

FY 2017 Comprehensive Federal Annual Monitoring and 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 for Fiscal Year (FY) 2017 and its progress in resolving outstanding findings from the previous FY 2016 Follow-Up Federal Annual Monitoring and Evaluation (FAME) report. 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 below. There were approximately 500 employees dedicated to the occupational safety and health program, which is the largest State Plan in the nation.

The Heat Illness Prevention Program continued to positively impact worker safety and health. California has seen a decrease in heat-related fatalities from ten in Calendar Year (CY) 2005 to one in CY 2016 (Bureau of Labor Statistics 2016 data). In 2017, California had only one medically-confirmed fatality case related to outdoor heat exposure, indicating the success of this program.

The Professional Development and Training Unit (PDTU), responsible for training and guidance of staff, was overhauled to meet the needs of all enforcement staff. Training included both classroom courses and online webinars that were conducted by trainers, enforcement staff, academic institutions, professional organizations, and industry experts. The PDTU conducted 52 technical training courses in a variety of safety and health topics attended by managers, professional staff, and compliance safety and health officers (CSHOs).

A total of 7,982 inspections were conducted, exceeding the goal of 7,350 inspections (SAMM 7). This resulted in over 20,567 hazards cited, a significant increase from the 19,851 cited in FY 2016 (according to the CA SOAR).

California made progress addressing the ten findings and five observations previously noted in the FY 2016 Follow-up FAME Report. Six findings were completed, and five findings were carried over to FY 2017. There were five new findings. Two observations were carried over from the FY 2016 report, and three were closed. There were six findings related to the Division of Labor Standards Enforcement (DLSE). Many of these findings could be addressed if a Retaliation Complaint Investigation manual was developed that was at least as effective as the federal standard. OSHA will continue to encourage and assist the State Plan in the development of these policies and procedures. Appendix A describes new and continued findings and recommendations. Appendix B describes new observations as well as the observations subject to continued monitoring. Appendix C describes the status of each FY 2016 finding in detail.

II. State Plan Background

A. Background

The Department of Industrial Relations (DIR) governs the California State Plan. The Director of DIR and State Plan Designee is Christine Baker. Juliann Sum is the Chief of Cal/OSHA. Ms. Sum is supported by Debra Lee, Deputy Chief for Field Enforcement; Cora Gherga, Assistant Chief of Enforcement Administration; and Eric Berg, Deputy Chief for Research and Standards. 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 Marley Hart, Executive Officer. One of the positions on the board is currently vacant.

The California Occupational Safety and Health Appeals Board (OSHAB) adjudicates contested cases. Art Carter is the Chairperson, and Han Ha was the Executive Director until November 2017.

Under the Labor Commissioner, DLSE investigates allegations of retaliation. The Labor Commissioner is Julie Su, the Regional Manager is Joan Healy, located in San Jose, and the Senior Deputy is Kim van Tran, located in Santa Ana. At the end of the fiscal year, one Senior Deputy Labor Commissioner located in Santa Ana, California, oversaw eight dedicated Deputy Labor Commissioners who investigate OSHA retaliation cases located in San Francisco, Sacramento, Santa Ana, and San Jose.

Cal/OSHA has 28 enforcement 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) that conduct 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 Unit offices in California whose mandate is 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) that target employers in the underground economy in partnership with other state agencies. The Crane Unit and a Pressure Vessel Unit assist compliance safety and health officers (CSHOs) by providing technical expertise for cranes, hoisting equipment, and pressure vessels and are co-located throughout the offices.

The base award to the California program was \$26,544,300 in federal funds. The state matched this and contributed an additional \$32,103,312 for a total of \$85,191,912. A one-time only award of \$45,000 in August increased their total grant to \$85,236,912. A financial monitoring visit covering the FY 2015 and FY 2016 program years was conducted resulting in three findings for the 23(g) grant. The findings included: 1) procurement requirements for processing invoices were not followed; 2) the policy for documenting receipt of ordered goods was out-of-date, and 3) there was no documentation that a physical inventory of all property was conducted according to

property accountability requirements. Following the review, corrective actions were immediately taken and the findings were closed.

B. Major New Issues

California Wildfires

Many parts of California were severely impacted by wildfires in 2017. In Northern California, a series of 250 wildfires started burning in early October, and 21 of them became major fires that burned at least 245,000 acres. In December, a series of 28 wildfires ignited areas across Southern California burning 307,000 acres, causing massive property damage and widespread evacuations.

Compliance assistance, outreach, and consultation were provided in response. Wildfire-related safety and health information was posted on websites and provided to callers. Joint efforts with the Office of Emergency Services were initiated to train workers and the public and to provide personal protective equipment to agricultural and clean-up workers. Enforcement activities occurred based on complaints or referrals from compliance assistance staff, on employers who demonstrated continued non-compliance.

Occupational Safety and Health Standard Development

California continued to lead the way in innovative occupational safety and health standard development. Two of these standards, Workplace Violence Prevention in Healthcare and Process Safety Management for Petroleum Refineries, are the first of their kind in the nation. The Workplace Violence Prevention in Healthcare requires health care facilities to establish workplace violence prevention plans to protect health care personnel from aggressive and violent behavior. Cal/OSHA is developing a broader standard for possible rulemaking to address workplace violence in all industries, with advisory input from numerous stakeholders.

As a result of the 2012 Chevron Refinery fire in Richmond, California, the OSHSB passed new regulations on Process Safety Management (PSM) for Petroleum Refineries that became effective October 1, 2017. This new regulation helped strengthen requirements regarding damage mechanism reviews, the hierarchy of hazard control analysis, human factors, incident investigations, management of organizational change, and safety culture assessments. In addition, new CSHO positions and two PSM offices were added to expand the existing PSM non-refinery inspection program.

Heat Illness Prevention

The initiatives developed for the Heat Illness Prevention Special Emphasis Program continued in 2017. This included a balance between outreach, training and education, and enforcement. Training and outreach to employers, supervisors, and workers were provided by partnering with agricultural and construction industry groups, insurance carriers and other stakeholders. In FY 2017, there were 2,755 inspections conducted where heat hazards were evaluated and 60% of these had violations associated. Additionally, 110 seminars and 150 outreach events were conducted, and more than 37,000 units of heat-related material were distributed to workers to educate them on recognizing the symptoms of heat illnesses and taking preventive measures. Currently, the heat illness and prevention standard is being expanded to include indoor

workplaces.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. The Fiscal Year 2017 report is a comprehensive year report where OSHA conducted an on-site program evaluation and case file review. On-site reviews were conducted at one office randomly selected from each Region, one PSM Office, and one High Hazard Unit Office.

A total of 173 safety and health inspection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections with violations conducted during the evaluation period (October 1, 2015, through September 30, 2017). The selected population included:

- 23 closed fatalities
- 98 closed unprogrammed inspections
- 52 closed programmed inspections

A total of 189 whistleblower investigations were completed and 64 complaints were administratively closed. A random selection of 15 percent of the completed investigation files were chosen for review by selecting from (1) different investigations and (2) different case determinations (dismissed, withdrawn, settled, settled other, and litigation/merit). In addition, 5 percent of the 64 administratively closed case files were selected. This resulted in 31 case files as follows:

- 8 withdrawn
- 15 dismissed
- 2 settled
- 3 settled other
- 3 administratively closed

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

- State Activity Mandated Measures Report (SAMM, data date 11/13/17)
- CA SAMM (data date 1/19/18)
- State Information Report (SIR, data date 11/13/17)
- Mandated Activities Report for Consultation (MARC, data date 11/17/17)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- OSHA Information System (OIS)

- Integrated Management Information System (IMIS, data date 10/13/2017)

Each State Activity Mandated Measures (SAMM) Report has a further review level (FRL), which can be either a single number or a range of numbers above and below the national average. SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2017 State Activity Mandated Measures Report and includes the FRL for each measure.

B. Review of State Plan Performance

This section is an assessment of California's progress in meeting mandated activities and program elements. The assessment of California's progress in achieving their annual performance plan goals is addressed in their FY 2017 State OSHA Annual Report (SOAR) (Appendix E).

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 programs are provided to staff to enhance their professional development. This program incorporates self-study, on-the-job experiences and formal training on a variety of safety and health topics, and accommodates the different levels of experience and competence. Training included formal courses and online webinars taught by both experienced enforcement staff and outside experts. The PDTU produced 52 total courses covering health and safety topics that included excavations, legal aspects, heat illness and prevention, scaffolding, investigation techniques, electrical, and data entry. Approximately 1,970 seats were filled for these courses.

b) State Internal Evaluation Program (SIEP) Report

The Cal/OSHA SIEP consisted of an internal review of randomly selected case files to assess enforcement and consultation 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. The FY2017 internal audit was conducted unannounced at each of the District Offices and units.

c) Staffing

There were approximately 500 personnel throughout the divisions dedicated to the occupational safety and health program, the biggest in the nation. While retirement continued to drive staff turnover, vacancies were being filled through a new streamlined hiring process. On July 1, 2017, funding was obtained for 13 new positions to expand the existing PSM non-refinery inspection program.

2. ENFORCEMENT

A total of 7,982 enforcement inspections were conducted (SAMM 7). The number of inspections exceeded the projected goal of 7,350 projected in the FY 2017 23(g) Grant. Enforcement staff identified over 20,567 violations, potentially affecting the estimated 3.1 million workers.

a) Complaints

The Policy and Procedures (P&P) Manual requires that formal serious complaints be responded to within three working days, and formal non-serious complaints be responded to within 14 calendar days. Complaints are categorized as serious or non-serious, and formal or non-formal. Complaints signed by current workers (identified by name and address), union representatives, and representative of a government agency are considered formal complaints. Complaints not falling into the above categories are considered non-formal complaints. All formal complaints are required to be investigated. The California Labor Code requires that an inspection for a formal serious complaint be initiated within three working days, while an inspection for a formal non-serious complaint be initiated within 14 calendar days.

The case file review revealed that all of the 14 case files classified as formal serious complaints were inspected within 3 working days. The average time to initiate an inspection for formal serious complaints was four working days, slightly exceeding the negotiated measure of three working days. Of the 28 formal non-serious complaint inspections, 6 (21%) were not opened within 14 calendar days. The average time to initiate an inspection for formal non-serious complaints was 17 days, which exceeded the negotiated measure of 14 calendar days.

Finding FY 2017-01: The average time to initiate an inspection for formal non-serious complaints was 17 calendar days, which exceeded the negotiated measure of 14 calendar days.

Recommendation FY 2017-01: Cal/OSHA should determine the cause of the response time to complaints, and implement a corrective action plan to ensure that complaints are responded to timely.

There are state-specific mandates for the response times that categorize complaints as serious or non-serious, and formal or non-formal. These categories are not currently accounted for in the calculations for SAMM 1 and 2 in the OIS SAMM report. Therefore, the response time reported in SAMM 1 and SAMM 2 (Appendix D) was not accurate, and a manual count was conducted. This observation has been amended and will remain open.

Observation FY 2017-OB-01(FY 2016-OB-02): The response time as measured by SAMM 1 and 2 was not accurate since OIS data did not separate serious and non-serious response time.

Federal Monitoring Plan FY 2017-OB-01 (FY 2016-OB-02): OSHA will continue to assist and track Cal/OSHA's development of an effective method for collecting complaint response time data in a timely manner.

The FY 2017 case file review data indicated that in 2 of the 34 (6%) complaint inspections where letters would be required to be sent to the complainants, reviewers were unable to locate the necessary letters in the case file. This was an improvement from Finding FY 2016-02; where 14% of the complaint inspections lacked notification of inspection results to complainants. Training was provided to staff to ensure the necessary letters were sent to complainants. Finding FY 2016-02 has been completed.

b) Fatalities

Of the FY 2017 fatalities, 97.5% were responded to within one day. This exceeds the national average of 96.3% (SAMM 10), but is just below the FRL of 100%. There were four outliers identified in this measure. One was a data entry error and was corrected. In another instance, the employer failed to report the fatality and was subsequently cited. Another fatality was opened within two days because it was reported to the wrong office and was not transferred to the appropriate office in a timely manner. This issue was addressed and corrected with those offices. And lastly, there was a four-day delay to respond to one case due to a misunderstanding on jurisdictional boundaries and work-relatedness.

Of the 23 fatality case files reviewed during the on-site case file review, two cases (8%) did not contain next-of-kin (NOK) letter documentation. In both cases, attempts were made to contact family members without success. Observation FY 2016-OB-03 is closed.

Cal/OSHA refers fatality and accident investigations when there is a potential for criminal prosecution to the Bureau of Investigations (BOI). In 2016, BOI opened more cases, but referred the fewest for prosecution than it had in the past ten years in an attempt to prioritize the cases most likely to result in criminal charges. There were 205 cases opened in 2016 and 201 were fatality related. Of these, 18 cases were referred to the District Attorney, and all (100%) resulted in criminal charges. These cases were highly publicized to serve as a significant deterrent to employers.

c) Targeting and Programmed Inspection

Programmed inspections are conducted focusing on four areas:

1. The High Hazard Unit (HHU) inspects high-hazard industries based on the days away, restricted and transferred (DART) rate that is twice the private sector average.
2. The Labor Enforcement Task Force (LETF) inspects employers in the underground economy (for example, employers who circumvent labor laws to gain a financial advantage over competitors) for different labor violations.

LETF's inspections are generally in low hazard industries, but could encompass high hazard areas.

3. The Process Safety Management (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 planned turnarounds for all affected units for the following calendar year. After reviewing the schedule, the PSM Unit can request further review and inspection.
4. Mining and Tunneling (MT) Unit inspects each tunnel under construction six times per year, as mandated by statute. These establishments are targeted by construction permits with the goal of prevention through frequent monitoring inspections.

Only the results from the HHU (which target industries for inspection based on their rate of injuries and illnesses in a manner similar to OSHA) will be used for comparison.

Table 1
Percent of Programmed Inspections with Serious, Willful, Repeat, or Unclassified Violations
 (run in OIS 2/6/2018)

	Safety	Health
HHU	63.4%	100.0%
Two-Year National Average	83.0%	70.6%

The percent of programmed inspections resulting in serious, willful, repeat, or unclassified (SWRU) violations completed by the High Hazard Unit was 100.0% in health and 63.4% in safety. Although the percent of safety inspections with SWRU is low, the average number of violations per inspection is 7.0, which significantly exceeds the national average of 2.9. This indicates that high hazard industries are properly targeted and Observation FY 2016-OB-04 is closed.

The in-compliance rate for safety inspections was 23.2% which is lower (better) than the FRL range (SAMM 9). The in-compliance rate for health inspections was 37.9% which is within the FRL range (SAMM 9).

d) Citations and Penalties

Of the 133 case files with violations reviewed, 63 (47%) did not have severity/extent/likelihood justifications documented within the case file. However, it was noted that the severity/extent/likelihood was defined in their P&P, thus a justification was not needed.

The average number of SWRU violations per inspection increased to 0.9 in FY 2017. This average was still below the lower end of FRL range at 1.46 (SAMM 5). Training was provided to all staff and a new evidence documentation form was implemented. The case file review revealed there were 74 cases (56%) with SWRU citations, out of the 133 cases with violations. This finding will carry over from the previous FY 2016 FAME, and will be amended to reflect the new data from FY 2017.

Finding FY 2017-02 (FY 2016-04): The average number of serious, willful, repeat or unclassified violations issued was 0.9 violations per inspection. This was below the FRL (SAMM 5).

Recommendation FY 2017-02 (FY 2016-04): Cal/OSHA should determine the reason for the low number of serious, willful, repeat, or unclassified violations, and implement corrective actions to ensure serious hazards are identified and abated.

The lapse time for safety inspections was 74 days, and for health inspections was 76 days, both exceeding the higher end of the FRL range, which was 53.45 for safety and 67.24 for health (SAMM 11). Per statute, an employer must be notified of the intent to issue a serious citation, and is given 15 days to respond with evidence, as to why it should not be serious. The case file review data was consistent with the SAMM data and showed the average lapse time, the time period between the opening conference date, and citation issuance date was 82 days. In cases where notification was sent to the employer the average lapse time was 81 days. In addition, when there was abatement before citation issuance, the lapse time averaged 78 days, but when there was no abatement before issuance, lapse time averaged 100 days. This finding will carry over from the FY 2016 FAME.

Finding FY 2017-03 (FY 2016-03): Cal/OSHA's citation lapse time for safety and health inspections was above the FRL (SAMM 11).

Recommendation FY 2017-03 (FY 2016-03): Cal/OSHA should work with district and regional managers to improve citation lapse time.

The average current penalty per serious violation in private sector was \$7,855.15, which far exceeded the national average, and continued to be the highest in the nation. Table 2 shows the average current penalty per serious violation based on the number of workers controlled by an establishment, with smaller employers receiving a higher discount than larger employers (SAMM 8). Penalties from citations go to the General Fund of the State of California.

Table 2
Average Current Penalty per Serious Violation

Number of Workers	FY 2017	National Average
Total 1-250+	\$7,855.15	\$2516.80
1-25	\$5,474.86	\$ 1706.10
26-100	\$8,360.76	\$ 2867.94
101-250	\$9,785.70	\$3952.26
251+	\$11,355.83	\$5063.48

District Offices do not collect penalties from citations. A separate unit within DIR, the Accounting and Collections Unit, has this responsibility. The Accounting and Collection Unit tracks overdue payments, and notifies the appropriate District Offices once full payment is received.

e) **Abatement**

The case file review showed appropriate abatement periods and overall timeliness. In 133 case files with violations, 84 (63%) case files had abatement completed prior to issuance of citations. Of the 74 cases reviewed that had a serious, willful, repeat citation, 58 (78%) were abated prior to citation issuance. Obtaining immediate abatement ensures workers are removed from hazards and is strongly encouraged of enforcement staff.

f) **Worker and Union Involvement**

The percentage of initial inspections with worker walk-around representation or worker interviews was 99.9% (SAMM 13). The case file review revealed 16 out of 17 inspections with union participation. This supports the SAMM data, and Finding FY 2016-05 is completed.

3. REVIEW PROCEDURES

a) **Informal Conferences**

The employer is encouraged to request an informal conference with Cal/OSHA within ten working days following the receipt of the citation. If an appeal is filed with OSHAB, an informal conference can be held up to the day of the appeal hearing. Informal settlement provisions provide employers the right of review and, workers or their representatives, the opportunity to participate in the proceedings.

During the informal conference, the District Manager or District Manager’s designee has the authority to withdraw violations, change the classifications and characterizations of violations, and reduce penalties based on supporting evidence provided by the employer. Abatement credits are awarded to employers for completing abatement prior to the deadline fixed in the citation for abatement, thereby encouraging timely abatement. The penalty retention rate was 75.7%, which is above the two-year national average of 67.9% (SAMM 12).

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 that could not have been reasonably anticipated. At least 30 days prior to the hearing, OSHAB will send out a Notice of Hearing to the parties involved. The employer is responsible for notifying workers of the pending hearing by posting the notice near the site of the alleged violation, in a conspicuous place, or where the workers report or carry out their duties. The Administrative Law Judge (ALJ) will file a written determination 36 days after the hearing. Any party to an appeal has the right to petition OSHAB to reconsider an order or decision of an ALJ. Any party to an appeal who disagrees with a decision after reconsideration or the denial of a petition for reconsideration may apply to the California Superior Court.

Unlike OSHA, an employer has the right to settle the case informally at any point during the appeal process. The cases settled by Cal/OSHA are recorded in the OIS. The cases settled by OSHAB are recorded in their Appeals Scheduling & Information System (OASIS) database and then sent back to the appropriate District Office to update in OIS. For FY 2017, 8.1% of violations were vacated after an appeal was filed, below the national average of 14.6% (SIR 5B), and 6.9% of violations were reclassified after the appeal, below the national average of 12.6% (SIR 6B). Of the 158 case files reviewed, 45 were appealed. Of the 45 cases appealed, 13 cases (29%) had violations that were vacated and/or reclassified, and 37 cases (82%) had a reduction in penalties. The penalty retention rate after the appeal was filed was 53.6% versus the national average of 62.9% (SIR 7B).

In FY 2017, the OSHAB had a full year with their new OASIS case management system and was deemed to improve the OSHAB's efficiency in resolving appeals. While each case is unique, counting all Settlement Orders and Decisions of Administrative Law Judges, the OSHAB greatly reduced the average time for a case to travel from docket date to resolution. Pre-OASIS, the OSHAB's average case resolution time was 233 days, while the 2017 average was 102 days. Of the 2,872 appealed cases received in CY 2017, 2,855 were adjudicated (99%) within the same year and 95% were adjudicated by Administrative Law Judge Orders before Hearings. There were 18 Petition for Writs (when an appeal is appealed) and all (100%) were upheld in favor of the OSHAB.

4. STANDARDS AND FEDERAL PROGRAM CHANGE ADOPTION

a) Standards Adoption

The OSHSB promulgates occupational safety and health standards for California. When a new or revised standard is proposed, an advisory opinion is requested. OSHA reviews the new or revised standard to ensure it is at least as effective as (ALAE) as the federal regulation and responds to the request. The rulemaking

process includes a public hearing, stakeholder input, comment periods, and economic analysis.

The 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 proposed rulemaking is currently undergoing a Standardized Regulatory Impact Assessment (SRIA), which is a requirement of Senate Bill 617. When the economic analysis estimates an impact that exceeds \$50 million, this law requires state agencies to conduct a SRIA. Although the rulemaking process is underway, this item will remain a finding until the regulation becomes adopted and an effective date is implemented.

Finding FY 2017-04 (FY 2016-01): OSHSB's regulations for residential construction fall protection are not ALAE as OSHA's regulations as required by 29 CFR 1953.5(a).

Recommendation FY 2017-04 (FY 2016-01): OSHSB should modify its construction fall protection regulations on a timely basis to ensure that its residential fall protection requirements are ALAE as the federal regulation. In addition, OSHSB and its stakeholders should coordinate with OSHA to work out any differences before finalizing the amended regulation.

The regulations for Bakery Ovens and Commercial Diving were not ALAE as OSHA's. The Bakery Oven standard exempts ovens below the 150,000 BTU/hour threshold, which is not in the federal standard. The OSHSB is currently in the process of completing revisions to the Commercial Diving standard. A portion of the regulation commensurate to the federal standard was adopted and effective as of December 1, 2017. The other portion of the regulation which was considered not as effective as the federal standard is undergoing analysis. This observation was amended to include commercial diving and will continue to be monitored.

Observation FY 2017-OB-02 (FY 2016-OB-05): State Plan-initiated rulemaking promulgated standards were not ALAE as OSHA standards, such as the Bakery Oven and Commercial Diving.

Federal Monitoring Plan FY 2017-OB-02 (FY 2016-OB-05): OSHA will monitor Cal/OSHA's standards to ensure they are ALAE as OSHA standards and initiate actions to update deficient standards.

With the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA raised its maximum penalties effective August of 2016. As required by law, OSHA then increased maximum penalties annually, on January 1, 2017 and January 1, 2018, according to the Consumer Price Index (CPI). State Plans are required to adopt both the initial increase and subsequent annual increases.

State Plans are also required to adopt penalty policies and procedures that are ALAE as those contained in OSHA's Field Operations Manual (FOM), which was revised

on August 2, 2016, to include changes to the penalty structure in Chapter 6 Penalty and Debt Collection based on changes in the Consumer Price Index.

Under Assembly Bill 112, California's Labor Code sections 6427, 6429, and 6431 were amended to conform to OSHA's changes. California regulations were then amended in September 2017 and January 2018 to implement the Labor Code changes. Effective January 1, 2018, the maximum penalty for a regulatory or general violation is increased to \$12,726, the maximum penalty for a willful or repeat violation is increased to \$127,254, and the minimum penalty for a willful violation is increased to \$9,090.

On May 12, 2016, OSHA published the Final Rule to Improve Tracking of Workplace Injuries and Illnesses, effective January 1, 2017. The rule required all affected employers to submit 300A log summaries in OSHA's Injury Tracking Application (ITA) by the specified due date of July 1, 2017. This deadline was subsequently pushed back to December 15, 2017.

In its Fall 2017 Regulatory Agenda, OSHA announced that it intends to issue a proposal to reconsider, revise, or remove provisions of the Improve Tracking of Workplace Injuries and Illnesses final rule, 81 FR 29624 (May 12, 2016). State Plans were required to adopt an "ALAE as" rule within six months of promulgation, by November 14, 2016. However, given OSHA's intent to issue a proposed rule to reconsider, revise or remove provisions of the Improve Tracking of Workplace Injuries and Illnesses rule, a number of State Plans, including California, have delayed adoption until this additional rulemaking is complete.

During FY 2016 and 2017, OSHA issued six federal standard actions that required a response to OSHA and six months to adopt the standard. Table 3 below includes those standards. In addition standards carried over from previous years that were not adopted or responded to timely are also included in the below table:

**Table 3
Federal Standard Actions**

Standard	State Plan Response Date	Intent to Adopt	Adopt Identical	State Plan Adoption Date
1903.2560.2575 Final Rule on the Implementation of the 2017 Annual Adjustment to Civil Penalties for Inflation FR Standard Date 1/18/17 Response Due Date 3/18/17 Adoption Due Date 7/18/17 Adoption Required	3/18/17	Yes	No	9/14/17 https://www.dir.ca.gov/title8/336.html State Adoption Not Timely
1910.1915.1926 Final Rule on Occupational Exposure to Beryllium FR Standard Date 1/9/17 Response Due Date 3/9/17 Adoption Due Date 7/9/17 Adoption Required	5/15/17	Yes	Yes	10/2/17 https://www.dir.ca.gov/oshsb/Occupational-Exposure-to-Beryllium-HORCHER.html State Response Not Timely
1910 Final Rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Services) FR Standard Date 11/18/16 Response Due Date 1/18/17 Adoption Due Date 5/18/17 Adoption Required	5/15/17	Yes	No	Awaiting Plan Change Supplement State Response Not Timely
1902, 1903 Interim Final Rule on Maximum Penalty Increases FR Standard Date 7/1/16 Response Due Date 9/1/16 Adoption Due Date 1/1/17 Adoption Required	5/15/17	Yes	Yes	9/14/17 https://www.dir.ca.gov/title8/336.html State Response Not Timely
1902, 1904 Final Rule to Improve Tracking of Workplace Injuries and Illnesses FR Standard Date 5/12/16 Response Due Date 7/12/16 Adoption Due Date 11/14/16 Adoption Required	7/13/16	Yes	No	Awaiting Plan Change Supplement State Adoption Not Timely
1904 Occupational Injury and Illness Recording and Reporting Requirements - NAICS Update and Reporting Revisions FR Standard Date 9/19/14 Response Due Date 11/19/14 Adoption Due Date 3/19/15 Adoption Required	11/03/14	Yes	No	1/1/16 https://www.dir.ca.gov/T8/14300_2.html State Adoption Not Timely

1926 Cranes and Derricks in Construction - Operator Certification Final Rule FR Standard Date 9/26/14 Response Due Date 11/26/14 Adoption Due Date 3/26/15 Adoption Not Required	10/15/14- new update received 2/1/18	Yes	Yes	Awaiting Adoption State Adoption Not Timely
1910 1926 Final Rule for Electric Power Generation, Transmission and Distribution; Electrical Protective Equipment FR Standard Date 4/11/14 Response Due Date 6/11/14 Adoption Due Date 1/11/15	4/22/14	Yes	No	Awaiting Adoption State Adoption Not Timely

b) Federal Program Change (FPC) Adoption

During FY 2016 and 2017, OSHA issued four Federal Program Changes that required a response to OSHA and six months to adopt the FPC. Table 4 below includes those FPCs. In addition, FPCs carried over from previous years that were not adopted/ or responded to timely are also included in the table.

**Table 4
Federal Program Changes**

FPC Directive/Subject	State Response Date	Intent to Adopt	Adopt Identical	State Adoption Date
CPL 02-01-058 Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence Date of Directive 1/10/17 Response Due Date 3/10/17 Adoption Due Date 7/10/17 Adoption Not Required Equivalency Not Required	2/9/17	No	No	4/1/17 https://www.dir.ca.gov/oshsb/Workplace-Violence-Prevention-in-Health-Care.html CA adopted the first WPV standard
CPL 02-00-160 Field Operations Manual Date of Directive 8/2/16 Response Due Date 10/1/16 Adoption Due Date 2/2/17 Adoption Not Required Equivalency Required	10/1/16	Yes	No	9/14/17 https://www.dir.ca.gov/title8/336.html State Adoption Not Timely

CPL 03-00-020 National Emphasis Program on Shipbreaking Date of Directive 3/7/16 Response Due Date 5/6/16 Adoption Due Date 9/7/16	5/20/16	Yes	Yes	State Adoption Not Timely
CPL 02-03-007 Whistleblower Investigations Manual Date of Directive 1/28/16 Response Due Date 4/27/16 Adoption Due Date 7/28/16 Adoption Not Required Equivalency Required	4/27/17	Yes	No	Awaiting Plan Change Supplement State Adoption Not Timely
TED 01-00-020 Mandatory Training Program for OSHA Whistleblower Investigators Date of Directive 10/8/15 Response Due Date 12/8/15 Adoption Due Date 4/8/16 Adoption Not Required Equivalency Required	12/4/15	Yes	No	Awaiting Plan Change Supplement State Adoption Not Timely
CPL 02-02-079 Inspection Procedures for the Hazard Communication Standard Date of Directive 7/9/15 Response Due Date 9/9/15 Adoption Due Date 1/11/16 Adoption Not Required Equivalency Required	7/30/15	Yes	No	8/24/16 https://www.dir.ca.gov/DOS/HPol/P&PC-43.pdf State Adoption Not Timely
CPL 02-02-078 Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis Date of Directive 6/30/15 Response Due Date 8/30/15 Adoption Due Date 12/31/15 Adoption Not Required Equivalency Required	7/29/15	Yes	No	May 5/1/09 http://www.dir.ca.gov/title8/5199.HTML Awaiting Plan Change Supplement
CPL 03-00-019 National Emphasis Program on Amputations Date of Directive 6/30/15 Response Due Date 8/30/15 Adoption Due Date 12/31/15 Adoption Required Equivalency Not Required	8/13/15	Yes	No	4/21/16 Awaiting Plan Change Supplement State Adoption Not Timely

CPL 02-01-057 Compliance Directive for Cranes and Derricks in Construction Standard Date of Directive 10/17/14 Response Due Date 12/17/14 Adoption Due Date 4/17/15 Adoption Not Required Equivalency Required	3/12/15	Yes	No	6/29/15 https://www.dir.ca.gov/DOS/HPol/Compliance-Directive.Cranes-and-Derricks-in-Construction.pdf Awaiting Plan Change Supplement State Response Not Timely
CPL 03-00-018 Revision – National Emphasis Program – Primary Metal Industries Date of Directive 10/20/14 Response Due Date 12/20/14 Adoption Due Date 4/20/15 Adoption Required Equivalency Not Required	3/11/15	Yes	No	4/10/15 https://www.dir.ca.gov/DOS/HPol/Primary-Metals-Emphasis-Program.(CPL%2003-00-018B).pdf

c) State Plan-Initiated Standards/Changes

When a state initiates a change to their program plan, it is submitted to OSHA for review and approval. Table 5 below lists all the state plan initiated changes.

**Table 5
State Plan Initiated Changes**

Rulemaking (State Plan Initiated Changes)	Adoption Date	Effective Date
Definition of Adequate Design	1/21/16	4/1/16
Fall Protection for Work Around Skylights	2/18/16	7/1/16
Working Area Catwalk Exception	10/20/16	4/1/17
Workplace Violence Prevention in Health Care	10/20/16	4/1/17
Underhung/Slung (Jump) Saw Guarding	2/16/17	7/1/17
Airborne Contaminants - Wood Dust and Western Red Cedar	2/16/17	7/1/17
Process Safety Management for Petroleum Refineries	5/18/17	10/1/17

Powered Industrial Truck Operation - Exception	6/15/17	10/1/17
Reinforcing Steel Concrete Construction and Post-Tensioning Operations	9/14/17	1/1/18
Airborne Contaminants - Benzyl Chloride	10/19/17	4/1/18

5. VARIANCES

A variance is a regulatory action that permits an employer to deviate from the requirements of an OSHA standard under specified conditions. OSHSB grants permanent variances. There were three permanent variances granted during this evaluation period. Two of these were variances concerned the 30 CFR 56 mining regulations enforced by MSHA. One safety and health variance concerned emergency eye wash/shower requirements passed by the state and was more prescriptive than the federal standards.

6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

In FY 2017, 443 inspections in state and local government workplaces were completed, surpassing the projected goal of 430 inspections and falling just below the FRL of 5.56% by conducting 5.5% of total inspections. Penalties were assessed against state and local government employers in the same manner as private sector employers.

7. WHISTLEBLOWER PROGRAM

Claims of workplace retaliation for reporting occupational safety and health issues are investigated by the Division of Labor Standards Enforcement (DLSE). There was no updated manual governing the review and processing of workplace retaliation complaints despite this being a repeated finding. Having a manual provides clear, updated policy and could potentially reduce findings each year. As of the date of this report, no draft chapters were submitted for review despite quarterly requests. This is a recurring finding and remains open.

Finding FY 2017-05 (FY 2016-09): DLSE does not have an updated whistleblower investigations manual to ensure that its policy and procedures are ALAE as OSHA's.

Recommendation FY 2017-05 (FY 2016-09): DLSE should develop a whistleblower investigations manual to ensure that its policy and procedures are ALAE as OSHA's and submit it to OSHA for approval.

According to a WebIMIS report run 10/13/2017, 189 whistleblower retaliation investigations were closed, and 64 administrative closures were completed. However, DLSE's internal database report (data date 11/08/2017) showed that it actually closed 359 cases in FY 2017. DLSE has experienced staff turnover and WebIMIS access issues which contributed to this discrepancy. Under the 23(g) grant conditions, State Plans must ensure that program data shall be provided to OSHA.

Based on the case file review, it appeared they generally followed OSHA policies and procedures outlined in the Whistleblower Investigations Manual (WIM). The on-site evaluation resulted in five new findings and two repeat findings. In addition, several best practices were observed in FY 2017. For example, DLSE hired a dedicated Senior Deputy Labor Commissioner to oversee all OSHA related retaliation investigations. A dedicated email address to facilitate OSHA referrals was also created. Moreover, the internal database indicated that seven "merit" (also known as "cause") findings were issued, the highest of any OSHA state plan based on their IMIS data, which is commendable.

Two findings, FY 2016-06 and FY 2016-07, were completed because the on-site review demonstrated corrective action had been taken. An additional finding, FY 2016-10, was completed based on a review of the website that allows complainants to file orally, by fax, and by email.

In 14 of 31 cases reviewed, information was not consistently entered into the WebIMIS database accurately, as required by the WIM. In four cases, the docketing date in WebIMIS was wrong. In five cases, the filing date in WebIMIS was either wrong or unverified. In three cases, the adverse action date in WebIMIS was either wrong or unverified. In five cases, the date entered in WebIMIS when the case was sent to the supervisor was either wrong or unverified. In eight cases, the date entered in WebIMIS when the supervisor approved the case determination was either wrong or unverified. Inaccurate data or untimely data entry creates an opportunity for information to be lost and could negatively impact the management of the program or could affect complainants' rights.

The challenges faced with prolonged lack of access to WebIMIS were recognized, and OSHA provided WebIMIS training to DLSE on several occasions to address these issues during FY 2017 and previous Fiscal Years, including in August 2016 and March 2017. OSHA remains hopeful that using dedicated staff in support and investigative roles should greatly reduce and alleviate these issues.

Finding FY 2017-06 (FY 2016-08): In 14 of 31 (45%) retaliation investigation cases reviewed, information was not consistently or accurately entered into WebIMIS.

Recommendation FY 2017-06 (FY 2016-08): DLSE should enter information into Web IMIS in a consistent and accurate manner.

In 21 of 31 closed cases reviewed, there was no evidence that the underlying occupational safety and health claim was referred to Cal/OSHA to both 1) notify them of potential occupational safety and health issues, and 2) to determine whether an inspection was pending, as required by the WIM. If DLSE provided notice to the Respondent of the whistleblower claim prior to a pending Cal/OSHA inspection, DLSE could negatively impact Cal/OSHA by giving the respondent advance notice of the underlying occupational safety and health allegations.

Finding FY 2017-07: In 21 of 31 (68%) closed retaliation investigation cases reviewed, there was no evidence that DLSE referred the retaliation claim to Cal/OSHA.

Recommendation FY 2017-07: DLSE should refer retaliation claims to Cal/OSHA. In 8 of 15 dismissals reviewed, there was no evidence that the Complainant or Respondent received a closing letter, as required by the WIM. Proof of receipt should be preserved in the file with copies of the letters to maintain accountability.

Finding FY 2017-08: In 8 of 15 (53%) retaliation dismissals, there was no proof of receipt that the Complainant or Respondent received a closing letter.

Recommendation FY 2017-08: DLSE should maintain proof of receipts that Complainants and Respondents receive closing letters.

In 27 of 28 cases reviewed, there was no evidence that screening interviews were conducted or a Memorandum of Interview was prepared based on information learned during the on-site evaluation, as required by the WIM. Rather, the on-site revealed that after a complaint was filed, complainants were routinely sent a Retaliation Complaint form (RC1) to fill out in lieu of conducting a screening interview and drafting a Memorandum of Interview. Such a Memorandum can preserve the complainant's account of the facts, record facts necessary to determine whether a prima facie allegation exists, and be used to later refresh the complainant's memory in the event his or her account deviates from initial information provided; this is often vital in later assessing the complainant's credibility.

Finding FY 2017-09: In 27 of 28 (96%) retaliation investigation cases reviewed, there was no evidence that DLSE conducted a screening interview and created a Memorandum of Interview based on information learned during the screening interview.

Recommendation FY 2017-09: DLSE should conduct screening interviews and draft Memorandum of Interviews during the intake process.

In two of the three administrative closures reviewed, there was no evidence that a supervisor reviewed and approved the decision to either administratively close the complaint as required by the WIM. Not having a supervisor review the decision to administratively close cases could result in a complaint being wrongly opened, closed or referred.

Finding FY 2017-10: In two of the three (33%) administrative closures, there was no evidence that a DLSE supervisor reviewed and approved the decision to administratively close complaints.

Recommendation FY 2017-10: DLSE should ensure that a supervisor review and approve the decision to administratively close or docket complaints.

OSHA previously raised concerns about DLSE's practice of referring claims filed by workers who alleged retaliation for reporting work-related fatalities, injuries, or illnesses to the DIR's Division of Workers' Compensation (DWC). In FY 2017, the state legislature addressed this issue by amending Labor Code 6310 to reflect that DLSE has jurisdiction to investigate these claims and Observation FY 2016 OB-01 is now closed.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

There were two Complaints About State Plan Administration (CASPA) in FY 2016 and none in FY 2017. One CASPA (CA-2016-59) alleged that a complaint inspection did not address all of the complaint items within the appropriate time frames, the complaint was not notified of the results timely, and the complainant was not given an opportunity to rebut the findings. After an investigation into the allegations, it was determined that the processes and procedures were correctly followed and no findings were issued. The complainant appealed this decision providing additional information. Two recommendations and findings resulted from the appeal, and corrective actions were taken.

The second CASPA (CA-2016-60) alleged a whistleblower complainant was denied appeal rights. There was one finding and recommendation from this CASPA. The Labor Code was amended so DLSE procedures would be as effective as the federal standard.

9. VOLUNTARY COMPLIANCE PROGRAM

The California Voluntary Protection Program (Cal/VPP) for general industry employers and VPP-C for construction employers provides recognition and programmed inspection exemptions to qualified fixed worksites. Participants are expected to have exceptional safety and health programs which attributes to a lower risk of injuries and illnesses, as compared to others in the industry.

In FY 2017, 6 new and 28 renewed establishments in general industry were certified, which totaled 68 active sites in California. For construction, six new establishments were added, with no renewals as VPP-C participants are dropped from the active list when the project is completed. Three workshops were held to promote Cal/VPP and two to promote VPP-C, exceeding the projected goal of one each.

10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM

Cal/OSHA provides consultation services to state and local government employers through its Consultation Program. The following section covers consultation services provided solely to state and local agency employers that are funded under Section 23(g) of the OSH Act.

A total of 34 initial consultation visits in the state and local agencies were conducted, one below the projected 35 visits in the grant. California's performance to increase its number of initial visits completes corrective action on Finding FY 2016-11.

Of the initial visits conducted in the state and local agencies, all (100%) were in high hazard industries, exceeding the goal of 90% (MARC 1). Visits to smaller businesses with less than 250 employees were 94.1% (MARC 2A) and visits to establishments with less than 500 employees were 91.2% exceeded the goal of 90% (MARC 2B). In all 34 consultation visits, the consultant conferred with employees 100% of the time. (MARC 3).

During this evaluation period, 73 serious hazards were identified, and all (100%) were corrected in a timely manner. Four serious hazards were corrected on-site, 63 within the original time, three within the extension time frame, and three within 14 days of latest correction due date. Of these, 91.8% were corrected within the original timeframe or on-site and exceeded the goal of 65%. No employers were referred to enforcement (MARC 4A-4D).

Appendix A – New and Continued Findings and Recommendations

FY 2017 California Comprehensive FAME Report

FY 2017-#	Finding	Recommendation	FY 2016-#
FY 2017-01	The average time to initiate an inspection for formal non-serious complaints was 17 calendar days, which exceeded the negotiated measure of 14 calendar days.	Cal/OSHA should determine the cause of the response time to complaints, and implement a corrective action plan to ensure that complaints are responded to timely.	New
FY 2017-02	The average number of serious, willful, repeat and unclassified violations issued per inspection was 0.9 violations per inspection. This is below the FRL level (SAMM 5).	Cal/OSHA should determine the reason for the low number of serious, willful, repeat and unclassified violations, and implement corrective actions to ensure serious hazards are identified and abated.	FY 2016-04
FY 2017-03	Cal/OSHA’s citation lapse time for safety and health inspections was above the FRL (SAMM 11).	Cal/OSHA should work with district and regional managers to continue improving its citation lapse time.	FY 2016-03
FY 2017-04	OSHSB’s regulations for residential construction fall protection are not ALAE 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 ALAE as the federal regulation. In addition, OSHSB and its stakeholders should coordinate with OSHA to work out any differences before finalizing the amended regulation.	FY 2016-01
FY 2017-05	DLSE does not have an updated whistleblower investigations manual to ensure that its policy and procedures are ALAE as OSHA’s.	DLSE should develop a whistleblower investigations manual to ensure that its policy and procedures are ALAE as OSHA’s and submit it to OSHA for approval.	FY 2016-09

Appendix A – New and Continued Findings and Recommendations

FY 2017 California Comprehensive FAME Report

FY 2017-#	Finding	Recommendation	FY 2016-#
FY 2017-06	In 14 of 31 (45%) retaliation investigation cases reviewed, information was not consistently or accurately entered into IMIS.	DLSE should enter information into Web IMIS in a consistent and accurate manner.	FY 2016-08
FY 2017-07	In 21 of 31 (68%) closed retaliation investigation cases reviewed, there was no evidence that DLSE referred the retaliation claim to Cal/OSHA.	DLSE should refer retaliation claims to Cal/OSHA.	New
FY 2017-08	In 8 of 15 (53%) retaliation dismissals, there was no proof of receipt that the Complainant or Respondent received a closing letter.	DLSE should maintain proof of receipts that Complainants and Respondents receive closing letters.	New
FY 2017-9	In 27 of 28 (96%) retaliation investigation cases reviewed, there was no evidence that DLSE conducted a screening interview and created a Memorandum of Interview based on information learned during the screening interview.	DLSE should conduct screening interviews, and draft Memorandums of Interviews during the intake process.	New
FY2017-10	In two of the three (33%) administrative closures, there was no evidence that a DLSE supervisor reviewed and approved the decision.	DLSE should ensure that a supervisor review and approve the decision to administratively close complaints.	New

Appendix B – Observations and Federal Monitoring Plans

FY 2017 California Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation# FY 2016-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2017-OB-01	FY 2016-OB-02	The response time as measured by SAMM 1 and 2 is not accurate, since OIS data does not separate serious and non-serious response time.	OSHA will continue to assist and track Cal/OSHA's development of an effective method for collecting complaint response time data in a timely manner.	Continued
FY 2017-OB-02	FY 2016-OB-05	State Plan-initiated rulemaking promulgated standards were not ALAE as OSHA standards, such as the Bakery Oven and Commercial Diving.	OSHA will continue to monitor Cal/OSHA's standards to ensure they are ALAE as OSHA standards and initiate actions to update deficient standards.	Continued
	FY 2016-OB-01	All claims filed by workers who allege retaliation for reporting work related fatalities, injuries, or illnesses are not being investigated in accordance with the equivalent federal whistleblower requirements.	OSHA will monitor DLSE's process for investigating claims filed by workers who alleged retaliation for reporting work related fatalities, injuries, or illnesses.	Closed
	FY 2016-OB-03	Final letters notifying the next-of-kin of the results of the fatality inspection were not sent in in 16.7% (4 out of 24) of the case files reviewed.	OSHA will continue to monitor to ensure that final letters are being sent to the next-of-kin, after completion of the investigation, as required by P&P Manual C-170 and 170A.	Closed
	FY 2016-OB-04	The percent of programmed safety inspections completed by the High Hazard Unit and Process Safety Management Unit, with serious, willful, repeat, or unclassified violations was lower (61.4%) than the national average (86.5%).	OSHA will continue to monitor the cause of the low number of programmed safety inspections with serious, willful, or repeat violations.	Closed

Appendix C - Status of FY 2016 Findings and Recommendations

FY 2017 California Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status (and Date if Item is Not Completed)
FY 2016-01	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.	<p>The OSHSB and OSHA agreed on text that will serve as the basis for residential construction fall protection amendments.</p> <p>In July 2017, OSHSB worked with UC Berkeley to conduct an economic impact analysis of the proposed changes.</p> <p>The Standardized Regulatory Impact Assessment is expected to be completed and approved February 15, 2018. Rulemaking will follow.</p> <p>Interim measures include DOSH enforcing current standards and outreach on enforceable trigger heights.</p>	Not Completed	Open February 8, 2018

Appendix C - Status of FY 2016 Findings and Recommendations

FY 2017 California Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status (and Date if Item is Not Completed)
FY 2016-02	Six of 43 (14%) cases reviewed lacked documentation that complainants were notified of the results of inspections or inquiries.	Cal/OSHA should ensure complainants are consistently notified of the results of the complaint inspections or inquiries by inserting documentation into the case file.	<ol style="list-style-type: none"> 1. Management trained all professional enforcement staff during the “Orientation to Enforcement” and “Inspection Techniques and Legal Aspects” during on-the-job refreshers and updates, to send notification letters and include the letters in the case files when submitting for review and processing; 2. Management trained District Managers and Senior staff during the “Case Management/ Review” class and during on-the-job refreshers and updates, to check for the complainant notification letters when reviewing and approving files; 3. Management trained office support staff during initial and ongoing training to check for the complainant notification letters when processing the files reviewed and approved by managers. 	April 10, 2017	Completed

Appendix C - Status of FY 2016 Findings and Recommendations

FY 2017 California Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status (and Date if Item is Not Completed)
FY 2016-03	Cal/OSHA's citation lapse time for safety inspections was more than 20% above of the national average (SAMM 11).	Cal/OSHA should work with district and regional managers to continue improving its citation lapse time.	<ol style="list-style-type: none"> 1. Cal/OSHA conducted an internal audit and concluded that the increased lapse time compared to the national average is due in large part to California's law that allows employers 15 days to rebut serious violations which delays the issuance of citations; 2. Senior staff in district offices were assigned to review cases and monitor lapse times in OIS; 3. Cal/OSHA has been hiring to fill CSHO vacancies to ease the workload of unprogrammed inspections. In FY16, Cal/OSHA hired 41 new employees in enforcement as CSHOs; 4. In July 2017, Cal/OSHA implemented a new evidence grid system for CSHOs to identify and organize the evidence of violations, which is expected to increase accuracy in classifying violations. 	Not Completed	Open February 8, 2018

Appendix C - Status of FY 2016 Findings and Recommendations

FY 2017 California Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status (and Date if Item is Not Completed)
FY 2016-04	The average number of SWRU violations issued per inspection was 0.8 violations per inspection. This is 43% below the national average of 1.87 (SAMM 5).	Cal/OSHA should determine the cause of the low number of inspections with serious, willful, repeat and unclassified violations, and implement corrective actions to ensure serious hazards are identified and eliminated.	<ol style="list-style-type: none"> 1. Management trained all professional enforcement staff during the “Orientation to Enforcement” and “Inspection Techniques and Legal Aspects” classes and 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. Management trained District Managers and Senior staff during the “Case Management/ Review” class and during on-the-job refreshers and updates, to properly monitor CSHOs’ investigations and to review their identification of hazards and classification of violations; 3. Senior staff in District Offices were assigned to assist with monitoring CSHOs’ investigations and reviewing their identification of hazards and classification of violations; 4. In July 2017, Cal/OSHA implemented a new evidence grid system for CSHOs to identify and organize the evidence of violations, which is expected to increase accuracy in classifying violations; 5. Cal/OSHA implemented the new regulation (8 CCR 334(d)) effective January 1, 2017 that defines repeat violations and expects to see an increase in the numbers of violations classified as repeat. 	Not Completed	Open February 8, 2018

Appendix C - Status of FY 2016 Findings and Recommendations

FY 2017 California Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status (and Date if Item is Not Completed)
FY 2016-05	Worker representatives were not involved in the opening conference nor were workers interviewed in 22 of the 205 (11%) inspections reviewed.	Cal/OSHA should conduct opening conference with unions (either with the employer or separately) and ensure these conferences are appropriately documented. Cal/OSHA should also ensure that worker interviews are conducted and documented.	<p>1. Management trained all professional enforcement staff during the “Orientation to Enforcement” and “Inspection Techniques and Legal Aspects” classes and during on-the-job refreshers and updates, to involve the union, interview employees, and document these actions;</p> <p>2. Management trained District Managers and Senior staff to check for the documentation of union involvement and employee interviews when reviewing and approving files.</p>	April 10, 2017	Completed
FY 2016-06	Eight of 12 (67%) workplace retaliation case settlement agreements were not signed and retained.	DLSE should ensure that settlements for workplace retaliation cases are signed and retained.	All cases closed as settled or settled other will have a signed copy of the settlement agreement in the file for FY 2016 and after. If parties refuse to provide a signed copy of the agreement, the case will be closed as withdrawn. The supervisor will verify a signed copy of the agreement is in the file at the time of closing.	August 2016	Completed

Appendix C - Status of FY 2016 Findings and Recommendations

FY 2017 California Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status (and Date if Item is Not Completed)
FY 2016-07	In one “settled” and one “settled other” claim, there was no documentation that the waiver of future employment clauses was evaluated to ensure complainants are allowed to secure employment in their locale, as per the Whistleblower Investigations Manual in effect at the time these two cases were closed.	DLSE should follow procedures to ensure proper consideration and documentation of factors to evaluate whether a waiver of future employment clauses prevents complainants from working in their chosen fields in the locality where they reside.	Training for RCI staff was provided by Region 9 staff. All files closed as settled will contain evidence of the evaluation of the factors in the waiver of future employment clauses; for 'settled other' claims, where this was not done, cases will be closed as withdrawn with notations in the case summary. The updated protocol and training will help ensure that appropriate practices are followed.	May 1, 2017	Completed
FY 2016-08	Information was not consistently entered into the IMIS database accurately for 15 cases reviewed, as required by WIM 02-03-003 Chapters 2(III)(B), 4(IV)(B)(1&2), 5(VII), and 6(IV)(C&D(3)), and WIM 02-03-003 Chapters 2(III)(B), 4(IV)(B)(1&2), 5(VII), and 6(XII)(C(5)&D(4)), which were in effect when these fifteen cases closed.	DLSE should consistently and accurately enter information into Web IMIS.	To ensure timely, consistent and accurate entry, all new cases will use 1 RID, Central California. All California users now have all RID access. Access was activated June 20, 2017, and all information subsequently entered is accurate. Corrections to information entered prior to June 2017 are ongoing.	Not Completed	Open February 8, 2018

Appendix C - Status of FY 2016 Findings and Recommendations

FY 2017 California Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status (and Date if Item is Not Completed)
FY 2016-09	DLSE has not updated its Retaliation Complaint Investigation (RCI) Manual and/or Policies and Interpretations Manual to ensure that its policy and procedures are at least as effective as OSHA's.	DLSE should update its RCI Manual and/or Policies and Interpretations Manual to ensure that its policy and procedures are at least as effective as OSHA's and submit to OSHA for approval.	The RCI manual is being updated. The anticipated date of completion is November 1, 2017.	Not Completed	Open February 8, 2018
FY 2016-10	DLSE's Retaliation Complaint Investigation (RCA) Manual requirements do not reflect that orally filed, faxed, and e-mailed retaliation complaints are acceptable which does not align with OSHA's Whistleblower Investigation Manual.	DLSE's RCI Manual should be changed to reflect that retaliation complaints will be accepted whether orally filed, faxed, or e-mailed.	The RCI manual is being updated for retaliation complaints to be received through a dedicated phone and fax lines, and an established email address. The anticipated date of completion is November 1, 2017.	January 12, 2018	Completed

Appendix C - Status of FY 2016 Findings and Recommendations

FY 2017 California Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status
FY 2016-11	There is a decreased number of consultation visits in state and local government workplaces.	Increase marketing in the state and local government consultation program in order to increase the number of visit requests.	<p>Management has identified additional methods to promote these services.</p> <p>The anticipated dates of completion are: March 1, 2017 (marketing letter sent to counties, cities, and special districts) which has been completed.</p> <p>October 1, 2018 (consultation visits to be completed in at least 35 state and local government workplaces).</p>	March 1, 2018	Completed

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 California Comprehensive FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: California – CAL/OSHA			FY 2017	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	10.32	3	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	6.88	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	9.20	1	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	3.18	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)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	2	0	The further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 0.91	+/- 20% of SWRU: 1.83	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 1.46 to 2.20 for SWRU and from 0.79 to 1.19 for OTS.
			+/- 20% of Other: 0.99	

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 California Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
6	Percent of total inspections in state and local government workplaces	5.55%	+/- 5% of 5.85%	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 5.56% to 6.14%.
7	Planned v. actual inspections – safety/health	S: 6,561	+/- 5% of S: 5,910	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 5,614.50 to 6,205.50 for safety and from 1,368 to 1,512 for health.
		H: 1,421	+/- 5% of H: 1,440	

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 California Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$7,855.15	+/- 25% of \$2,516.80	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,887.60 to \$3,146.00.
	a. Average current serious penalty in private sector (1-25 workers)	\$5,474.86	+/- 25% of \$1,706.10	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,279.58 to \$2,132.63.
	b. Average current serious penalty in private sector (26-100 workers)	\$8,360.76	+/- 25% of \$2,867.94	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,150.96 to \$3,584.93.
	c. Average current serious penalty in private sector (101-250 workers)	\$9,785.70	+/- 25% of \$3,952.26	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,964.20 to \$4,940.33.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$11,355.83	+/- 25% of \$5,063.48	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$3,797.61 to \$6,329.35.
9	Percent in compliance	S: 23.18%	+/- 20% of S: 29.53%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 23.62% to 35.44% for safety and from 28.62% to 42.94% for health.
		H: 37.89%	+/- 20% of H: 35.78%	
10	Percent of work-related fatalities responded to in one workday	97.52%	100%	The further review level is fixed for all State Plans.
11	Average lapse time	S: 74.06	+/- 20% of S: 45.29	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 36.23 to 54.35 for safety and from 44.82 to 67.24 for health.
		H: 75.83	+/- 20% of H: 56.03	

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 California Comprehensive FAME Report

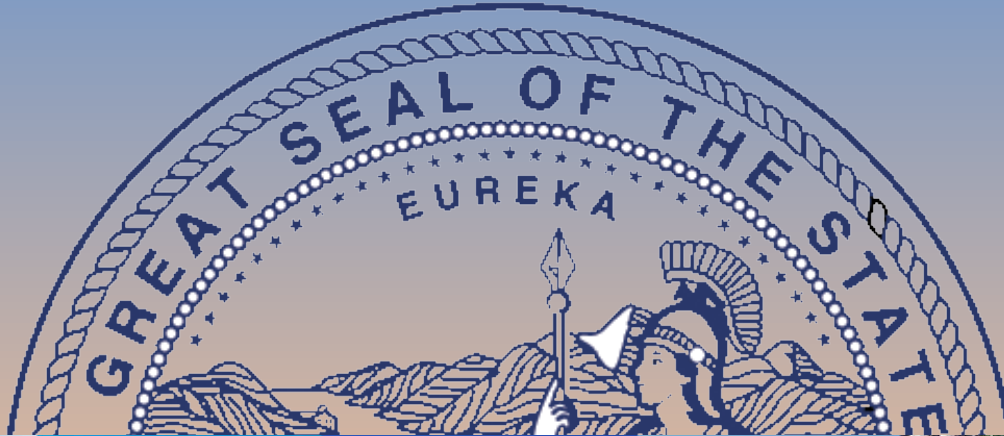
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
12	Percent penalty retained	75.67%	+/- 15% of 67.44%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 57.32% to 77.56%.
13	Percent of initial inspections 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	2%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	24%	+/- 20% of 25%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 20% to 30%.
16	Average number of calendar days to complete an 11(c) investigation	659	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.15%	+/- 25% of 1.26%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 0.95% to 1.58%.

NOTE: Fiscal Year 2017 is the second year since the transition from the NCR (OSHA's legacy data system) began that all State Plan enforcement data has been captured in OSHA's Information System (OIS). As such, the further review levels for SAMMs typically referencing a three-year rolling average will instead rely on a two-year average this year. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 13, 2017, as part of OSHA's official end-of-year data runs.

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FY 2017

California
Occupational Safety and
Health Program



Juliann Sum
Chief DOSH

Debra Lee
Deputy Chief,
Cal/OSHA Enforcement

Cora Gherga
Assistant Chief,
Cal/OSHA Enforcement
Administration

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EXECUTIVE SUMMARY

The Cal/OSHA annual report documents progress toward achieving the Cal/OSHA strategic vision of becoming a model agency that promotes workplace safety and health by motivating employers and employees to be actively involved in preventing hazards, which would lead to reduced injuries and illnesses on the job.

The role of Cal/OSHA is to enforce safety and health regulations for employers who are not in compliance with the law through enforcement efforts, and to provide compliance assistance through targeted outreach, education and training and to emphasize increased awareness on the part of both employers and employees of the importance of a safety and health culture.

Cal/OSHA strives to provide as many employers as possible with assistance in achieving voluntary compliance with Cal/OSHA standards before enforcement measures become necessary—and, more importantly, before an employee is injured or killed. Traditional enforcement methods are supplemented by incentive and education programs and targeted outreach that encourage voluntary compliance. Partnership and cooperative programs leverage Cal/OSHA's resources.

In accordance with the requirements of the Government Performance and Results Act (GPRA), California developed a Five-Year Strategic Plan covering the period 2013 through 2017. The Five Year Strategic Plan incorporated the three federal OSHA goals as its direction. The three overall strategic goals are:

- Goal 1. Secure safe and healthy workplaces, particularly in high-risk industries, and improve workplace safety and health through enforcement and consultative assistance.
- Goal 2. Promote workplace cultures that increase employer and employee awareness of, commitment to, and involvement in safety and health.
- Goal 3. Maximize Cal/OSHA's effectiveness and enhance public confidence.

The Fiscal Year (FY) 2017 Annual Performance Plan developed by Cal/OSHA was intended to support the overall goals of the five-year Strategic Plan. The 2017 Performance Plan included specific performance goals designed to produce measurable progress toward realization of Cal/OSHA's strategic goals. Performance goals include:

- ⇒ Reducing fatalities and occupational injuries in construction and agriculture;
- ⇒ Reducing injuries, illnesses and fatalities in selected high hazard industries with a goal of removing the industry from the High Hazard Industries list due to decreased injury and illness rates;
- ⇒ Reducing fatalities and occupational injuries and illnesses in petroleum refineries and other industries which fall under the requirements of the Process Safety Management standard;
- ⇒ Raising awareness of heat illness prevention among employees and employer groups in outdoor places of employment;
- ⇒ Improving communication and interaction with high-risk worker organizations regarding workplace safety and health;
- ⇒ Promoting voluntary compliance by offering employers a variety of partnerships including recognition and exemption programs; and

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- ⇒ Responding effectively to mandates regarding timely investigation of fatalities and issuance of citations so that workers are provided full protection under Cal/OSHA.

This annual report for Cal/OSHA Enforcement reflects the integrated approach to achieving goals which were stated in the Cal/OSHA Strategic Plan. Cal/OSHA Enforcement programmed and self-referral activities have continued to be coordinated to ensure the greatest impact on selected industries with the highest preventable injury, illness and workers' compensation rates.

FY 2017 ACCOMPLISHMENTS

After several years of challenges posed by budgetary constraints at State and Federal level, that created obstacles for Cal/OSHA in hiring personnel, in most recent years the Department of Industrial Relations (DIR) and Cal/OSHA were successful in obtaining State authorization and funding for significantly increasing staffing. Each consecutive year starting July 2013 authority was granted initially to backfill previously vacant positions, then to establish new positions in Enforcement and Enforcement-support units. Most recently, starting on July 1, 2017, Cal/OSHA obtained approval and funding for 13 new positions to expand the existing Program Safety Management (PSM) non-refinery inspection program.

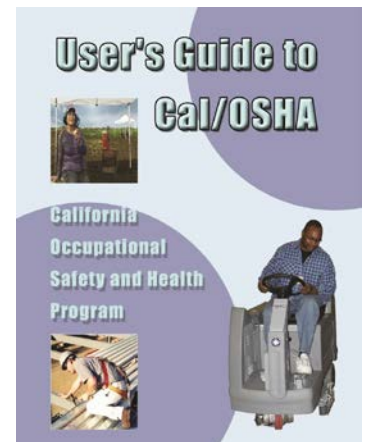
During this past fiscal year, Cal/OSHA in collaboration with the Occupational Safety and Health Standards Board developed, proposed, amended and promulgated a significant number of regulations, some of which are the first in the nation, broadening the range of hazards from which workers are to be protected.

One of the most notable accomplishments of the past year was the adoption of the most protective regulation in the nation for the safety and health of refinery workers and surrounding communities. The approved regulation introduced new refinery safety orders to the state's labor code, which will help ensure California's oil refineries are operated with the highest level of safety possible.

Cal/OSHA continued to strengthen its outreach efforts. Previous fiscal years' budgets restricted the ability to maintain a dedicated unit that drafted educational materials, however, in FFY 2017, Cal/OSHA reactivated the Publications Unit (formerly named Research and Education Unit) and dedicated two permanent full-time positions to writing publications. Educational materials are primarily drafted or edited by 23(g) staff members in the Publications Unit. The draft documents are then further reviewed and edited by Research and Standards staff, the Cal/OSHA Legal Unit, senior management, Cal/OSHA leadership, and lastly by the DIR Public Information Office and selected stakeholders.

Publications that are currently being developed and updated include:

- Aerosol Transmissible Disease (ATD) Guide and Model Program
- Cal/OSHA Handbook Users Guide
- Confined Space Hazard Alert
- Construction Silica Exposure Fact Sheet
- Hazardous Communication Guide
- Heat Illness Prevention Plan (HIPP) eTool
- Injury and Illness Prevention Program (IIPP) eTool
- Model Chemical Hazard Communication Program (HAZCOM) for Restaurants



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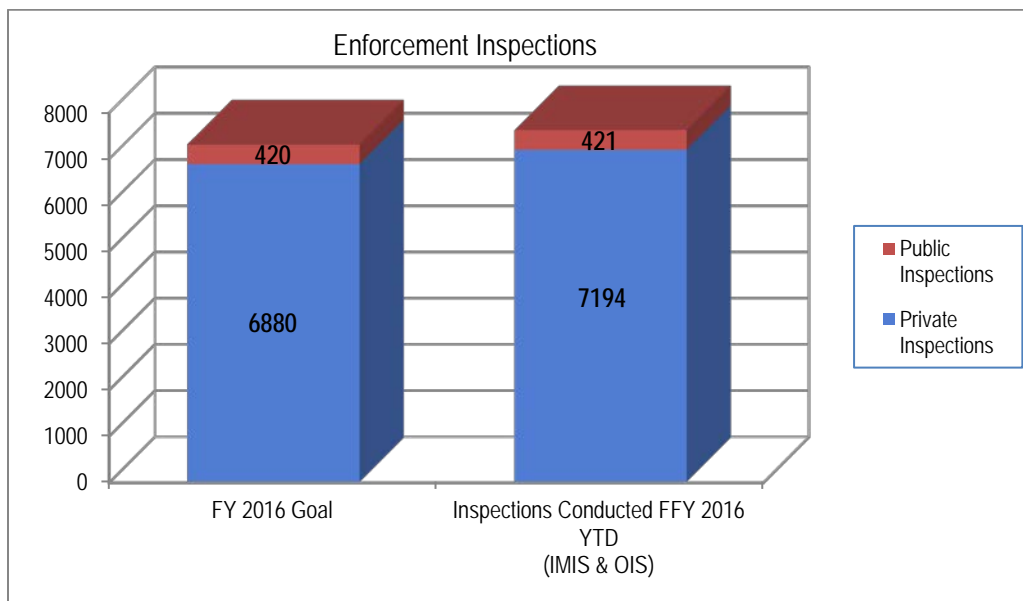
- Occupational Exposures to Respirable Crystalline Silica
- Power Press Safety Fact Sheet
- Respiratory Protection in the Workplace
- Safety and Health in Agricultural Field Operations
- Safety and Health Protection on the Job (Cal/OSHA Poster)
- Violence in Health Care Fact Sheet

Last year's achievements in the training and professional development of Cal/OSHA staff continued throughout FFY 17, by ensuring that newly-hired or promoted compliance personnel completed the training requirements for new compliance officers, new managers, and senior professional staff. This was accomplished by coordinating and facilitating a significant number of training courses over the fiscal year.

Another area of continued progress has been the updating, reorganization, and expansion of instructional materials and guidance information on Cal/OSHA's internet pages (for stakeholders and public), and intranet pages (for staff).

Enforcement and Outreach/Educational Activities

As illustrated in the table below, this Federal fiscal year, Cal/OSHA Enforcement opened 7,982 inspections, exceeding the goal to conduct 7,350 inspections. The aforementioned inspections comprised of 7,538 private industry inspections and 444 public sector inspections. During this time, Cal/OSHA identified over 20,567 hazards, potentially affecting the estimated 3.1 million workers employed at these establishments. Of the hazards identified, 4,569 resulted in serious, 32 resulted in willful, 123 in repeat, and 37 in failure-to-abate citations¹.



¹ OIS Inspection and Scan Summary Reports dated December 14, 2017.

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While enforcement activities are critical to the Cal/OSHA program, educational outreach is also a valuable component to the success of fulfilling its mission. To achieve this, Cal/OSHA has a dedicated enforcement Outreach Coordination Program, which includes a Bilingual Outreach Team (BOT). The program focuses on providing educational outreach to high-risk, vulnerable employee populations.

In FFY 2017, Enforcement Branch staff and BOTs provided educational outreach to small and large audiences, including those from unions, other worker-based organizations, university programs, professional organizations, Mexican Consulates, and organizations serving persons who speak Spanish. Topics covered during these outreach events include agricultural safety, construction safety, heat illness prevention, tree worker safety, worker's rights, and other industry specific topics.



In FFY 2017, Cal/OSHA established a Recruiting Committee that was comprised of managers and senior professional staff who worked diligently to develop professional appearing marketing tools and identify locations to attract prospective safety engineers and industrial hygienists. Throughout FFY 2017, Cal/OSHA attended and participated in dozens of professional association and societal events, and university job/career fairs. These target rich environments allowed Cal/OSHA to successfully educate and recruit prospective applicants for the program.

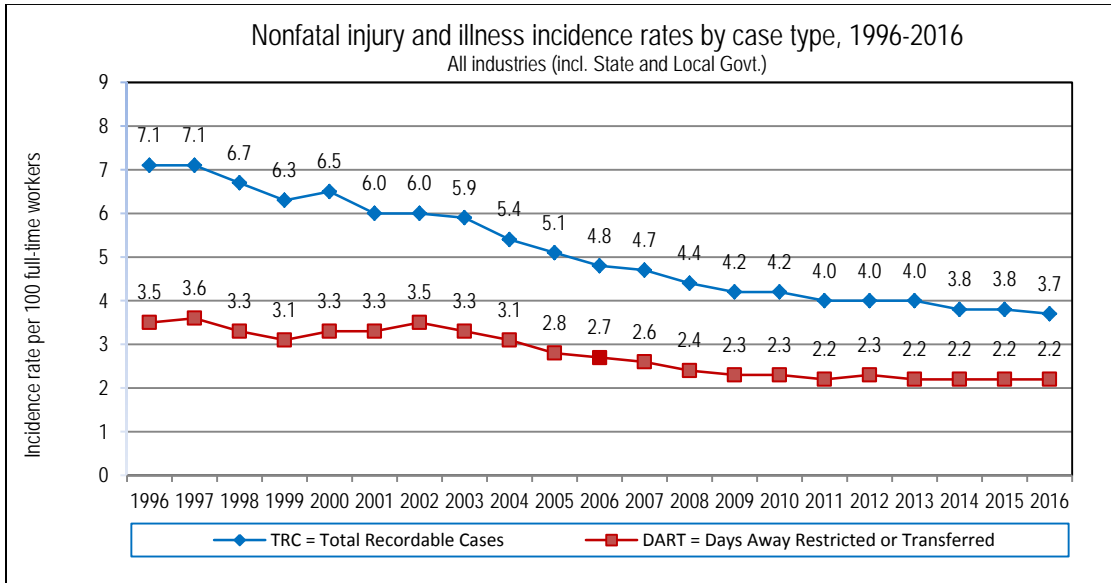
Injuries, Illnesses and Fatalities

Cal/OSHA believes these combined enforcement and educational efforts have contributed to reducing California's already low on-the-job total recordable case (TRC) injury and illness incidence rate of 3.7² in CY 2016. Please see the following graph.

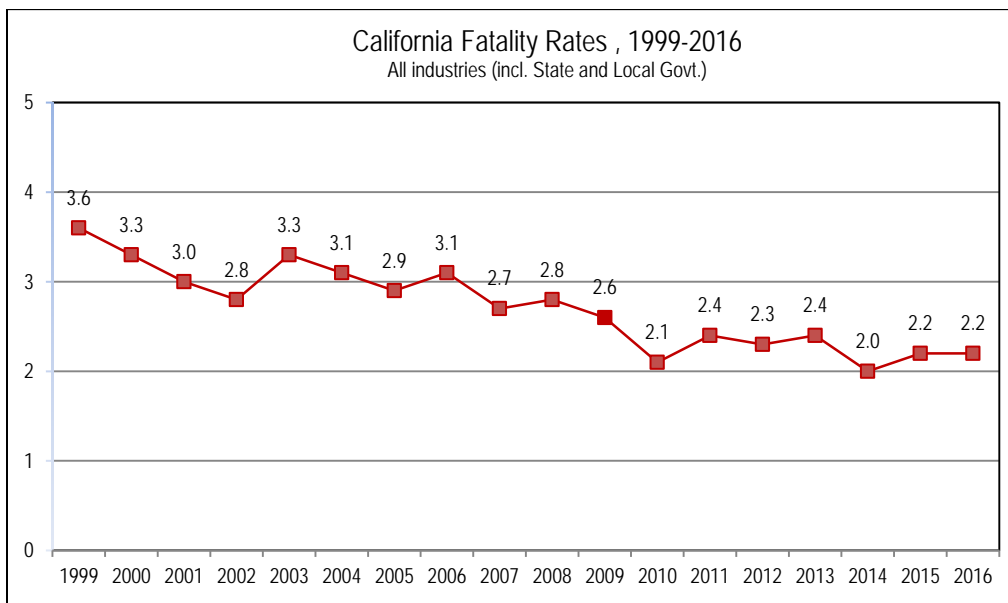
² Table 1. Incidence rates of nonfatal occupational injuries and illnesses by selected industries and case types, 2016 at www.dir.ca.gov/OPRL/Injuries/2016/2016Table1.pdf.

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As reported by the Census of Fatal Occupational injuries (CFOI), the rate of fatalities for CY 2016 remained steady at 2.2³ per 100,000 full-time equivalent (FTE) workers).



California's CY 2016 fatality rate of 2.2 is also lower than the national rate of fatal work injuries for civilian workers in CY 2016 of 3.6 per 100,000 full-time equivalent (FTE) workers⁴

The tables below provide a quick comparison of fatality rates between the national and California data by industry type, and show that except for transportation/utilities and public administration, the fatality

³ Fatal injury rates by state of incident and industry, 2016, available at www.bls.gov/iif/oshwc/foi/staterate2016.htm.

⁴ Fatal occupational injuries, total hours worked, and rates of fatal occupational injuries by selected worker characteristics, occupations, and industries, civilian workers 2015 available at <https://www.bls.gov/iif/oshcfoi1.htm#rates>

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rates in all other industries were equal to or lower than the national average.

California Fatality Rates

Fatality Rate	Overall Rate	Ag, forestry, fishing & hunting	Const	Mfg	Transportation & Utilities	Whsle. and retail trade	Prof. and business services	Educ. and health services	Leisure and hospitality	Other services, except public admin.	Public Admin
2015	2.2	17.1	6.8	1.0	4.9	1.4	2.3	0.7	1.5	1.6	3.0
2016	2.2	10.4	5.2	1.1	7.4	1.9	1.5	0.5	1.7	2.5	2.3

National Fatality Rates

Fatality Rate	Total	Ag, forestry, fishing & hunting	Const	Mfg	Trade, Transportation & Utilities	Whsle. and retail trade	Prof. and business services	Educ. and health services	Leisure and hospitality	Other services, except public admin.	Gov't.
2015	3.4	22.8	10.1	2.3	4.9	n/a	3.0	0.7	2.0	3.0	1.9
2016	3.6	23.2	10.1	2.0	5.2	n/a	3.1	0.7	2.6	3.2	2.2

Occupational Safety and Health Appeals Board (OSHAB) Accomplishments

Litigation: The Board prevailed in all twelve cases concluded in 2017 at the Superior Court level. The Superior Court affirmed the Board's decisions being challenged. No cases involving the Board were decided by an appellate court in 2017.

Pilot Project: In third quarter 2017, the Board initiated a pilot project to assess the effect of changing the way an appealing employer finalizes or "perfects" its appeal. Existing procedure requires the employer to send the Board a copy of the citation or citations being appealed, and if the employer fails to do so, its appeal is often dismissed. The procedure being tested involves having the Division of Occupational Safety and Health (Division), as well as the employer, send the citation(s) to the Board. The Division has the citation(s) as it is the issuing agency. The goal is to reduce the number of appeals dismissed because the employer does not send the citation documents. The project is intended to determine the ability of the Division to send the citations.

Stakeholder Training: In July 2017, the Board held three full-day training sessions for its stakeholders, i.e. for enforcement personnel, employers, and advocates for both. Board administrative law judges conducted the training in San Diego, Los Angeles and Oakland. The sessions were well received by the more than 100 stakeholders in attendance.

Training Manual for New ALJs: In 2017, the Board developed a new training manual for administrative law judges as they join the Board. The manual contains helpful references and key administrative procedures.

OASIS Portal Usage: In October 2016, the Board activated a new electronic "portal" or filing option for employers to use in filing appeals. During 2017 (as of early December 2017) approximately 61 per cent of all appeals were filed electronically, the remainder by mail.

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Efficiency: The OASIS case management system, which has been in place for little more than a year, is improving the Board's efficiency in resolving appeals. While each case is unique, counting all Settlement Orders and Decisions of Administrative Law Judges, the Board has greatly reduced the average time for a case to travel from docket date to resolution. Pre-OASIS, the Board's average case resolution time was 233 days, while to date in 2017, the average is 102 days.

SPECIAL INITIATIVES

Heat Illness Prevention

According to the National Oceanic and Atmospheric Administration (NOAA) the summer of 2017 saw average summer temperatures in the U.S. at 1.3 degrees above average. The summer of 2017 was California's second consecutive record warm summer and its last four summers are among its five warmest.

The Cal/OSHA program continued its highly effective heat illness prevention program in 2017. The program combines a multifaceted approach that includes components of education and focused enforcement.

Cal/OSHA has worked alongside agricultural and construction industry groups, insurance carriers and others in 2017 in order to provide highly effective training and outreach to employers, supervisors and work crews on heat illness prevention. By the end of FFY 2017, Cal/OSHA staff participated in over 150 events in which heat illness was discussed.



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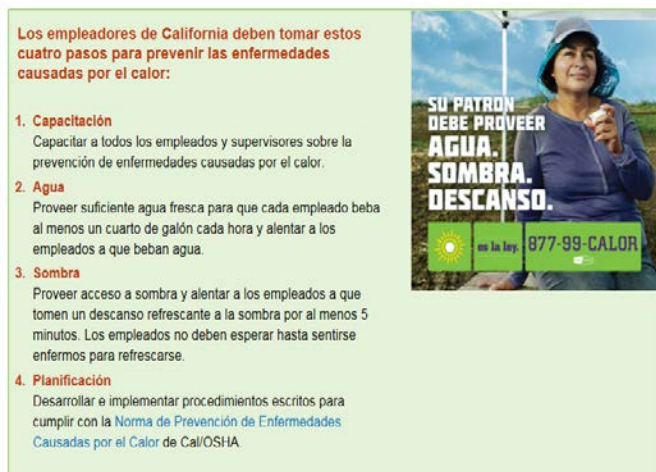
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As in past years, bilingual training efforts were augmented with television interviews, and regular participation in radio programs to raise awareness of the Cal/OSHA program, how to file a complaint, heat illness prevention and field sanitation issues.

In addition to issuing six heat advisories, the outreach campaign included multilingual public service announcements on approximately 58 billboards, 78 wall posters, 56 lunch trucks and 15 moving vans in areas extending from Yuba City through the Central Valley. More than 4,500 multilingual ads in Spanish, Hmong and Punjabi aired on nearly 20 radio stations in the target areas as well.



Outreach materials and resources continued to be highly useful in assisting both employees and employers in the prevention of heat-related illness and death. Many of these materials are available online at either the Cal/OSHA heat page at: <http://www.dir.ca.gov/dosh/heatillnessinfo.html> or at the Cal/OSHA heat campaign outreach page located at <http://99calor.org/english.html>. It is important to note that both web pages are available in either an English or a Spanish format, and that many of the individual products are also available in Hmong, Mixteco, and Punjabi.



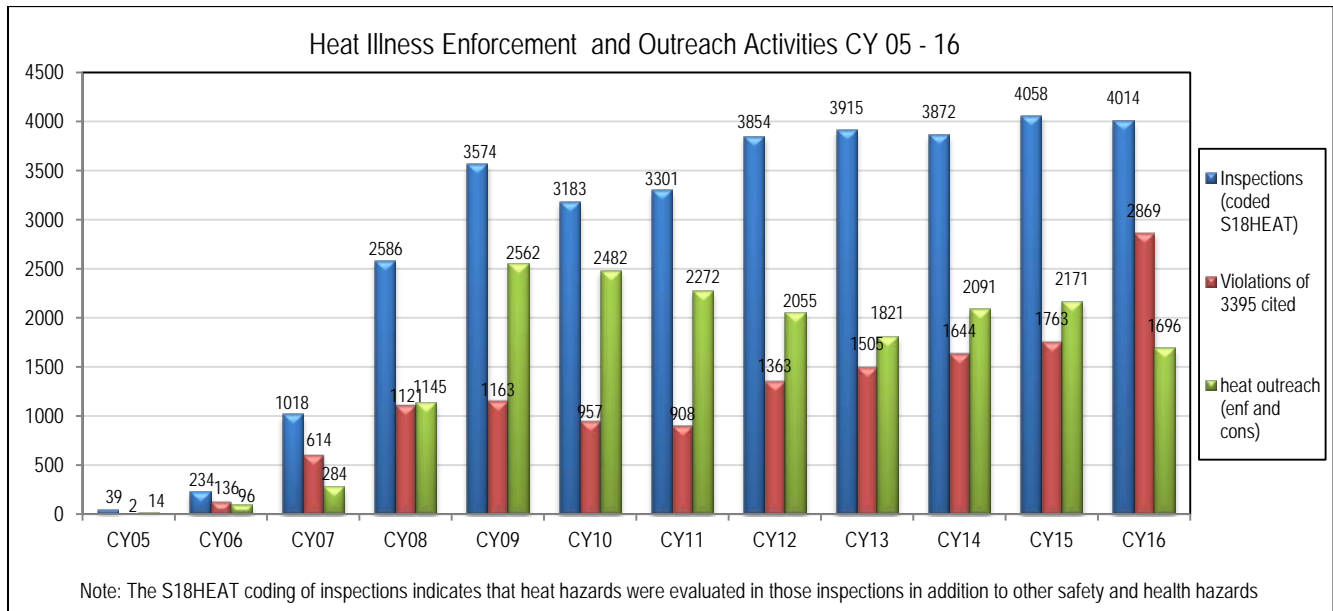
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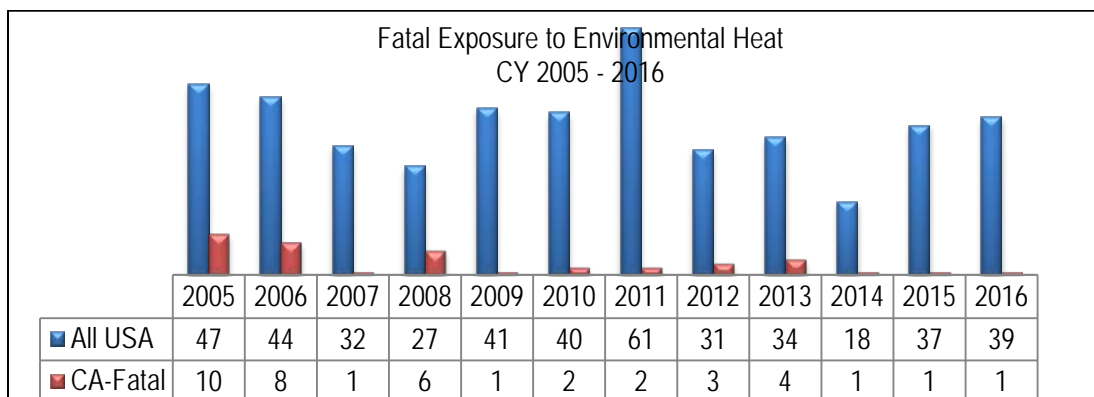
Compliance with the heat standard last revised in 2015 was addressed during inspections of industries with outdoor employment throughout the year. Peak enforcement times paralleled summer heat events.

The overall compliance rate for 2017 will not be calculated until all of the 2017 cases have been closed. The overall compliance rate¹ in 2016 was 60.2%; compared to 63.3% in 2015.

The following graph represents the year round enforcement and outreach activities from calendar year (CY) 2005 through CY 2016.



In CY 2016, there was one confirmed heat related fatality compared to 10 in CY 2005, when the initial emergency standard was passed. California has seen a 90% decrease in heat related fatalities in the workplace since CY 2005, while the nation as a whole, as reported in BLS statistics, has experienced a 17% decrease in reported heat fatalities during this same time, from 47 to 39.^[1] Please see the graph below.

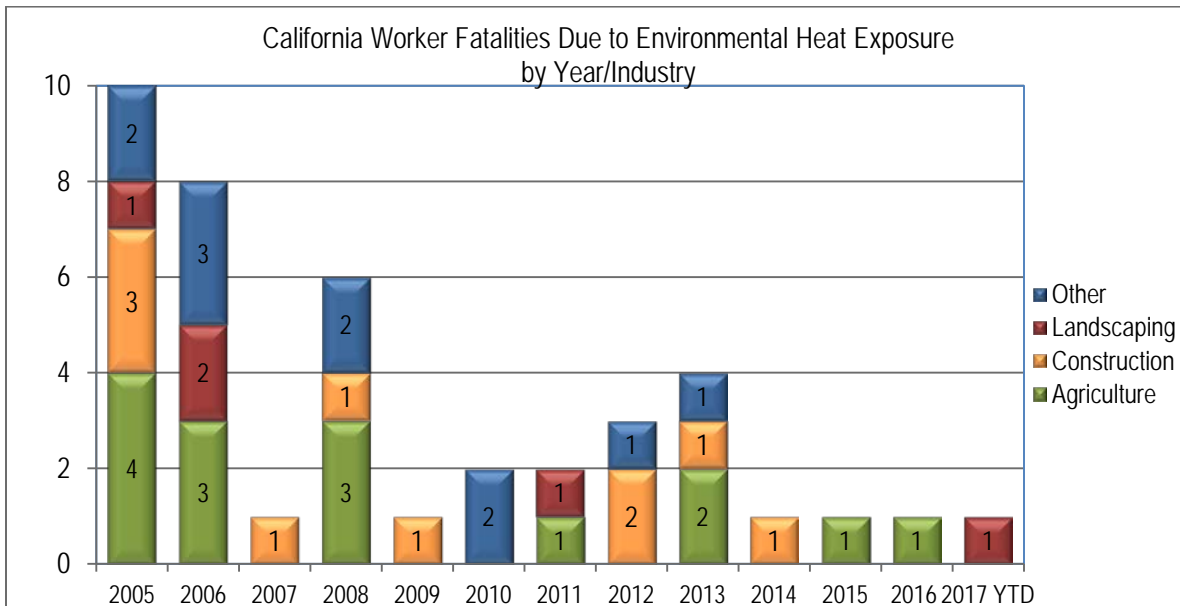


[1] The national statistics may not be entirely comparable in that they may include cases of indoor heat-related fatalities, while California's are focused on outdoor heat cases. "USA" Source: United States Department of Labor - Bureau of Labor Statistics

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To date for 2017, California has had one medically-confirmed fatality case related to outdoor heat exposure. Four suspect heat fatalities are pending medical records review as of this writing. Final enforcement outcomes are still pending at this time. The following table indicates the distribution of fatalities due to outdoor heat exposure, by industry, for the 2005-2017 YTD period.



Tree Work Safety Emphasis Program

Following several tree-trimming workplace fatalities, in January 2017 Cal/OSHA launched a safety awareness campaign aimed to protect the lives of tree service workers. Employers in this high-risk industry need to be aware of, and take steps to minimize, the hazards to their workers.

As part of the Tree Work Safety Emphasis Program, Cal/OSHA uses the combined approach of awareness campaign and making resources available for employers and employees, including a Tree Work Safety Guide, fact sheet and checklist, and enhanced enforcement, with Cal/OSHA inspectors throughout the state investigating possible violations when they observe unsafe tree trimming or tree removal operations, in addition to inspections of complaints and accidents.

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Communicating with the Limited and Non-English Speaking Workforce

Direct communication with limited and non-English-speaking workers and their employers continues to be a high priority for Cal/OSHA. Starting in 2002, Cal/OSHA sought to overcome language barriers between Cal/OSHA staff and the limited and non-English speaking workforce by increasing the number of in-house certified bilingual employees, which at the time were 26. By December 2017, Cal/OSHA's bilingual staff (in various languages) had risen to 64 employees who passed the state's language certification exam. These efforts were supplemented by contracting with an external translation service, providing a network of native-speaking language interpreters telephonically available for over 100 languages and dialects for those instances where an in-house bilingual employee was not readily available or staff was unable to identify the language spoken.

Cal/OSHA's commitment to serve the growing number of limited and non-English-speaking workers in California was reaffirmed in 2011 by the introduction of the Language Learning Project. The Cal/OSHA Language Learning Project provides tuition fees, books, and paid study time for employees interested in learning a second language after work hours at a community college, UC/CSU extension, or other local provider (on-line courses excluded). Cal/OSHA continued to make this program available to employees in FY 2017. Although Spanish is the current priority, Cal/OSHA is also considering other languages in the future as well.

Professional Training and Certification

The Professional Development and Training Unit (PDTU) is responsible for administering the Professional Development and Training Program. The goal of the program is to assist Compliance Safety and Health Officers (CSHOs) and their supervisors with direction, guidance, and training options that directly contribute to their ability to perform their duties and represent Cal/OSHA with a high degree of professional expertise.

In early CY 2017, the PDTU experienced a major overhaul. The unit was placed under the Program Manager for Communications and Strategic Planning who established a new vision, developed a strategic plan, and augmented the unit's resources by hiring additional staff members to implement the newly established vision and critical objectives. These changes supplemented the revitalization that previously occurred in 2011.

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Throughout FFY 2017, the PDTU worked tirelessly to plan, forecast, schedule, and deliver training to meet the training needs of managers, senior professional staff, and CSHO's throughout the state. Training included both in-service courses and online webinars that were conducted by Cal/OSHA staff, and out-service courses taught by academic institutions, professional organizations, and highly-respected professionals who are experts in their field.



During FFY 2017, the PDTU coordinated and facilitated 52 total courses, comprised of both mandatory and technical training courses and webinars, that a total of 1971 managers, senior professional staff, and CSHO's participated in.

As in previous years, the PDTU and Cal/OSHA leadership continue to encourage and support qualified staff in obtaining professional certifications. Staff that elect to participate in these opportunities are reimbursed tuition, books, and other related fees and expenses.



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PARTNERSHIPS / COMPLIANCE ASSISTANCE

Employment Education and Outreach (EMPLEO)

The Employment Education and Outreach (EMPLEO) was established as an alliance to provide Spanish-speaking employees and employers with information on federal and state workplace laws. This partnership is two-fold: helping workers know what rights and protections they have, and helping employers know what resources there are available to them. Partners in the EMPLEO program include the U.S. Department of Labor's Wage and Hour Division; OSHA; the U.S. Equal Opportunity Commission; California Division of Labor Standards Enforcement; Cal/OSHA; the consulates of Mexico, El Salvador, Guatemala, Honduras, Nicaragua and Costa Rica; the regional Hispanic Chamber of Commerce; and the Coalition of Human Immigration Rights in Los Angeles, among others.

Cal/OSHA is proud to be part of this program since its inception in 2004, providing information and assistance to Spanish-speaking workers and employers regarding their rights and responsibilities, and responding to workplace complaints.

Alliance with the Mexican Consulates

In 2016 DIR signed a two-year alliance agreement between the Department of Industrial Relations' (DIR) Cal/OSHA and the Mexican Consulates in California, to assist in educating Mexican workers on their labor rights.

For the ninth year, DIR joined the Mexican Consulates in launching the annual Labor Rights Week, during which DIR and its representatives from Cal/OSHA, the Labor Commissioner's Office and Division of Workers' Compensation participated in seminars at all ten Mexican Consulates across the state.



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Cross Referrals with the Division of Labor Standards Enforcement (DLSE)

Under California law, the Division of Labor Standards Enforcement (DLSE) has responsibility for investigating worker complaints related to unpaid wages, lack of rest breaks, and other labor law violations. Unlike the federal system, DLSE – not Cal/OSHA – is responsible for investigating worker complaints of retaliation, reprisal and discrimination by employers against employees who express concern about and/or contact Cal/OSHA regarding unsafe and unhealthy working conditions.

In May 2012, DLSE and Cal/OSHA established a streamlined system involving new forms and a centralized processing point for cross-referrals between the two agencies so that all referrals are logged and tracked. Cal/OSHA refers complaints of labor law violations and employer discrimination to DLSE, while DLSE refers worker complaints, and the observations of its own employees conducting DLSE inspections of work sites, regarding unsafe and unhealthy working conditions to Cal/OSHA. The new procedures have resulted in more reliable and rapid cross-referrals between Cal/OSHA and DLSE.

During the FY 2017, the cross referral process continued for the benefit of the workers covered by these two Divisions of the Department of Industrial Relations, with Cal/OSHA forwarding 98 referrals for investigation to DLSE (89 concerning labor law violations, and nine concerning employer retaliation and discrimination), and receiving four referrals from DLSE concerning working conditions.

SIGNIFICANT CASES

Cal/OSHA investigated many noteworthy cases during FY 2017. Some of these include:

Citations to Solar Panel Installer for Willful Fall Protection Violations

Elite Electric Inc. (#1155351)

On November 16, 2016, the Cal/OSHA San Bernardino district office issued one general, three serious and one willful citations, with total penalties of \$130,125 to Elite Electric Inc., for a jobsite located in Fontana, California. On June 13, 2016, a worker suffered critical injuries when he fell 29 feet through a skylight while installing solar panels on a roof, without fall protection systems in place.

The general violation was for a drinking water provision failure, while the serious citations were issued for lack of protection against falls through chute and hatchway openings, failure to provide fall arrest systems to employees exposed to unguarded roof edges, and for failing to implement provisions of the Injury and Illness Prevention Program with respect to fall hazards which contributed to the accident. The willful accident-related violation was issued for failure to protect employees working within six feet of the skylights from falling through the skylights, even though the employer had charged the building owner, and had been paid for, the fall protection equipment.

Citations to Property Management Company in Aerial Lift Tip Over

Village Management Services, Inc. (#1168188)

On January 31, 2017, the Cal/OSHA Santa Ana district office issued three general and seven serious citations, four of which were designated as accident-related with total penalties of \$108,830, to Village Management Services, Inc., located in Laguna Woods, California. On August 8, 2016, a worker suffered fatal injuries when the elevated aerial lift from which he was working on a sloped surface tipped over.

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The general violations related to fall protection inspection deficiencies, testing of the lift controls and use of wheel chocks for the lift. The serious citations were issued for failing to implement provisions of the Injury and Illness Prevention Program with respect to identifying hazards associated with the use of aerial lifts, failing to perform maintenance of the lift as recommended by the manufacturer, and for not providing fall protection for employees in an elevated basket of an aerial lift. The accident-related violations were for failures to address the hazards associated with the use of the elevated aerial lift on sloped surfaces.

Citations in Fatal Trash Compactor Accident

Goodwill Industries of Sacramento Valley & Northern Nevada, Inc. (#1181199)

On March 30, 2017, the Cal/OSHA Sacramento district office issued two general, three serious and one willful citations, with total penalties of \$106,675 to Goodwill Industries of Sacramento Valley & Northern Nevada, Inc., located in Sacramento, California. On September 30, 2016, a worker was fatally injured when his head was pinned between a stationary compactor and a trash bin when the operator actuated and released the cable holding the trash bin from a roll-off truck.

The general violations addressed lack of definition of aisles and walkways in the warehouse where employees were exposed to forklift traffic, and the failure to develop operating instructions for the compactor. Two of the serious citations were issued for failing to guard the pinch points and shear points of a baler, and for failing to train employees in the safe operation of stationary compactors. The third serious citation, designated as accident-related, was for failing to ensure that the control of a hoist and tilt-frame trash collection truck was not be actuated with any employee in a position to be endangered by the movement resulting from the actuation. The willful violation, also designated as accident-related, was for not developing procedures to correct unsafe or unhealthy conditions in a timely manner, or preventing employees from operating the compaction equipment and the trash collection roll-off trucks until the required procedures have been developed, even as the employer had been made aware that no procedures had been developed for operating the compaction equipment and the trash collection roll-off trucks, and that untrained employees were allowed to operate the equipment.

Citations for Fatal Confined Space Accident

D & D Construction Specialties, Inc. (#1185893)

On April 21, 2017, the Cal/OSHA Los Angeles district office issued several citations, including three classified as willful, with total penalties of \$337,700 to D & D Construction Specialties, Inc., for a confined space accident at a jobsite in Los Angeles, California. On October 21, 2016, a construction worker suffered fatal injuries when he was lowered into a 50-foot drainage shaft and fell to his death.

A general contractor engaged in constructing a single family residence in a hilly area had hired the employer to install and service reinforced concrete posts (caissons) on the property. The D&D Construction employee was being lowered into a 50-foot deep concrete-lined drainage shaft, in a bucket attached to a mini crawler crane with no personal fall protection, to clean out mud and debris. After descending 10 feet into the shaft, the worker lost consciousness due to the oxygen deficient atmosphere, fell approximately 40 feet and drowned in one foot of water.

Employer received three general citations related to permit required confined space operations, unstable ground/working surface for a crane in use, and load testing of the crane. Six serious citations were issued, including for failing to determine the presence of permit-required confined spaces, to implement

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measures to prevent unauthorized confined spaces entries, to provide and ensure the use of equipment necessary for safe entries, to annually review the permit space program, for failing to train employees regarding confined spaces, and for allowing employees to ride on crane-suspended loads. Another serious citation, for failing to have rescue procedures, was designated as accident-related. The three willful serious citations, two of which were also designated as accident-related, were issued for failing to arrange for a standby person during permit-required space entries, for the failure to ensure safe entry into the confined space, and for not testing the environment in the shaft for atmospheric hazards, although the employer had been cited in the past for violating similar safety orders at a different construction site.

Citations to Explosive Manufacturer for Workplace Explosion Pacific Scientific Energetic Materials Company (#1195899)

On May 26, 2017, the PSM North district office issued several citations, including three classified as willful, with total penalties of \$293,235 to Pacific Scientific Energetic Materials Company, located in Hollister, California. On December 1, 2016, a technician was seriously injured when the explosives-containing metal tubing that she was handling exploded, sending metal shrapnel flying in all directions.

Two general citations were issued, for failing to implement procedures contained in the Injury and Illness Prevention Program, and for failure to develop clear operating procedures for employees working with explosive materials. Employer also received four serious citations, for failing to perform a process hazard analysis for all the operations involving explosive materials, for failure to protect against overpressure and explosive fragments, for allowing use of equipment incompatible with the explosive materials, and for failure to provide eye/face protection to the employees handling explosive materials; the last three violations were designated as accident-related. The three willful citations were issued for failing to conduct a PSM process hazard analysis of the explosive handling operations, for failing to implement the existing procedures that required safeguards during work with explosives, and for failing to shield the employee's workstation while working with explosives; the last two violations were also designated as accident-related.

Citations to Foundry for Lead Exposures P Kay Metal, Inc. (#1212380)

On August 21, 2017, the Long Beach district office issued one general and six serious citations with total penalties assessed \$101,315 to P Kay Metal, Inc., located in Vernon, California, as result of a complaint inspection.

The general violation was for the failure to effectively implement hazard identification and hazard correction provisions of the Injury and Illness Prevention Program. The serious citations were issued for failure to establish and implement a respiratory protection program for the employees exposed to lead, for failure to maintain flow rates for emergency eyewashes and showers, for failing to conduct air monitoring to determine employees' exposure to lead, for deficiencies of employer's lead compliance plan, for failure to maintain workplace areas free of lead dust, and for failure to provide medical surveillance and biological monitoring to employees exposed to lead.

Citations to Flooring Materials Manufacturer Mannington Mills, Inc. – Burke Industries, Inc. (#1220329)

On September 28, 2017, the High Hazard North district office issued two regulatory, 16 general, 15 serious and one repeat serious citations with total penalties assessed \$290,230 to Mannington Mills, Inc.

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– Burke Industries, Inc., located in San Jose, California, as result of a programmed-planned high hazard inspection.

The regulatory citations were issued for failure to conduct periodic inspections of their energy control procedures and for failing to post operating rules for industrial trucks. The general citations were for failure to maintain space around electrical installations and provide working space to access electrical installations, failure to provide strain relief on flexible cords, ineffective injury and illness prevention program, using flammable liquids to wash walls in work areas, failure to provide adequate walkways/access to equipment, failure to secure machinery to prevent walking or moving, failure to ensure that employees wear hearing protection where required, failure to develop procedures for proper use and maintenance of respirators, failure to train employees on confined space procedures and evaluations of permit required confined spaces, failure to maintain emergency eyewash and shower equipment and for failure to label containers of hazardous materials. The serious citations were issued for failure to lock out/tag out equipment during repair work, deficient hazardous energy control procedures, lack of tongue guards on bench grinders, failure to provide machine controls on a pneumatic press, failure to guard rotating shafts and shaft ends, failure to guard belt and pulley drives, failure to prevent access to unguarded portions of saw blades on radial arm saws and other saws in the facility, failure to provide guards preventing access to the compactor/baler, failure to guard the bite of in-running open roles of calenders and for failure to provide an emergency shower in an area where employees were exposed to corrosive materials. The repeat serious citation was for failing to provide immediate access to an emergency eyewash.

REGULATIONS

New or revised Title 8 California Code of Regulations in FY 2017:

Administrative Regulations:

Section 336, Assessment of Civil Penalties. (Effective September 14, 2017). This rulemaking was initiated in response to statutory maximum and minimum civil penalty increases for certain violation classifications. The statutory changes were triggered by similar increases in the corresponding OSHA civil penalties in 2016.

Safety Regulations:

GISO section 3273(d) (Effective April 1, 2017) – This rulemaking was initiated after the Occupational Safety and Health Standards Board became aware of the impracticality of the installation of catwalks in attics and other ceiling spaces. An exception was included in this section allowing planks or platforms to be utilized in lieu of catwalks in attics and other ceiling spaces.

GISO section 3220 (Horcher, effective June 5, 2017) – Horcher of CFR 1910.38(c)(2) to ensure equivalent efficacy with federal regulations regarding emergency action plans. Federal language for the type of evacuation to be utilized by the employer was incorporated within in 3220(b)(1), as well as language in 3220(b)(2) to clarify that rescue personnel and medical personnel might only perform a single function but not necessarily both.

CSO section 1637(n)(2) (Horcher, effective June 5, 2017) – Horcher of CFR 1926.451(e)(2) to include federal requirements for the maximum bottom rung height and platform requirements for hook-on

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ladders for scaffold access.

GISO section 4306 (Effective July 1, 2017) – This regulatory amendment was based on an OSHSB review of the requirements of guarding of underhung/slung (Jump) saws. Based on multiple injury incidents evaluated during the review, it was determined that the prior guarding requirements alone were insufficient to ensure safe operation of jump saws. A new subsection was included to require hood type guards to prevent the operator's hands from entering the point of operation.

Health Regulations:

CSO & GISO Sections 1532.3, 5155 and 5204, Silica (Horcher) (Effective October 17, 2016). In response to a 3/25/16 federal final rule, these regulations set the permissible exposure limit (PEL) for silica at 50 micrograms per cubic meter of air, averaged over an eight-hour shift. Employers are required to use engineering controls, work practices, and provide respiratory protection when controls do not limit exposures to the PEL. Employers must also limit access to high exposure areas, train workers, and provide medical exams to highly exposed workers.

GISO Section 3342, Workplace Violence Prevention in Health Care (Effective 1 April 2017). Covered health care employers must protect employees from workplace violence by developing, implementing and reviewing a plan that includes logging violent incidents, training, recordkeeping and reporting certain types of incidents to Cal/OSHA.

GISO Section 5155, Wood dust (Effective 1 July 2017). The existing 8-hour time-weighted average (TWA) Permissible Exposure Limit (PEL) of 5 milligrams per cubic meter of air (mg/M^3) is reduced to 2 mg/M^3 for wood dust (all soft and hard woods, except Western Red Cedar), and the existing 15-minute short term exposure limit (STEL) of 10 mg/M^3 is reduced to 5 mg/M^3 . For Western Red Cedar the existing PEL of 2.5 mg/M^3 (8-hour TWA) is reduced to 0.5 mg/M^3 .

LEGISLATION

There were several bills that affect Cal/OSHA and DLSE signed by Governor Brown in FY 2017, most of which, while signed in FY 2017, will take effect in January 1, 2018.

AB 555 Hazardous materials management: stationary sources.

Under an existing provision of the Health & Safety Code, workers at high hazard facilities had to receive 20 hours of advanced safety training within the past two years, starting January 1, 2018. An existing occupational safety and health regulation required all workers in refineries, including contractors, to comply with this Health and Safety Code section. Among other things, this bill amends that code section to allow the training to occur within the past *three* years, starting *July* 1, 2018. Cal/OSHA's process safety management unit reviews training for refinery workers, and it will enforce the 20-hour requirement when it takes effect next year.

5 Bill text - http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB55

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AB 16496 Oil refineries: public safety.

This bill requires the California Environmental Protection Agency (Cal EPA), in consultation with other agencies, including Cal/OSHA, to examine ways to improve public and worker safety through enhanced oversight of refineries and to strengthen emergency preparedness in anticipation of any future refinery incident. The bill requires Cal EPA, in consultation with other agencies, to facilitate coordination among agencies to protect the public, fence line communities, and refinery workers from risks associated with refinery operations throughout the state. The bill requires public meetings twice a year, which Cal/OSHA will attend.

SB 967 (Budget & Fiscal Review) State Government.

Effective June 27, 2017, this bill increased the maximum penalty amount from \$7,000 to \$12,471 for general or regulatory violations and from \$70,000 to \$124,709 for willful or repeat violation; the bill also set a minimum penalty of \$8,908 for willful or repeat violations. These amounts must be increased in accordance with the consumer price index on January 1 of each year. The bill removed special penalty provisions for violations involving asbestos, cranes, and carcinogens, which had previously set the maximum penalties below those imposed for other kinds of violations. The bill also clarified existing law by making it expressly unlawful to discharge or discriminate against an employee for reporting a work-related fatality, injury, or illness; requesting access to occupational injury or illness reports; or exercising any rights protected by the federal Occupational Safety and Health Act.

SB 2588 Cleaning Product Right to Know Act of 2017.

This bill imposes labeling requirements on cleaning products sold in California and also requires manufacturers to disclose certain information about those products online. Employers must make these online disclosures available at the workplace in the same manner as Safety Data Sheets. Cal/OSHA will create and enforce a regulation implementing employers' new obligation.

SB 3069 Retaliation actions: complaints: administrative review.

The Division of Labor Standards Enforcement (DLSE) enforces anti-retaliation provisions related to occupational safety and health. This bill authorizes DLSE to commence an investigation of an employer, with or without a complaint being filed, when retaliation or discrimination is suspected during the course of a specified investigation by the Labor Commissioner. If the Commissioner finds reasonable cause to find retaliation or discrimination, the bill authorizes the Commissioner to seek injunctive relief or issue a citation. The bill also authorizes employees to seek injunctive relief in civil court.

6 Bill text - http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1649

7 Bill text - http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB96

8 Bill text - http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB258

9 Bill text - http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB306

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SUMMARY OF ANNUAL PERFORMANCE PLAN RESULTS FOR ENFORCEMENT FEDERAL FISCAL YEAR 2017

Performance Goal 1.1	Targeting the Mobile Workforce
Performance Goal 1.2	High Hazard Targeting Program
Performance Goal 1.3	Process Safety Management (PSM) and Covered Industries
Performance Goal 2.1	Heat Illness Prevention Enforcement and Outreach to Employees and Employer Groups
Performance Goal 2.2	Educational Outreach to Vulnerable Employee Populations
Performance Goal 2.3	Partnership Programs
Performance Goal 3.1	Timeliness of Inspections Opening and Citation Issuance
Performance Goal 3.2	Imminent Hazards and Fatalities Response Time

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GOAL 1.1

Targeting the Mobile Workforce

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

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

Performance Indicator Type	Indicator	Results	Comments									
Activity Measures	<ul style="list-style-type: none"> Conduct approximately 2,850 inspections combined for both construction and agriculture. Attempt to sustain a 2% higher percentage of the serious classification of citations issued as result of these inspections. 	<ul style="list-style-type: none"> 2,997 combined inspections were conducted, 2,355 in construction and 642 in agriculture during FY 2017, as reflected by OIS as of December 4, 2017. The percent of serious citations issued in FY 2017 to establishments in agricultural and construction NAICS codes which were sustained (with final order dates) were: <table style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">FY 2016</th> <th style="text-align: center;">FY 2017</th> </tr> </thead> <tbody> <tr> <td style="padding-left: 20px;">Agriculture</td> <td style="text-align: center;">85%</td> <td style="text-align: center;">92%</td> </tr> <tr> <td style="padding-left: 20px;">Construction</td> <td style="text-align: center;">83%</td> <td style="text-align: center;">86%</td> </tr> </tbody> </table> <p style="font-size: small; margin-top: 5px;">FY 16 – OIS data as of December 4, 2017 FY 17– OIS data as of December 4, 2017</p> 		FY 2016	FY 2017	Agriculture	85%	92%	Construction	83%	86%	<ul style="list-style-type: none"> This goal was achieved. This goal to sustain a 2% higher percentage of the serious classification of citations issued to establishments in agricultural and construction NAICS Codes in FY 2017 compared to FY 2016 was achieved. These numbers, however, are expected to change as cases are adjudicated.
	FY 2016	FY 2017										
Agriculture	85%	92%										
Construction	83%	86%										

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Goal 1.1 Targeting the Mobile Workforce (cont.)

Performance Indicator Type	Indicator	Results	Comments
Outcome Measures Cont.	<ul style="list-style-type: none"> • Abatement of non-contested serious hazards found in these industries will be achieved in 95% of cases. • Fatality rates in construction and agriculture will be reduced by 0.2 compared to the average for the past three years. • Incidence rates for total recordable occupational injury and illness cases per 100 full time employees for Agriculture and Construction will be reduced by 0.1 compared to the average for the past three years. 	<ul style="list-style-type: none"> • 96% of not currently contested agricultural and 98% of not currently contested construction serious, willful, and/or repeat (SWR) violations, cited during FY 2017 were abated, as reflected by OIS as of December 12, 2017. • 5.2¹⁰ fatality rate was reported in construction and 10.4 in agriculture, forestry, fishing and hunting in CY 2016. • 3.811 incidence rate for total recordable occupational injury and illness cases per 100 full time workers in construction and 5.8 in agriculture, forestry, fishing and hunting in CY 2016. 	<ul style="list-style-type: none"> • This goal was achieved. Whenever possible, Cal/OSHA field staff attempt to secure abatement of these hazards while on-site. • This goal was achieved. The baseline average fatality rates for the past three years (2014 - 2016)¹² was 5.5 in construction and 11.9 in agriculture, forestry, fishing and hunting. • This goal was partially achieved. Nonfatal injuries and illnesses, as measured by the incidence rates for total recordable cases, for the baseline average for the past three years (2014 – 2016)¹³ was 4.0 in construction (goal achieved) and 5.5 in agriculture, forestry, fishing, and hunting (goal not achieved).

10 Fatal injury rates by state of incident and industry, 2016, available at <https://www.bls.gov/iif/oshwc/foi/staterate2016.htm>

11 Table 1. Incidence rates of nonfatal occupational injuries and illnesses by selected industries and case types, 2016 at <http://www.dir.ca.gov/oprl/injuries/2016/2016Table1.pdf>

12 The fatality rates in construction and agriculture for calendar years 2014, 2015, and 2016 were respectively 4.5, 6.8 and 5.2 in construction and 8.2, 17.1 and 10.4 in agriculture, forestry, fishing and hunting.

13 The lost work day incidence rates for calendar years 2014, 2015, and 2016 as reported by DIR's Office of Policy, Research, and Legislation (OPRL) were respectively 4.8, 3.3 and 3.8 in construction and 5.2, 5.6 and 5.8 in agriculture, forestry, fishing and hunting.

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GOAL 1.2

High Hazard Targeting Program

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

Performance Goal: Reduce injuries, illnesses and fatalities in selected high hazard industries, with a goal of removing the specific industry from the High Hazard List due to decreased injury and illness rates.

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> The High Hazard Unit and other District Offices staff will conduct 400 targeted inspections of establishments in high hazard industries from the High Hazard Industries list. 	<ul style="list-style-type: none"> 378 targeted inspections were conducted during FY 2017 by the High Hazard Enforcement Unit and other district offices, as reflected by OIS as of December 15, 2017. 	<ul style="list-style-type: none"> The goal to conduct 400 inspections in FY 2017 was not met.
Outcome Measures	<ul style="list-style-type: none"> Abatement of non-contested serious hazards found in these inspections will be achieved in 97% of cases. Percentage of Programmed inspections conducted in High Hazard establishments, with Serious/Willful/Repeat (S/W/R) violations will be 60% or greater. The High Hazard targeting program will identify violations in at least 90% of all programmed inspections during the FFY. Average number of violations per inspection with violations will reach or exceed 5.0. 	<ul style="list-style-type: none"> 100% of serious, willful, and/or repeat violations (SWR), not currently under contest, cited in FY 2017 as the result of HHU targeted inspections and district office programmed inspections (coded REGIONP1) were abated. 56% of Programmed inspections conducted in High Hazard establishments with S/W/R violations in FY 2017 as reflected by OIS as of December 15, 2017. 93% of Programmed inspections conducted in High Hazard establishments had violations cited in FY 2017. Average number of violations per inspection with violations was 7.0 for Programmed inspections with violations cited in FY2017. 	<ul style="list-style-type: none"> This goal was achieved. This goal was not achieved. This goal was achieved. This goal was achieved.

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GOAL 1.3

Process Safety Management (PSM) and Covered Industries

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

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

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • The Cal/OSHA Process Safety Management Unit (PSM) will conduct a total of 40 programmed inspections at facilities, other than petroleum refineries, that meet the trigger threshold quantities for the PSM standard. • Participate in five outreach/compliance assistance activities provided to industry/professional groups. • Conduct four comprehensive inspections of petroleum refineries during normal operating conditions, conducted by the PSM Unit. • The PSM Unit will conduct four turnaround inspections of petroleum refineries (two in the North and two in the South), in accordance with Labor Code 7872. 	<ul style="list-style-type: none"> • 54 programmed inspections were conducted at facilities other than petroleum refineries that meet the trigger threshold quantities for the PSM standard, as reflected by OIS on December 11, 2017. • The PSM Unit staff participated in 15 outreach/compliance assistance activities provided to industry/professional groups. • The PSM Unit staff conducted four comprehensive programmed inspections of petroleum refineries (NAICS 324110) during normal operating conditions in FY 2017. • The PSM Unit conducted three turn around inspections of petroleum refineries (NAICS 324110), one in the North and two in the South, in accordance with Labor Code 7872. 	<ul style="list-style-type: none"> • This goal was achieved. • This goal was achieved. • This goal was achieved. • This goal was partially achieved.

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GOAL 1.3 Process Safety Management (PSM) and Covered Industries (cont.)

Performance Indicator Type	Indicator	Results	Comments
Activity Measures Cont.	<ul style="list-style-type: none"> The PSM Unit will conduct follow-up inspections at establishments other than petroleum refineries for 10% of all inspection types, whether programmed or unprogrammed. 	<ul style="list-style-type: none"> Four follow-up inspections were conducted during FY 2017. 	<ul style="list-style-type: none"> This goal was not achieved (4 out of 63 non-refinery, non-follow-up inspections not currently under contest).
Outcome Measures	<ul style="list-style-type: none"> Abatement of non-contested serious hazards found in these industries will be achieved in 98% of cases. The number of fatalities and serious injuries/illnesses attributable to violations of the PSM standard at these facilities will be maintained at the average level for the past three years. 	<ul style="list-style-type: none"> 100% of serious, willful, and/or repeat violations (SWR), not currently under contest, cited during FY 2017 were abated, as reflected OIS as of December 12, 2017. There was one serious injury (no fatalities) attributable to violations of the PSM standard (T8 CCR 5189) at covered facilities during CY 2016, as reflected by OIS reports (using accident investigations conducted by the dedicated Cal/OSHA PSM Unit). 	<ul style="list-style-type: none"> This goal was achieved. This goal was achieved. The average number of fatalities and serious injuries/illnesses attributable to violations of the PSM standard at covered facilities for the past three years (2014 - 2016)¹⁴ was 1.

¹⁴ The number of fatalities and serious injuries/illnesses attributable to violation of the PSM standard for calendar years 2014, 2015 and 2016 were respectively 0, 2 and 1.

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Goal 2.1

Heat Illness Prevention Enforcement and Outreach to Employees and Employer Groups

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

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

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • Conduct 2,500 inspections of outdoor places of employment where heat hazards are evaluated. • Conduct a minimum of 90 seminars where heat illness prevention will be emphasized. • Distribute a minimum of 7,000 units of heat illness prevention outreach materials during inspections and outreach events. 	<ul style="list-style-type: none"> • 2,755 combined inspections where heat hazards were evaluated (coded S 18 HEAT) were conducted during FY 2017: 2,186 in construction and 569 in agriculture NAICS Codes, as reflected by OIS on December 11, 2017. • 110 seminars/workshops were conducted where heat illness was emphasized during FY 2017. In all, Cal/OSHA Enforcement staff participated in over 150 outreach events where heat illness prevention was addressed, including TV and radio interviews. • Staff distributed over 37,000 units of heat illness prevention materials during outreach events alone. 	<ul style="list-style-type: none"> • This goal was achieved. • This goal was achieved. Cal/OSHA continues to collaborate with various employers, labor groups, community based organizations and local governments to train employers and employees on heat illness prevention. • This goal was achieved.
Outcome Measures	<ul style="list-style-type: none"> • Abatement of non-contested heat hazards found in outdoor places of employment will be achieved in 94% of cases. 	<ul style="list-style-type: none"> • 92% of 3395 violations, not currently under contest, cited during FY 2017 (all industries) were abated, as reflected by OIS as of December 12, 2017. 	<ul style="list-style-type: none"> • This goal was not reached. Cal/OSHA will continue to work with employers to obtain abatement.

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GOAL 2.1 Heat Illness Prevention Enforcement and Outreach to Employees and Employer Groups (cont.)

Performance Indicator Type	Indicator	Results	Comments
Outcome Measures	<ul style="list-style-type: none"> Maintain the number of heat-related serious illnesses and fatalities occurring in outdoor places of employment, based on Cal/OSHA internal tracking, at the average level for calendar years 2011-2013. 	<ul style="list-style-type: none"> There was one confirmed outdoor heat related fatality and 52 confirmed heat illnesses in CY 2016, based on Cal/OSHA internal tracking. 	<ul style="list-style-type: none"> This goal was achieved. The baseline average number of heat fatalities for CY 2011 - 2013¹⁵ was 3. The baseline average number of heat-related illnesses for CY 2011 – 2013¹⁶ was 52.

¹⁵ The number of worker fatalities due to outdoor heat exposure for calendar years 2011, 2012 and 2013 based on Cal/OSHA internal tracking were respectively 2, 3, and 4.

¹⁶ The number of heat-related illness for calendar years 2011, 2012 and 2013 based on Cal/OSHA internal tracking were respectively 54, 48 and 54.

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Goal 2.2

Educational Outreach to Vulnerable Employee Populations

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

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

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • Cal/OSHA Enforcement Branch will continue to distribute publications and flyers to employers, supervisors, foremen and workers in English and other languages that detail the requirements of Cal/OSHA regulations including worker rights. Publication distribution will exceed 15,000 in total. • The Division will conduct 110 events in FY 2017 by the BOT and regular DOSH staff at events with <i>vulnerable</i> workers organized by worker and community organizations, the UC programs, and consulates. 	<ul style="list-style-type: none"> • Over 68,000 publications and flyers distributed during FY 2017 outreach events with <i>vulnerable</i> workers. • Cal/OSHA Enforcement staff participated in approximately 170 outreach events with <i>vulnerable</i> workers. 	<ul style="list-style-type: none"> • This goal was achieved. • This goal was achieved.

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Goal 2.2 Educational Outreach to Vulnerable Employee Populations (cont.)

Performance Indicator Type	Indicator	Results	Comments
Outcome Measures	<ul style="list-style-type: none"> • At least 1,100 event participants will come away with increased knowledge of workplace health and safety hazards, workers' rights under the law and how to exercise these. An additional 19,000 workers will gain this information from trainings conducted by participants in the DOSH events. • The Farm Labor Contractor (FLC) Safety and Health guide will be translated into Spanish. 	<ul style="list-style-type: none"> • There were over 35,000 attendees at FY 2017 outreach events with <i>vulnerable</i> workers. Based on this information, it is safe to infer that at least 1,100 event participants came away with increased knowledge of workplace health and safety hazards, workers' rights under the law and how to exercise these. It is also safe to conclude that over 19,000 workers gained health and safety knowledge from the workshops, training and other events. • The English-language FLC guide, now called Safety and Health in Agricultural Field Operations, has been completed and will be ready for posting to the internet soon. The translation of this publication has begun. 	<ul style="list-style-type: none"> • This goal was achieved. • This goal was partly achieved.

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Goal 2.3 Partnership Programs

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

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

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> Cal/VPP and Cal/VPP Construction Units will hold one workshop each to promote Cal/VPP and Cal/VPP Construction. 	<ul style="list-style-type: none"> Three workshops were held during FY 2017 to promote Cal/VPP and two to promote Cal/VPP Construction. 	<ul style="list-style-type: none"> This goal was surpassed.
Outcome Measures	<ul style="list-style-type: none"> Three new establishments will be added into the Division's leadership level for fixed site establishments (Cal/VPP) and 30 will be renewed, for a total of 74 VPP sites. Ten new establishments will be added into the Division's leadership level partnership program for construction VPP worksites and 1 will be renewed, for a total of 37 VPP-C sites. 	<ul style="list-style-type: none"> Six new VPP sites were added into the Divisions leadership level for fixed establishments and 28 were renewed, during FY 2017. 68 VPP sites were in effect at the end of FFY 2017. Six new establishments were added into the Division's leadership level partnership program for construction VPP worksites and none were renewed during FY 2017. 23 VPP-C sites were in effect at the end of FFY 2017. 	<ul style="list-style-type: none"> This goal was for the most part achieved. This goal was partially met.

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Goal 3.1

Timeliness of Inspections Opening and Citations Issuance

Strategic Goal: Maximize Cal/OSHA's effectiveness and enhance public confidence.

Performance Goal: Respond effectively to mandates so that workers are provided full protection under Cal/OSHA by timely response to formal complaints and to nonfatal accidents, as well as by timely issuance of citations, so that hazards could be timely corrected.

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • Cal/OSHA district offices will run on a weekly basis the “UPA Tracking” report to monitor the unsatisfied complaints, and will run monthly the “UPA One Liner Detail” report to track complaint response time. • Cal/OSHA district offices will run monthly the “Open Inspection” report and work with CSHOs to expedite citation issuance. • All Cal/OSHA offices will monitor SAMMs and other management reports to track progress of citations lapse time. 	<ul style="list-style-type: none"> • Cal/OSHA staff ran the OIS “UPA Tracking” report on a weekly basis to monitor the unsatisfied complaints, and ran the “UPA One Liner Detail” report monthly to track complaint response time • Cal/OSHA staff ran the OIS Open Inspections report on a monthly basis and worked with CSHOs to identify less complicated cases without serious citations with the goal of issuing citations as soon as possible. • Cal/OSHA staff ran the OIS SAMMs, and Open Inspection reports to track citation lapse time and other measures 	<ul style="list-style-type: none"> • This goal was achieved. • This goal was achieved. • This goal was achieved.
Outcome Measures	<ul style="list-style-type: none"> • Respond to formal serious complaints on average within 3 working days and to formal non-serious complaints on average within 14 calendar days of receipt of the complaint. 	<ul style="list-style-type: none"> • Cal/OSHA responded within an average of 3.73 working days to ALL serious complaints (formal and non-formal), and within 16.62 calendar days to ALL non-serious complaints (formal and non-formal). 	<ul style="list-style-type: none"> • This goal has not been achieved.

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Goal 3.1 Timeliness of Inspections Opening and Citations Issuance (cont.)

Performance Indicator Type	Indicator	Results	Comments												
Outcome Measures	<ul style="list-style-type: none"> Average number of days for citations issuance will decrease for both safety and health inspections. Percentage of serious violations abated during inspection will increase by 3% compared to previous year. 	<ul style="list-style-type: none"> Citation lapse time as reported by OIS SAMMs reports as follows: <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th style="text-align: center;">FY 2016</th> <th style="text-align: center;">FY 2017</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Safety</td> <td style="text-align: center;">68.45</td> <td style="text-align: center;">74.07</td> </tr> <tr> <td style="text-align: center;">Health</td> <td style="text-align: center;">73.87</td> <td style="text-align: center;">75.83</td> </tr> <tr> <td colspan="3" style="font-size: small;"> FY 2016 OIS SAMMs #11 dated 12/2/16 FY 2016 OIS SAMMs #11 dated 12/11/17 </td> </tr> </tbody> </table> 68% of serious, willful, repeat (SWR) violations cited during FY 2017 were abated on site, as reflected by OIS as of December 13, 2017. 		FY 2016	FY 2017	Safety	68.45	74.07	Health	73.87	75.83	FY 2016 OIS SAMMs #11 dated 12/2/16 FY 2016 OIS SAMMs #11 dated 12/11/17			<ul style="list-style-type: none"> This goal was not met. This goal was not achieved. The percentage of SWR violations cited during FY 2016 that were abated during inspection was 69%, as reflected by OIS as of December 13, 2017.
	FY 2016	FY 2017													
Safety	68.45	74.07													
Health	73.87	75.83													
FY 2016 OIS SAMMs #11 dated 12/2/16 FY 2016 OIS SAMMs #11 dated 12/11/17															

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Goal 3.2

Imminent Hazards and Fatalities Response Time

Strategic Goal: Maximize Cal/OSHA's effectiveness and enhance public confidence.
Performance Goal: Respond effectively to mandates so that workers are provided full protection under Cal/OSHA by timely response to imminent hazards and to work related fatality reports.

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • Use the SAMMs report to monitor, on a monthly basis, response times to imminent hazard complaints/referrals, as well as fatality investigations and correct data entry errors that occur. 	<ul style="list-style-type: none"> • Cal/OSHA staff ran the OIS SAMMs report on a monthly basis and monitored response times to imminent hazard complaints/referrals, as well as fatality investigations and corrected any data entry errors identified. 	<ul style="list-style-type: none"> • This goal was achieved.
Outcome Measures	<ul style="list-style-type: none"> • Respond to 100% of imminent hazard complaints/referrals within one day of receipt. • Cal/OSHA will also respond to 100% work related fatality reports within one day of receipt. 	<ul style="list-style-type: none"> • 100% of all imminent hazard complaints/referrals were responded to within one day of receipt, as reflected by SAMMs #3 as of December 11, 2017. • 98.14% of work related fatalities (158 out of 161) were opened within one workday, as reflected by SAMMs #10 as of December 11, 2017. 	<ul style="list-style-type: none"> • This goal was achieved. • This goal was not achieved. Three work related fatalities were identified as having a response time greater than one day. After close review of these three fatalities, it was found that: <ul style="list-style-type: none"> 1 – jurisdiction had to be resolved; and 2 – were opened late

¹ The percentage of inspections opened in 2016 and completed in 2016 or later where no violations of section 3395 were cited, compared to all inspections opened in 2016 and completed in 2016 or later where compliance with section 3395 was evaluated.