7) enforcement inspections were conducted, which was below the goal of 5,775 projected in the FY 2021 State Plan 23(g) Grant Application. Of these, 478 were programmed inspections in four focused areas:

- i) The HHU inspects high-hazard industries based on the days away, restricted and transferred (DART) rate in 2018 (2.1). Industries with a DART rate of twice the private sector, or greater than 4.2, were added to the High Hazard List.
- ii) The LETF inspects employers in the underground economy (for example, employers who circumvent labor laws) for different labor violations. LETF's inspections are generally in low hazard industries but may encompass high hazard areas. Federal funds were not provided to this unit, as it is 100% state-funded.
- iii) The PSM Units target employers who possess, store, or use chemicals above a threshold quantity. These inspections are intended to prevent catastrophic events. The PSM Units conduct programmed inspections of non-refinery establishments based on randomly selected sites within a state database. Petroleum refinery establishments must submit a schedule of "turnarounds" for all affected units for the following calendar year. A turnaround inspection is a planned shutdown to perform major maintenance. After reviewing the schedule, the PSM Units can request further review and inspection. Federal funds were not provided to this unit as it is 100% state funded.
- iv) The MT Unit inspects each tunnel under construction six times per year as mandated by statute. These worksites are targeted by issued construction permits with the goal of hazard prevention through frequent monitoring inspections. Federal funds were not provided to this unit as it is 100% state-funded.

Percent of enforcement presence (SAMM 17) describes the number of safety and health inspections conducted compared to the number of employer establishments in the state. The State Plan had a percent enforcement presence of 0.55%, which was lower than the FRL range of 0.74% to 1.24%. The low enforcement presence indicates that the State Plan is reaching less employers with enforcement activity than the national average.

d) Citations and Penalties

The percent of safety inspections that were in-compliance was 26.52% (SAMM 9), within the FRL of +/- 20% of the three-year national average (31.65%, range 25.32-37.98%). For health, the in-compliance rate of 34.45% (SAMM 9) was within the FRL range of +/- 20% of the three-year national average (40.64, range 32.51- 48.77%).

Of the 158 inspection case files reviewed, 63 (40%) had citations issued. With few exceptions, citations were adequately supported, abatement periods were reasonable, and the hazards were properly assessed. Finding FY 2020-01 is completed.

The average number of serious, willful, repeat, or unclassified (SWRU) violations per inspection remained steady at 0.80 (SAMM 5) in FY 2021. This average was below the lower end of FRL range (1.42-2.14, the three-year national average 1.78 +/-20%). This finding will carry over from the FY 2020 Follow-up FAME.

Finding FY 2021-03 (FY 2020-02): The average number of serious, willful, repeat, or unclassified (SWRU) violations issued was 0.80 (SAMM 5) violations per inspection. This was below the lower end of the FRL range (1.42 violations per inspection).

Recommendation FY 2021-03 (FY 2020-02): Cal/OSHA should determine the underlying cause for the low number of serious, willful, repeat, and unclassified violations, and implement corrective actions.

The average current penalty per serious violation in the private sector was \$9,580.20 (SAMM 8), exceeding the three-year national average of \$3,100.37 and the FRL range of \$2,325.28 to \$3,875.46, and continued to be the highest nationally. Table 1 shows the average current penalty per serious violation, based on the number of workers controlled by an establishment, with smaller employers receiving a greater penalty reduction.

Table 1
Average Current Serious Penalty in Private Sector (SAMM 8)

Number of Workers	Average Current Serious Penalty	3-Year National Average	FRL
Total 1-250+	\$9,580.20	\$3,100.37	\$2,325.28 to \$3,875.46
1-25	\$6,536.00	\$2,030.66	\$1,523.00 to \$2,538.33
26-100	\$8,613.89	\$3,632.26	\$2,724.20 to \$4,540.33
101-250	\$10,940.83	\$5,320.16	\$3,990.12 to \$6,650.20
251+	\$12,314.35	\$6,575.70	\$4,931.78 to \$8,219.63

District offices do not collect penalties from citations. The Accounting and Collections Unit, a separate unit within DIR, has the responsibility to track overdue payments and notify the appropriate district office once full payment is received on a weekly basis.

The average lapse time for safety and health inspections was 89.78 and 119.03 days (SAMM 11) respectively, both exceeding the higher end of the FRL range (41.94-62.9 and 52.88-79.32).

Lapse time can be an indicator of how long employees are exposed to a hazard, and a low lapse time infers exposure is minimized. Per California Labor Code section 6432(b), an employer must be notified of the intent to issue a serious citation and is given 15 working days to respond with evidence negating the serious classification.

SAMM 11 does not consider hazards that are corrected during the inspection. According to OIS violation detail reports, 56% of all violations were coded as corrected during inspection (CDI) compared to the national average of 33%. Where serious hazards were identified, CDI was noted in 65% of violations, exceeding 33% nationally. Although these hazards were coded as CDI, the abatement may not have been witnessed by the compliance officer while conducting the on-site inspection, as defined in the OSHA FOM, but was abated prior to the issuance of the citation. As a result, the hazards could have existed for as long as it took to issue the citation. This requires a closer look to determine the impact on the length of time employees are exposed to hazards.

Finding FY 2021-04 (FY 2020-03): Cal/OSHA's citation lapse time was 89.78 days for safety inspections and 119.03 days (SAMM 11) for health inspections. These are above the high end of the FRL ranges of 62.9 days for safety inspections and 79.32 days for health inspections.

Recommendation FY 2021-04 (FY 2020-03): Cal/OSHA should establish a plan to work with district and regional managers to improve citation lapse time.

e) Abatement

The case file review showed the majority (96%) had appropriate abatement periods and overall timeliness. However, there were three of 71 (4%) cases with violations where the required abatement documentation or verification was missing.

f) Worker and Union Involvement

The percentage of initial inspections with worker walk-around representation or worker interviews was 99.85% (SAMM 13), which is below the FRL of 100% but above the national average of 97.29%. The case files reviewed confirmed union participation, when required.

3. Review Procedures

a) Informal Conferences

Employers are encouraged to request an informal conference with Cal/OSHA within 10 working days following the receipt of a citation. Informal settlement provisions provide employers the right of review. Workers or their representatives have the opportunity to participate in the proceedings. During the informal conference, the district manager or their designee has the authority to withdraw violations, change classification of violations, and reduce penalties, based on supporting evidence provided by the employer. Penalty reductions are awarded to employers for completing abatement prior to citation issuance or before the due date, thereby encouraging prompt abatement. The penalty retention rate was 96.62% (SAMM 12), which is above further review level of the three-year national average +/- 15% (59.57%-80.59%). The cases settled by Cal/OSHA are recorded in the OIS. If an appeal is filed with OSHAB, an informal conference can be held up to the day of the appeal hearing.

The case file evaluation revealed that of the 11 inspections reviewed, where an informal or pre-hearing conference took place, there was only one instance where changes made to citations was not justified in the case file. As a result of this, Observation FY2020-02 is closed.

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, such as circumstances beyond an employer's control. At least 30 days prior to the hearing, OSHAB will send out a Notice of Hearing to involved parties. The employer is responsible for notifying workers of the pending hearing by posting the notice near the site of the alleged violation, or where the workers report or carry out their duties. The Administrative Law Judge (ALJ) files a written decision 30 days after the submission date of the hearing. Any party to an appeal has the right to petition OSHAB to reconsider an order, or decision by an ALJ. If any party involved in the appeal process disagrees with the ALJ's decision, they may file an additional appeal to the California Superior Court. The cases settled by OSHAB are recorded in their OASIS database and then sent back to the appropriate district office to update in OIS.

For FY 2021, 11.16% (SIR 5B) of violations were vacated after an appeal was filed, below the national average of 14.48%, and 10.53% (SIR 6B) of violations were reclassified after the appeal, below the national average of 12.17%. The penalty retention rate following an appeal was 59.80% (SIR 7B) versus the national average of 63.30%.

OSHAB received 2,081 appeals over the course of FY 2021 with 381 of these being related to COVID. They have focused on prioritizing its calendaring efforts on the COVID-related appeals.

To mitigate the impact from the pandemic, OSHAB conducted 109 video hearings over the course of FY 2021 using the Zoom video platform. In support of this initiative,

OSHAB created a video presentation on a mock hearing with instructional materials on the use of Zoom and filing exhibits in OASIS. The response from stakeholders has been positive. OSHAB also updated resources available on its web page, including Frequently Asked Questions to be user-friendly.

4. Standards and Federal Program Change (FPC) Adoption

a) Standards Adoption

The OSHSB promulgates occupational safety and health standards for California. When a new or revised standard is proposed, the state generally submits a request to OSHA for an advisory opinion to ensure the state's new or revised standard is at least as effective (ALAE) as the federal regulation in advance of promulgation.

The rulemaking process includes an advisory committee as needed, a public hearing, stakeholder input, comment period, and economic analysis. Embedded within the rulemaking process is an opportunity for stakeholders, including OSHA, to provide oral and written comments to OSHSB via the 45 Day Notice period leading up to the Public Hearing. Additional comment opportunities are provided, whenever modifications to the original proposal are made via the 15-Day Notice process. Stakeholders can comment on the proposal, prior to the Public Hearing, when the proposed regulatory text is considered for adoption.

Current regulations for residential construction fall protection are in the process of being amended. In 2016, proposed language was approved by both federal and state counterparts. The California Department of Finance (DOF) has requested that a second alternative approach be developed for fiscal analysis, and OSHSB continues to work with the Department to obtain approval for the alternative and the linked cost analysis. After this phase, the regulatory package undergoes review for conformance with Administrative Procedure Act requirements. The next step is approval by the Labor and Workforce Development Agency and the Office of Administrative Law (OAL). Once approved, OAL will publish the notice of proposed rulemaking in the California Regulatory Notice Register and it will proceed to OSHSB for adoption. Although the rulemaking process is underway, this item remains a finding until adoption and an effective date is implemented. This has been a FAME finding since 2015.

Finding FY 2021-05 (FY 2020-04): OSHSB's regulations for residential construction fall protection are not at least as effective (ALAE) as OSHA's regulations, as required by 29 CFR 1953.5(a).

Recommendation FY 2021-05 (FY 2020-04): OSHSB should ensure their standards on residential construction fall protection are ALAE as OSHA's standards.

On April 14, 2021, California adopted a change in their Commercial and Technical Diving Operations regulations effective October 1, 2021. The majority of the regulation was adopted identical to the federal standard, except for the definition of technical diving and a few select exceptions. OSHA provided a letter dated October 14, 2020, describing concerns that some portions of the regulation were not as least as effective as the federal standard. OSHA and OSHSB will continue to discuss how to address

safety and health for the types of diving in question. Observation FY 2020-OB-03 was elevated to a finding.

Finding FY 2021-06 (FY 2020-OB-03): State Plan-initiated rulemaking promulgated standards on commercial diving are not ALAE as OSHA's standard.

Recommendation FY 2021-06: California's commercial diving standard should be updated to ensure it is ALAE as OSHA's standard.

During FY 2020 and 2021, OSHA issued seven federal standards that required a response. Additionally, one standard carried over from previous years that has not been adopted is included in Table 2 below.

Table 2
Status of FY 2021 Federal Standards Adoption Required
(May include any delinquent standards from earlier fiscal years)

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/15/2020)	3/15/2020	2/5/20220	Yes	No	7/15/2020	1/1/2020
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	1/28/2021	Yes	No	1/14/2021	10/2/2017
Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1915, 1926 (8/31/2020)	10/30/2020	1/28/2021	Yes	No	2/27/2021	10/2/2017
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	1/25/2021	Yes	No	7/15/2020	1/1/2021
Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	6/25/2021	Yes	No	7/21/2021	8/5/2009

Table 3
Status of FY 2021 Federal Standards Adoption Encouraged
(May include any delinquent standards from earlier fiscal years)

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Rules for Agency Practice and Procedures Concerning OSHA Access to Employee Medical Records 29 CFR 1913 (7/30/2020)	9/28/2020	1/28/2021	No	Not Applicable	Not Applicable	Not Applicable
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work 29 CFR 1926 (9/15/2020)	11/14/2020	2/9/2022	No	Not Applicable	Not Applicable	Not Applicable

b) Federal Program Change (FPC) Adoption

During FY 2020 and 2021, OSHA issued 14 FPCs that required a response (Tables 4, 5, and 6).

California has not submitted the required documentation for several FPCs that required adoption or the adoption of an equivalent approach. Per OSHA's State Plan Policies and Procedures Manual, when a state does not adopt an FPC identical to OSHA's, it must submit documentation that identifies any differences between its policy and OSHA's. OSHA will continue to work with the State Plan during quarterly meetings to ensure documentation is submitted.

Table 4
Status of FY 2021 Federal Program Change (FPC) Adoption Required
(May include any delinquent FPCs from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	4/8/2020	Yes	No	6/10/2020	10/22/2020
CPL 03-00-023 Respirable Crystalline Silica NEP (2/4/2020)	4/4/2020	1/25/2021	Yes	No	8/4/2020	11/10/2020

Table 5
Status of FY 2021 Federal Program Change (FPC) Where Equivalency Required
(May include any delinquent FPCs from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
CPL 02-03-007 Whistleblower Investigations Manual (1/28/2016)	4/27/2016	4/27/2017	Yes	No	7/28/2016	Not yet adopted
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/13/2020	10/22/2020	Yes	No	10/14/2020	1/1/2020
Inspection Procedures for the Respirable Crystalline Silica Standards CPL 02-02-080 (6/25/2020)	8/24/2020	4/8/2020	Yes	No	12/25/2020	11/10/2020
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021	8/30/2021	Yes	No	6/14/2021	3/20/2018
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	4/19/2021	Yes	No	9/19/2021	Not yet adopted
Inspection Procedures for the COVID-19 Emergency Temporary Standard CPL DIR 2021-02 (CPL 02) (6/28/2021)	7/13/2021	8/4/2021	Yes	No	7/28/2021	Not yet adopted
Compliance Directive for the Excavation Standard 29 CFR 1926, Subpart P CPL 02-00-165 (7/1/2021)	8/30/2021	8/30/2021	Yes	No	12/28/2021	8/30/2021
Revised National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-03 (CPL 03) (7/7/2021)	7/22/2021	8/4/2021	Yes	No	8/7/2021	5/6/2021

Table 6
Status of FY 2021 Federal Program Change (FPC) Adoption Encouraged
(May include any delinquent FPCs from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	State Plan Adoption Date
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	4/8/2020	Yes	No	8/30/2020
Electronic Case File System Procedures for the Whistleblower Protection Program CPL 02-03-009 (6/18/2020)	8/18/2020	2/1/2021	No	N/A	N/A
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	4/19/2021	Yes	No	Superseded
Communicating OSHA Fatality Inspection Procedures to a Victim's Family CPL 02-00-166 (7/7/2021)	9/7/2021	4/19/2021	Yes	No	1/9/2014

c) State-Initiated Changes

When a state initiates a change to their program plan, it is submitted to OSHA for review and approval. California initiated 13 changes during FY 2020 and FY 2021. Table 7 below lists all California-initiated changes during this evaluation period.

Table 7
FY 2020 and FY 2021 State-Initiated Changes

Standard	Adoption Date	Effective Date
Fall Protection in Telecommunications	11/21/2019	4/10/2020
Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment: Final Rule – Corrections	12/5/2019	4/1/2020
Tree Work, Maintenance or Removal – Use of Portable Power Saws	12/19/2019	10/1/2020
Cranes and Derricks in Construction: Operator Qualification – HORCHER	2/20/2020	4/6/2020
Outdoor Agricultural Operations During Hours of Darkness	2/20/2020	7/1/2020
Employee Access to Injury and Illness Prevention Program	3/3/2020	7/1/2020
Single User Toilet Facilities	3/3/2020	7/1/2020

Standard	Adoption Date	Effective Date
Process Safety Management of Acutely Hazardous Materials, Appendix A List of Acutely Hazardous Chemicals, Toxics and Reactives (HORCHER)	4/16/2020	5/4/2020
Protection from Wildfire Smoke	4/30/2020	6/23/2020
Tree Work, Maintenance or Removal - Use of Portable Power Saws 2020-01	7/30/2020	10/1/2020
COVID-19 Prevention (Emergency Regulation)	11/19/2020	11/30/2020
Protection from Wildfire Smoke	12/17/2020	2/1/2021
Commercial and Technical Diving Operations	4/14/2021	10/1/2021
COVID-19 Prevention (Emergency Regulation) Readoption	6/17/2021	6/17/2021

5. Variances

A variance is a regulatory action permitting employers to deviate from the requirements of an OSHA standard under certain conditions. OSHSB grants permanent variances. Most applications submitted concern the Elevator Safety Orders, which was outside of the scope of General Industry and Construction Safety Orders. No permanent variances were granted during this evaluation period, other than those for elevators, escalators, wheelchair lifts and other conveyances.

6. State and Local Government Worker Program

In FY 2021, 405 (7.58%) inspections in state and local government workplaces were completed, above the FRL of 5.19% for SAMM 6. Penalties are assessed against state and local government employers in the same manner as private sector employers.

7. Whistleblower Protection Program – SAMMs 14, 15, 16

Claims of workplace retaliation for reporting occupational safety and health issues are investigated by the DLSE, Retaliation Complaint Investigation Unit. During FY 2021, there were eight full-time whistleblower protection investigators located in five different offices.

A total of 422 retaliation investigations were completed and 509 complaints were administratively closed. DLSE completed 3% (SAMM 14) of their retaliation investigations within 90 days, which was a decrease from 4% in FY 2020. The FRL is fixed at 100% and the national average was at 27%. The merit rate increased from 22% (SAMM 15) in FY 2020 to 34% and remains above the FRL range of 18.4% to 27.6%. In addition, the average days to complete a retaliation investigation was 609 days (SAMM 16), a notable decrease from 904 days in FY 2020. The FRL for this metric was fixed at 90 days and the national average was 325 days.

While there are still minor issues with data integrity between the OSHA and California databases for tracking retaliation complaints, DLSE has significantly improved their process. DLSE has also allocated approved funding to continue to improve the data link between the two systems.

When a complainant voluntarily withdraws a complaint, the complainant must be advised that they forfeit all rights to appeal or to object, and the case will not be reopened. In 31 of 33 retaliation cases withdrawn by the complainant, evidence of this advisement was in the case file reviewed. Finding FY 2020-06 is completed.

In addition, DLSE updated their notification letters to include information for complainants and their dual file right to request a federal review, within outlined filing times, is retained. While DLSE provided proof of this letter, the California database's automated system sent letters directly to the complainants, and a copy was lacking in the case files reviewed. Due to this change, Observation FY 2020-OB-06 was closed, but the lack of documentation will be added to Observation FY 2021-OB-03.

Based on a case file review, DLSE generally followed OSHA policies and procedures. DLSE has been working on an updated manual governing the review and processing of workplace retaliation but has yet to complete it. A completed manual will provide clear, updated policies, and could potentially reduce findings each year. As of the date of this report, DLSE has submitted several chapters for review with a completed manual estimated in FY 2022. Due to not having an approved manual, Finding FY 2020-05 will continue this year. This has been a FAME finding since 2013.

Finding FY 2021-07 (FY 2020-05): DLSE does not have an approved whistleblower investigations manual to ensure that its policies and procedures are ALAE as OSHA's.

Recommendation FY 2021-07 (FY 2020-05): DLSE should complete the whistleblower investigation manual to ensure that its policies and procedures are ALAE as OSHA's.

Proper documentation in retaliation case files is important to ensure the totality of the case is recorded and understood by all parties conducting any type of review, after the case has been completed. Two hundred of 210 (95%) retaliation case files reviewed lacked proper documentation. This included lacking final signatures on settlement agreements, correspondence between DLSE and the parties, evidence of review by a supervisor, letters of designation, complaint summaries, interview summaries, rebuttal interviews, medical information not protected, and notification of dual file right or other documents required to be in the retaliation case file. DLSE's electronic case files still need improvement. DLSE did not adopt OSHA's Electronic Case File (ECF) System Procedures for the Whistleblower Protection Program (CPL 02-03-009) and is encouraged to use it as a guide when maintaining ECF outside of the California database for tracking retaliation complaints, or provide OSHA read only access for future reviews. Observation FY 2020-OB-05 will continue for FY 2021.

Observation FY 2021-OB-01 (FY 2020-OB-05): Retaliation case files lacked the required documentation such as final signatures on settlement agreements, correspondence between DLSE and the parties, evidence of review by a supervisor, letters of designation, complaint summaries, interview summaries, rebuttal interviews,

medical information not protected, notification of dual file right, or other documents required to be in the retaliation case file.

Federal Monitoring Plan FY 2021-OB-01 (FY 2020-OB-05): OSHA will monitor the lack of required documentation during quarterly meetings with DLSE. OSHA also suggests for DLSE to use CLP 02-03-009 as a guide when maintaining ECF outside of California's database for tracking retaliation complaints, or provide OSHA read-only access into the database for any future reviews.

As noted in previous FAME reports, there was no evidence that claims of alleged retaliation for reporting workplace injuries or illnesses (FY 2016 OB-01, FY 2019-OB-06, FY 2020-OB-06) were being investigated by DLSE. In 2017, the state legislature addressed the issue by amending Labor Code 6310(a)(4) to reflect that DLSE has jurisdiction to investigate these claims. Under the OSH Act, reporting workplace injuries and illnesses is an OSHA activity. Any retaliation in response to OSHA activities falls under 11(c) of the OSH Act and must be investigated under the grant. In February 2021, DLSE provided OSHA with a document to be used by investigators on screening work related injuries and determining investigative jurisdiction between Labor Code Section 6310(a)(4) vs. 132a. The document ensures investigation of claims where there is a worker's compensation claim or validates an active worker's compensation claim exists, prior to referring a complainant to the Division of Worker's Compensation (DWC). However, from the case files reviewed, it does not appear that investigators are using it. Observation FY 2020-OB-06 will continue this year.

Observation FY 2021-OB-02 (FY 2020-OB-06): There is no clear evidence that DLSE investigates retaliation for reporting workplace injuries and illnesses. Instead DLSE refers the complainants to Division of Workers' Compensation (DWC).

Federal Monitoring Plan FY 2021-OB-02 (FY 2020-OB-06): During quarterly meetings, OSHA will monitor to ensure that complaints of retaliation are being screened, according to the document provided by DLSE, and that the reporting of workplace injuries and illnesses are investigated under the grant.

8. Complaint About State Program Administration (CASPA)

There was one Complaint About State Plan Administration (CASPA) in FY 2020. CASPA CA-2020-01 alleged that DLSE investigators mishandled, falsified, or refused to verify employer statements, and that DLSE refused to present evidence of the contested narrative. Review of the State's file revealed that they had given available evidence due consideration and that their determination was appropriately supported. The investigation found no merit in the allegations.

9. Voluntary Compliance Program

The California Voluntary Protection Program (Cal/VPP) for general industry employers and VPP-Construction (VPPC) for construction employers provides recognition and programmed inspection exemptions to qualified worksites. Participants are expected to have exceptional safety and health programs attributing to a lower risk of injuries and illnesses.

In FY 2021, four new certifications and 23 re-certifications of general industry establishments were completed. For construction, seven new sites were added. Two workshops were held to promote Cal/VPP.

10. State and Local Government 23(g) On-site Consultation Program

The Consultation Services Branch provides consultation services to state and local government employers and is funded under the 23(g) grant. Private sector consultation is funded under the 21(d) cooperative agreement and is evaluated separately in the FY 2021 Regional Annual Consultation Evaluation Report (RACER).

Consultants conducted 18 initial consultation visits to employers in state and local government agencies, below the goal of 40 visits. All visits were to high hazard industries, exceeding the goal of 90% (MARC 1). Visits to smaller businesses with less than 250 employees, and visits to establishments with less than 500 employees, were 94.44% and 100% respectively (MARC 2A and 2B). In all 18 consultation visits, the consultant conferred with employees 100% of the time (MARC 3).

During this evaluation period, 61 serious hazards were identified, and all were abated in a timely manner, 45 within the original timeframe, and 16 within the extension timeframe (MARC 4A and 4B). No employers were referred to enforcement (MARC 4C). Out of the 61 serious hazards, 45 (73.77%) were corrected in the original timeframe or on site, exceeding the goal of 65% (MARC 4D). There were no uncorrected serious hazards with correction dates 90 days past due (MARC 5).

An off-site review was conducted of the state and local government consultation program on November 23, 2020 through January 13, 2021. The purpose of the visit was to assess the quality of the program's services and its internal quality assurance program in accordance with Consultation Policies and Procedures Manual (CSP 02-00-003) and 29 Code of Federal Regulations (CFR) Part 1908 - Consultation Agreements.

Overall, program requirements were met. Of the 17 visit files reviewed, there were no findings or recommendations. Details are available in the FY 2021 RACER.

Appendix A – New and Continued Findings and Recommendations

FY 2021 California Division of Occupational Safety and Health Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB- #
FY 2021-01	The average time to initiate an inspection for formal serious was 12.54 working days and non-serious complaints was 20.53 calendar days, which exceeded the negotiated measure of 3 and 14 days, respectively.	Cal/OSHA should determine the cause of the extended response time to complaints and implement corrective action to ensure that complaints are responded to timely.	New
FY 2021-02	In the fatality and catastrophe case files reviewed, 12 of 59 (20%) did not contain OSHA 170 Fatality and Catastrophe Investigation Summaries.	Cal/OSHA should ensure that the OSHA 170 Fatality and Catastrophe Investigation Summaries are maintained in the fatality and catastrophe case files.	New
FY 2021-03	The average number of serious, willful, repeat, or unclassified (SWRU) violations issued was 0.80 (SMM 5) violations per inspection. This was below the lower end of the FRL range (1.42 violations per inspection).	Cal/OSHA should determine the underlying cause for the low number of serious, willful, repeat, and unclassified violations, and implement corrective actions.	FY 2020-02
FY 2021-04	Cal/OSHA's citation lapse time was 89.78 days for safety inspections and 119.03 days (SMM 11) for health inspections. These are above the high end of the FRL ranges of 62.9 days for safety inspections and 79.32 days for health inspections.	Cal/OSHA should establish a plan to work with district and regional managers to improve citation lapse time.	FY 2020-03

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB- #
FY 2021-05	OSHSB's regulations for residential construction fall protection are not at least as effective (ALAE) as OSHA's regulations, as required by 29 CFR 1953.5(a).	OSHSB should ensure their standards on residential construction fall protection are ALAE as OSHA's standards.	FY 2020-04
FY 2021-06	State Plan-initiated rulemaking promulgated standards on commercial diving are not ALAE as OSHA's standard.	California's commercial diving standard should be updated to ensure it is ALAE as OSHA's standard.	New
FY 2021-07	DLSE does not have an approved whistleblower investigations manual to ensure that its policies and procedures are ALAE as OSHA's.	DLSE should complete the whistleblower investigation manual to ensure that its policies and procedures are ALAE as OSHA's.	FY 2020-05

Appendix B – Observations Subject to New and Continued Monitoring

FY 2021 California Division of Occupational Safety and Health Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB-# or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
	FY 2020-OB-01	In three of the 24 (13%) complaint inspections, case files lacked evidence that required notification letters were sent to the complainant regarding the status of the complaint inspection.	Federal OSHA will continue to conduct case file evaluations to ensure all required correspondence with complainants is documented within the case file.	Closed
	FY 2020-OB-02	In the 48 case files reviewed where an informal or pre- hearing conference took place, five cases (10%) lacked necessary documentation to justify changes made to the citation post-issuance.	Federal OSHA will continue to conduct case file evaluations to ensure justification is documented to support post-issuance changes to violations.	Closed
	FY 2020-OB-03	State Plan-initiated rulemaking promulgated standards were not at least as effective as OSHA standards, such as Commercial Diving.	OSHA will monitor Cal/OSHA's standards to ensure they are at least as effective as OSHA standards and initiate actions to update deficient standards.	Elevated to finding
	FY 2020-OB-04	There was no evidence in the retaliation case files reviewed that DLSE was advising complainants of their right to dually file with OSHA, or to contact OSHA, after all appeal rights have been exhausted at the state level.	OSHA will monitor during quarterly meetings that information regarding complainants' rights at the federal level is provided and documented in the retaliation case file.	Closed
FY 2021-OB-01	FY 2020-OB-05	Retaliation case files lacked the required documentation such as final signatures on settlement agreements, correspondence between DLSE and the parties, evidence of review by a supervisor, letters of designation, complaint summaries, interview summaries, rebuttal interviews, medical information not protected, notification of dual file right or other documents required to be in the retaliation case file.	OSHA will monitor the lack of required documentation during quarterly meetings with DLSE. OSHA also suggests for DLSE to use CLP 02-03-009 as a guide when maintaining ECF outside of CAL ATLAS, or provide OSHA read-only access into CAL ATLAS for any future reviews.	Continued

FY 2021-OB-02	FY 2020-OB-06	There is no clear evidence that DLSE investigates retaliation for reporting workplace injuries and illnesses. Instead DLSE refers the complainants to Division of Workers' Compensation (DWC).	During quarterly meetings, OSHA will monitor that complaints of retaliation due to reporting of workplace injuries and illnesses are investigated under the grant.	Continued
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Appendix C – Status of FY 2020 Findings and Recommendations

FY 2021 California Division of Occupational Safety and Health Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-01	In the 110 FY 2019 case files reviewed with citations issued, 24 (22%) lacked critical evidence to support the violation, such as, information that the standard applied and was violated, evidence of employee exposure, and evidence of employer knowledge.	Cal/OSHA should ensure evidence supporting each violation is documented.	Cal/OSHA implemented the following measures to ensure evidence supporting each violation is documented: 1. Targeted classroom, and on-the-job training and mentoring for supervisory and field staff on evidentiary requirements to support violations cited. 2. In June/July 2019 all Regional Managers, District Managers and Senior staff attended the updated “Case Management/ Review” training, which provided information and tools for effective review of inspection files, including sufficiency of evidence to support each violation. This training will again be provided in the fall of 2021 to all new Regional Managers, District Managers and Senior staff, and anyone who needs a refresher. 3. The outcomes of these measures were tracked by looking at the violation evidence documentation as part of the enhanced case file review procedures implemented as result of the COVID-19 enforcement protocol.	December 8, 2021	Completed

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-02	The average number of SWRU violations issued was 0.8 violations per inspection. This was below the FRL of 1.43 violations per inspection (SAMM 5).	Cal/OSHA should determine the underlying cause for the low number of serious, willful, repeat and unclassified violations, and implement corrective actions to ensure serious hazards are identified and abated.	Measures to improve the hazard classification continued to be implemented as follows: 1. Training all professional enforcement staff during the "Orientation to Enforcement" and "Inspection Techniques and Legal Aspects" classes, providing standard-specific and other specialized classes, and during on-the-job refreshers and updates to increase their skills and knowledge in identifying hazards and classifying violations. 2. The June/July 2019 "Case Management/ Review" training which was attended by all Regional Managers, District Managers and Senior staff requires monthly meetings with CSHOs to monitor and review their inspection files and proposed violations to ensure correct identification of hazards and classification of violations. 3. The outcomes of these measures are being tracked by looking at the correct classification of violations as part of the enhanced case file review procedures implemented as result of the COVID-19 enforcement protocol. 4. Cal/OSHA management is continuing to track the number of S/W/R violations to determine whether further corrective actions are needed.	Not Applicable	Open November 8, 2021

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-03	Cal/OSHA's citation lapse time for safety and health inspections was 83.14 days for safety inspections and 89.84 days for health inspections. These are above the FRLs of 60.70 days for safety inspections and 72.47 days for health inspections. (SAMM 11).	Cal/OSHA should work with district and regional managers to continue improving citation lapse time.	Progress is expected during the upcoming fiscal year after taking the following measures: 1. Engage in a robust hiring process to fill all CSHO vacancies, including 33 new positions allocated to Cal/OSHA by the administration, thus easing the workload of unprogrammed inspections for each CSHO. 2. Analyze the current case review process and identify potential for efficiencies that may result in decrease in citation lapse times. 3. Assign Senior staff in District Offices to decrease the average time necessary to review cases and to monitor lapse times in OIS. 4. District Managers will ensure support staff run the "Open Inspection" report and use the "Citation Pending" section of the report when meeting with CSHOs monthly to review all open inspections and develop strategies to complete them timely. 5. All Cal/OSHA offices (district, region, Program Office) will monitor SAMMs and other management reports to track the progress of citation lapse time and use the information to continue raising awareness among staff of the need to reduce citation lapse time.	Not Applicable	Open November 8, 2021

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-04	OSHSB's regulations for residential construction fall protection are not at least as effective as OSHA's regulations as required by 29 CFR 1953.5(a).	OSHSB should modify its construction fall protection regulations on a timely basis to ensure that its residential fall protection requirements are at least as effective as the federal regulation. In addition, OSHSB and its stakeholders should coordinate with OSHA to work out any differences before finalizing the amended regulation.	This project has been significantly impacted by vacancies and the pandemic. Since reporting in March of 2021, OSHSB has filled the first two (2) of four (4) Senior Safety Engineer vacancies. This regulation has been assigned to one of the new SSE's as a priority assignment. The Department of Finance has requested a second alternative approach be developed for fiscal analysis in early calendar year 2022.	Not Applicable	Open January 28, 2022

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-05	DLSE does not have an updated approved whistleblower investigations manual to ensure that its policies and procedures are at least as effective as OSHA's.	DLSE should complete the whistleblower investigation manual to ensure that its policies and procedures are at least as effective as OSHA's.	DLSE is currently working on completing the whistleblower investigation manual and anticipates the completion of the manual in FY 2022.	Not Applicable	Open December 2022
FY 2020-06	In FY 2019, 88% (23 of the 26) of retaliation cases withdrawn by the complainant had no documentation that DLSE advised the complainant of the consequences of the withdrawal.	DLSE should ensure that complainants are advised that by entering a withdrawal they will be forfeiting all rights to appeal or to object, and the case will not be reopened.	DLSE has used modified letters since December 2019 about withdrawals to ensure the complainants are notified that there is no right to appeal or object and the case close is permanent.	December, 2019	Completed

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report
FY 2021 California Division of Occupational Safety and Health Comprehensive FAME Report

U.S. Department of Labor
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of workdays to initiate complaint inspections (state formula)	20.41	3	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of workdays to initiate complaint inspections (federal formula)	12.58	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of workdays to initiate complaint investigations (state formula)	18.21	1	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of workdays to initiate complaint investigations (federal formula)	2.79	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	99.24%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
5a	Average number of violations per inspection with violations by violation type (SWRU)	0.80	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
5b	Average number of violations per inspection with violations by violation type (other)	1.92	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
6	Percent of total inspections in state and local government workplaces	7.58%	+/- 5% of 5.19%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 4.94% to 5.45%.
7a	Planned v. actual inspections (safety)	3,508	+/- 5% of 4,675	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 4,441.25 to 4,908.75 for safety.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
7b	Planned v. actual inspections (health)	1,837	+/- 5% of 1,100	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,045 to 1,155 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$9,580.20	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
8a	Average current serious penalty in private sector (1-25 workers)	\$6,536.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
8b	Average current serious penalty in private sector (26-100 workers)	\$8,613.89	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
8c	Average current serious penalty in private sector (101-250 workers)	\$10,940.83	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,990.12 to \$6,650.20.
8d	Average current serious penalty in private sector (greater than 250 workers)	\$12,314.35	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
9a	Percent in compliance (safety)	26.52%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
9b	Percent in compliance (health)	34.45%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
10	Percent of work-related fatalities responded to in one workday	63.64%	100%	The further review level is fixed for all State Plans.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
11a	Average lapse time (safety)	89.78	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
11b	Average lapse time (health)	119.03	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
12	Percent penalty retained	96.62%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.
13	Percent of initial inspections with worker walk-around representation or worker interview	99.85%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	4%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	33%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
16	Average number of calendar days to complete an 11(c) investigation	594	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	0.55%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.