

**FY 2018**  
**Follow-up Federal Annual Monitoring Evaluation (FAME) Report**

**Nevada Department of Business & Industry**  
**Division of Industrial Relations, Occupational Safety & Health**  
**Administration (NVOSHA)**



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## I. Executive Summary

The purpose of this report is to assess Nevada's Occupational Safety and Health program for Fiscal Year (FY) 2018, and its progress in resolving outstanding findings from the FY 2017 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report. The agency responsible for enforcing Nevada's regulations is the Nevada Occupational Safety and Health Administration (NVOSHA), under the Division of Industrial Relations (DIR).

NVOSHA either met or exceeded all of its FY 2018 Annual Performance Plan goals, with one exception. Goal 1.2 was for the removal of at least 22,000 employees from exposure to potential workplace safety and health hazards. This goal was increased by 4,000 employees from the previous FY 2017. Although the goal was not achieved as 21,718 employees were removed from such hazards in FY 2018, it is still a commendable achievement.

NVOSHA made significant progress to address 11 previous findings and 2 observations from the FY 2017 Comprehensive FAME Report. Two findings were verified as completed. Additionally, corrective actions for nine findings were completed, awaiting verification, which will be a focus of next year's on-site case file review during the FY 2019 Comprehensive FAME. Lastly, there were two observations that remained open for further monitoring.

## II. State Plan Background

The State of Nevada, under an agreement with OSHA, operates an occupational safety and health program per Section 18 of the Occupational Safety and Health Act of 1970. Initial approval of the Nevada State Plan occurred on January 4, 1974, and final approval was given on April 18, 2000.

The Department of Business and Industry, Division of Industrial Relations (DIR) is the designated agency for administering the OSHA-funded enforcement program in Nevada through NVOSHA. Joseph Decker was the State Plan designee and administrator of DIR until his departure on April 17, 2018. Ray Fierro was acting in the position until his permanent appointment on September 24, 2018. Jess Lankford is the Chief Administrative Officer (CAO) for enforcement. The consultation program is administered through Todd Schultz, CAO of SCATS. There were 75 full-time employees and hiring is underway for two more employees. Both the enforcement and consultation programs have jurisdiction and provide services to approximately 81,254 state and local government and private sector employers<sup>1</sup> and nearly 1.3 million workers in the state except for federal workers, Tribal lands, military installations, and other areas of exclusive federal jurisdiction.

The enforcement program operates under the 23(g) grant, which also covers consultation and training for state and local government agencies. The base award to the Nevada program was \$1,457,900 in federal funds. The state matched this and contributed an additional \$4,668,548 for a total of \$7,584,348. A one-time only award of \$57,701 in July increased the total grant to

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<sup>1</sup> Figures from the Nevada FY 2019 23g grant application, state demographic profile. Source <http://nevadaworkforce.com/OCEW> from 2017.

\$7,642,049, and \$7,603 federal funds were not expended at the end of the grant. NVOSHA had three new successful initiatives: the OSHA 10-hour and 30-hour general industry training requirement, Nevada Safety Consultation and Training Section (SCATS) Safety and Health Practitioner Program, and the use of Unmanned Aerial Vehicles (UAV) or drones to collect photographs and aerial views of activities. NVOSHA presented their findings on the use of UAVs at the October 2018 Occupational Safety and Health State Plan Association (OSHSPA) meeting.

Beginning January 1, 2018, certain workers in the entertainment industry were required to obtain the OSHA 10-hour and OSHA 30-hour General Industry Course training cards. Workers whose primary occupation fell into one of these categories: (1) theatrical scenery, rigging or props; (2) wardrobe, hair or makeup; and (3) audio, camera, projection, video or lighting equipment were covered. The requirement also applied to workers involved with any other items or parts related to these categories and that were used in conjunction with the presentation of live entertainment, filmmaking or photography, television programs, sporting events, and theatrical performances.

Lastly, SCATS continued its Safety and Health Practitioner Certificate program to heighten the standard of safety in Nevada. The program recognizes those who have completed a curriculum of 27 SCATS training classes within three years of the date of enrollment. As of September 30, 2018, 2,791 students (300 more than last fiscal year) were enrolled in the Safety and Health Practitioner Certificate Program and 770 have graduated.

### **New Issues**

In accordance with the Bipartisan Budget Bill passed on November 2, 2015, OSHA published a rule on July 1, 2016 raising its maximum penalties. As required by law, OSHA then increased maximum penalties annually, on January 1, 2017, January 1, 2018, and January 23, 2019, according to the Consumer Price Index (CPI). State Plans are required to adopt both the initial increase and subsequent annual increases within the corresponding six-month timeframe set by regulation. December 2018 marked two full years since the first deadline passed for adoption and the Nevada State Plan has not yet completed the legislative changes to increase maximum penalties. Therefore, if the State Plan does not take further steps to adopt during FY 2019, this issue may be a finding in the FY 2019 Comprehensive FAME Report.

## **III. Assessment of State Plan Progress and Performance**

### **A. Data and Methodology**

OSHA has established a two-year cycle for the FAME process. The Fiscal Year 2018 report is a follow-up year report and OSHA did not conduct an on-site program evaluation and case file review. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME.

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, Appendix D)
- State Information Report (SIR)

- Mandated Activities Report for Consultation (MARC)
- State OSHA Annual Report (SOAR, Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Web Integrated Management Information System (WebIMIS)
- Quarterly monitoring meetings between OSHA and the State Plan

Each State Activity Mandated Measures (SAMM) Report has a further review level (FRL) that is 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 2018 State Activity Mandated Measures Report and includes the FRL for each measure.

## B. Findings and Observations

### FINDINGS (STATUS OF PREVIOUS AND NEW ITEMS)

The State Plan made progress to address the previous 11 findings and 2 observations from the FY 2017 Comprehensive FAME Report. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2017 recommendation in detail.

#### Completed Findings

**Finding FY 2017-02:** The average number of violations classified as serious, willful, repeat, or unclassified (SWRU) was below the further review level.

**Status:** NVOSHA has completed the corrective action by developing a staff training program focusing on serious hazard identification and requiring direct supervisors to review files for correct classification prior to issuance. In addition, by improving staff retention and employing effective emphasis program targeting, particularly towards construction, NVOSHA was able to bring about positive change in this area. As a result, the average number of SWRU violations per inspection (SAMM 5) continues to improve upon the previous FY 2015-2017 performances. The measure rose to 1.45 in FY 2018 and is now negligibly below the FRL. OSHA considers this finding to be complete.

**Table 1**

#### **Average Number Violations per Inspection with Violations (SAMM 5)**

Measure	FY 2015	FY 2016	FY 2017	FY 2018	SAMM 5 FRL
SAMM 5 (SWRU)	1.25	1.30	1.37	1.45	1.46 to 2.18

**Finding FY 2017-09:** In FY 2016 and FY 2017, NVOSHA did not respond to notices of intent and adoptions for Federal Program Changes and standards timely.

**Status:** Finding FY 2017-09 was closed based on NVOSHA's substantial progress towards completion. All Standards and Federal Program Changes for the time period were adopted, with the exception of the penalty maximum updates. The adoption of penalty structure, Senate Bill (SB) 40, is scheduled to be heard at the upcoming convening of the Nevada legislature in February of 2019. This bill includes a provision to adopt any adjustments made to the civil penalty under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The adoption of final rules related to penalty updates are addressed in the major new issues section of this report and will be tracked separately from this finding.

### Continued Findings

**Finding FY 2018-01 (FY 2017-01):** In FY 2017, in all seven (100%) fatality investigation case files reviewed, required fatality investigation documentation was missing including a final next-of-kin letter and a fatality report.

**Status:** NVOSHA developed a reference guide to ensure the requisite documentation was included in the file. Additionally, training was held for management and staff throughout the year with the most recent training held on November 6, 2018. The corrective action plan was completed, awaiting verification, and will be a focus of next year's on-site case file review during the FY 2019 Comprehensive FAME.

**Finding FY 2018-02 (FY 2017-03):** In FY 2017, there was no evidence the union was sent citations in 9 of 15 (60%) safety and health case files reviewed where a union was identified to represent employees.

**Status:** NVOSHA issued a memorandum, "Provision of Citations to Employee Representatives," to inform staff of the requirement. Training was held for management and staff throughout the year with the most recent training held on November 6, 2018. In addition, direct supervisors were tasked with ensuring the union representation section of the file was completed prior to processing. The corrective action plan was completed, awaiting verification, and will be a focus of next year's on-site case file review during the FY 2019 Comprehensive FAME.

**Finding FY 2018-03 (FY 2017-04):** In FY 2017, there were 3 of 22 (14%) cases with changes made to a citation resulting from an informal conference where the informal settlement agreement was not maintained in the file.

**Status:** NVOSHA developed and issued to staff a memorandum, "Informal Settlement Procedures," following the OSHA memorandum, "Informal Conference Guidelines." Moreover, training was held for management throughout the year with the most recent training held on November 6, 2018. OSHA provided on-site assistance on October 25, 2018 along with a template for completing the informal settlement agreement, using electronic transmission to ensure a record was documented in the file. The corrective action plan was completed, awaiting verification, and will be a focus of next year's on-site case file review during the FY 2019 Comprehensive FAME.

**Finding FY 2018-04 (FY 2017-05):** In FY 2017, there were 10 of 19 (53%) cases reviewed where informal settlement agreements were received and signed, after the 15-working day contest period.

**Status:** NVOSHA developed and issued to staff a memorandum, “Informal Settlement Procedures,” following the OSHA memorandum, “Informal Conference Guidelines.” Training was held for management and staff throughout the year with the most recent training held on November 6, 2018. In addition, a process was developed for scanning and emailing informal settlement agreements to allow for rapid processing within the 15-working day contest period. Electronic transmission of settlement agreements has allowed for faster processing. Direct supervisors closely track the certified mailing cards to ensure timelines are met. The corrective action plan was completed, awaiting verification, and will be a focus of next year’s on-site case file review during the FY 2019 Comprehensive FAME.

**Finding FY 2018-05 (FY 2017-06):** In FY 2017, there were 4 of 19 (21%) cases with a signed informal settlement agreement in the file where the District Manager signed before the employer.

**Status:** NVOSHA developed and issued to staff a memorandum, “Informal Settlement Procedures,” following the OSHA memorandum, “Informal Conference Guidelines.” Training was held for management and staff throughout the year with the most recent training held on November 6, 2018. On October 25, 2018, OSHA provided on-site training for NVOSHA staff providing a case study where the delayed signing by the employer had a negative impact on the settlement agreement. The corrective action plan was completed, awaiting verification, and will be a focus of next year’s on-site case file review during the FY 2019 Comprehensive FAME.

**Finding FY 2018-06 (FY 2017-07):** In FY 2017, employers were provided an additional right to contest of 15-working days after receipt of an amended citation.

**Status:** NVOSHA developed and issued to staff a memorandum, “Informal Settlement Procedures,” following the OSHA memorandum, “Informal Conference Guidelines.” Training was held for management and staff throughout the year with the most recent training held on November 6, 2018. In addition, OSHA received confirmation on October 25, 2018, that the practice of reissuing a citation (rather than a standard amendment during settlement proceedings) no longer occurs. The corrective action plan was completed, awaiting verification, and will be a focus of next year’s on-site case file review during the FY 2019 Comprehensive FAME.

**Finding FY 2018-07 (FY 2017-08):** In FY 2017, confidential worker interview statements taken during the course of the inspection were shared with the employer during an informal conference.

**Status:** NVOSHA conducted training for management and staff throughout the year with the most recent training held on November 6, 2018. Compliance officers were informed of the requirement to ensure worker confidentiality is maintained to the extent allowable by law. In addition, compliance officers were informed to be careful with wording during interviews so as not to reveal information from protected sources. The corrective action plan was completed, awaiting verification, and will be a focus of next year’s on-site case file review during the FY 2019 Comprehensive FAME.

**Finding FY 2018-08 (FY 2017-10):** In FY 2017, in two of eight (25%) whistleblower retaliation investigations that were dismissed, there was no evidence documented in the file that respondents were either sent or received a closing letter.

**Status:** NVOSHA conducted training for management and staff throughout the year and again on November 6, 2018. The training focused on the requirements of communicating with respondents. The whistleblower supervisor reviewed files prior to closure to ensure a closing letter was sent. The corrective action plan was completed, awaiting verification, and will be a focus of next year's on-site case file review during the FY 2019 Comprehensive FAME.

**Finding FY 2018-09 (FY 2017-11):** In FY 2017, in 10 of 19 (53%) cases reviewed, information on workplace retaliation investigations was not accurately entered into WebIMIS.

**Status:** New employees completed WebIMIS training as part of their new hire training and in conjunction with the senior investigator mentorship process. In addition, direct supervisors reviewed files at the time of submittal for accuracy. The corrective action plan was completed, awaiting verification, and will be a focus of next year's on-site case file review during the FY 2019 Comprehensive FAME.

## **OBSERVATIONS**

### Continued Observations

**Observation FY 2018-OB-01 (FY 2017-OB-01):** In FY 2017, there were 9 of 59 (15%) case files with violations where the severity and probability assigned to at least one of the violations was not justified and/or the violations were not appropriately classified for the severity of the injury that could occur as related to the hazard.

**Status:** NVOSHA provided staff development and training throughout the year with a focus on serious hazard classification and justification. In addition, direct supervisors reviewed files for accuracy prior to issuance. Staff retention and effective supervisory reviews were determined to be positive factors towards this area. A case file review is necessary to gather the facts needed to evaluate this observation. Therefore, this observation will be monitored as part of next year's on-site case file review during the FY 2019 Comprehensive FAME. This observation will be continued.

**Observation FY 2018-OB-02 (FY 2017-OB-02):** In FY 2017, in all 37 (100%) files with multiple penalty adjustment factors, the calculation used was incorrect and was not applied serially as described in the Nevada Operations Manual (NOM).

**Status:** NVOSHA corrected the calculation mechanism in OSHA Information System (OIS) to reflect procedures as described in the NOM. A case file review is necessary to gather the facts needed to evaluate this observation. Therefore, this observation will be monitored as part of next year's on-site case file review during the FY 2019 Comprehensive FAME. This observation will be continued.



### **C. State Activity Mandated Measures (SAMM) Highlights**

Each SAMM has an agreed upon Further Review Level (FRL) that is 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. The measures that warranted a finding or observation were discussed in the previous section. SAMM measures that fell outside the FRL but did not warrant a finding or observation are discussed below. Appendix D presents the FY 2018 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure. The State Plan was outside the FRL on the following SAMMs:

#### **SAMM 6 – Percent of total inspections in state and local government workplaces**

Discussion of State Plan data and FRL: The FRL for SAMM 6 was +/- 5% of 3.33%, which equals a range of 3.17% to 3.50%. NVOSHA's percent of total inspections in state and local government workplaces was 1.53% which was below the FRL and warrants a closer look at the situation during quarterly meetings with the State Plan.

Explanation: NVOSHA's low percentage of inspections in this area was attributed to lower than anticipated unprogrammed activity (complaints, referrals, etc.) that would warrant an on-site inspection. Previously, NVOSHA did not have a targeting program for state and local government workplaces. NVOSHA is currently developing a local emphasis program (LEP) to target state and local municipalities and address this measure. This metric does not rise to the level of an observation at this time; however, OSHA will continue to discuss this situation during quarterly meetings with the State Plan.

#### **SAMM 7 – Planned v. actual inspections – safety/health**

Discussion of State Plan data and FRL: The FRL for SAMM 7 was +/- 5% of 840 and +/- 5% of 360 for safety and health, respectively. The FRL was based on the number negotiated by OSHA and the State Plan through the grant application, which equals a range of 798 to 882 for safety and 342 to 378 for health. A total of 663 safety and 317 health inspections were conducted in FY 2018. Therefore, NVOSHA's safety and health inspection numbers fell outside of the FRL and warrants a closer look at the situation during quarterly meetings with the State Plan.

Explanation: NVOSHA's staff turnover and the need for compliance officer training were attributed as primary factors contributing towards the lower than expected number of inspections. OSHA discussed performance on this measure during quarterly meetings and notable improvement was observed over the third and fourth quarters of FY 2018.

#### **SAMM 8 – Average current serious penalty**

Discussion of State Plan data and FRL: The FRL for this measure was +/- 25% which was based on the three-year national average. The State Plan was within the FRL except for employers with 101-250 workers. The average serious penalty was \$3,047.88 for employers with 101-250 employees, compared to the FRL of \$4,203.40 (\$3,152.55 to \$5,254.25).

Explanation: NVOSHA was only slightly below the lower end of the FRL for one category of employers which does not rise to the level of an observation.

### **SAMM 9 – Percent in compliance**

Discussion of State Plan data and FRL: The FRL for this measure was +/-20% of 29.90%, which equals a range of 23.92% to 35.88% for safety and was based on a three-year national average. NVOSHA's in-compliance rate for safety inspections was 36.77%, which was slightly higher than the FRL and is not a cause for concern at this time.

### **SAMM 12 - Percent Penalty Retained**

Discussion of State Plan data and FRL: The FRL for this measure was +/- 15% of 66.81% which equals a range of 56.79% to 76.83% and was based on a three-year national average. NVOSHA's percent penalty retained was 77.82% which was above the FRL.

Explanation: This was commendable performance showing a commitment to ensuring an appropriate deterrent effect was maintained during settlement conferences with employers.

### **SAMM 14 – Percent of 11(c) investigations completed within 90 days**

Discussion of State Plan data and FRL: The FRL for this metric was fixed at 100% for all State Plans. NVOSHA completed 45% of 11(c) investigations within 90 days.

Explanation: Although the FRL was not met, this performance was higher than the national average of 35%. Therefore, this result does not rise to the level of an observation; however, OSHA will continue to have discussions with the State Plan during quarterly meetings.

### **SAMM 16 – Average number of calendar days to complete an 11(c) investigation**

Discussion of State Plan data and FRL: The FRL for this metric was fixed at 90 days for all State Plans. NVOSHA's average number of calendar days to complete an 11(c) investigation was 114 days.

Explanation: Although the FRL was not met, performance was better than the national average of 277 days. Therefore, this result does not rise to the level of an observation; however, OSHA will continue to have discussions with the State Plan during quarterly meetings.

### **SAMM 17 – Percent of enforcement presence**

Discussion of State Plan data and FRL: The FRL for this metric was +/- 25% of 1.24% which equals a range of 0.93% to 1.55% and was based on a three-year national average. NVOSHA's enforcement presence was 2%.

Explanation: NVOSHA's enforcement presence was better than the FRL, indicating that NVOSHA reached more employers than the national average.



## Appendix A – New and Continued Findings and Recommendations

### FY 2018 Nevada Follow-up FAME Report

FY 2018-#	Finding	Recommendation	FY 2017-#
FY 2018-01	In FY 2017, in all seven (100%) fatality investigation case files reviewed, required fatality investigation documentation was missing including a final next-of-kin letter and a fatality report.	NVOSHA should ensure all required documentation is contained in each fatality investigation case file such as the OIS fatality report and next-of-kin letter. Corrective action complete; awaiting verification.	FY 2017-01
FY 2018-02	In FY 2017, there was no evidence the union was sent citations in 9 of 15 (60%) safety and health case files reviewed where a union was identified to represent employees.	NVOSHA should ensure citations are provided to all employee representatives and/or unions and document this information in OIS. Corrective action complete; awaiting verification.	FY 2017-03
FY 2018-03	In FY 2017, there were 3 of 22 (14%) cases with changes made to a citation resulting from an informal conference where the informal settlement agreement was not maintained in the file.	NVOSHA should ensure all informal settlement agreements are maintained in the case file. Corrective action complete; awaiting verification.	FY 2017-04
FY 2018-04	In FY 2017, there were 10 of 19 (53%) cases reviewed where informal settlement agreements were received and signed, after the 15-working day contest period.	NVOSHA should ensure all informal settlement agreements are signed by all appropriate parties prior to the 15-working day contest period per the NOM Chapter 15. Corrective action complete; awaiting verification.	FY 2017-05
FY 2018-05	In FY 2017, there were 4 of 19 (21%) cases with a signed informal settlement agreement in the file where the District Manager signed before the employer.	NVOSHA should ensure all informal settlement agreements are signed first by the employer, and last by the District Manager per the NOM Chapter 8. Corrective action complete; awaiting verification.	FY 2017-06
FY 2018-06	In FY 2017, employers were provided an additional right to contest of 15-working days after receipt of an amended citation.	NVOSHA should ensure employers are not afforded any additional contest period beyond the initial 15-working days past receipt of the original citation. Corrective action complete; awaiting verification.	FY 2017-07

**Appendix A – New and Continued Findings and Recommendations**  
 FY 2018 Nevada Follow-up FAME Report

FY 2018-#	Finding	Recommendation	FY 2017-#
FY 2018-07	In FY 2017, confidential worker interview statements taken during the course of the inspection were shared with the employer during an informal conference.	NVOSHA should ensure confidential worker interview statements are not released or shared with an employer at any time during an open investigation. Corrective action complete; awaiting verification.	FY 2017-08
FY 2018-08	In FY 2017, in two of eight (25%) of whistleblower retaliation investigations that were dismissed, there was no evidence documented in the file that Respondents were either sent or received a closing letter.	NVOSHA should ensure closing letters are sent to all appropriate parties after a determination is made. Corrective action complete; awaiting verification.	FY 2017-10
FY 2018-09	In FY 2017, in 10 of 19 (53%) cases reviewed, information on workplace retaliation investigations was not accurately entered into WebIMIS.	NVOSHA should ensure information is entered into WebIMIS in an accurate manner. Corrective action complete; awaiting verification.	FY 2017-11

## Appendix B – Observations and Federal Monitoring Plans

FY 2018 Nevada Follow-up FAME Report

Observation # FY 2018-OB-#	Observation# FY 2017-OB-# or FY 2017-#	Observation	Federal Monitoring Plan	Current Status
FY 2018-OB-01	FY 2017-OB-01	In FY 2017, there were 9 of 59 (15%) of case files with violations where the severity and probability assigned to at least one of the violations was not justified and/or the violations were not appropriately classified for the severity of the injury that could occur as related to the hazard.	OSHA will monitor both probability and severity determinations for violations to ensure the appropriate classification is justified and supported during the FY 2019 Comprehensive case file review.	Continued
FY 2018-OB-02	FY 2017-OB-02	In FY 2017, in all 37 (100%) files with multiple penalty adjustment factors, the calculation used was incorrect and was not applied serially as described in the NOM.	OSHA will monitor this issue to ensure all penalties are correctly calculated by applying penalty reductions serially during the FY 2019 Comprehensive case file review.	Continued

## Appendix C - Status of FY 2017 Findings and Recommendations

### FY 2018 Nevada Follow-up FAME Report

FY 2017-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
FY 2017-01	In all seven (100%) fatality investigation case files reviewed, required fatality investigation documentation was missing including a final next- of-kin letter and a fatality report.	NVOSHA should ensure all required documentation is contained in each fatality investigation case file such as the OIS fatality report and next-of-kin letter.	NVOSHA drafted a reference guide on required fatality investigation documentation, and trained management and staff.	October 31, 2018	Awaiting Verification, 01/29/2019
FY 2017-02	The average number of violations classified as serious, willful, repeat, or unclassified (SWRU) was below the further review level.	NVOSHA should improve the average number of serious, willful, repeat, or unclassified violations to be within the further review level.	NVOSHA continued to train and develop investigator skillsets per their current development plan. In addition, direct supervisors continued to review the file to ensure correct violation classification.	November 6, 2018	Completed

## Appendix C - Status of FY 2017 Findings and Recommendations

### FY 2018 Nevada Follow-up FAME Report

FY 2017-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
FY 2017-03	There is no evidence the union was sent citations in 9 of 15 (60%) safety and health case files reviewed where a union was identified to represent employees.	NVOSHA should ensure citations are provided to all employee representatives and/or unions and document this information in OIS.	NVOSHA reviewed and retrained management on the required notifications for businesses with labor representation on site. Direct supervisors continued to review the union representation section prior to file processing.	October 31, 2018	Awaiting Verification, 01/29/2019
FY 2017-04	There were 3 of 22 (14%) cases with changes made to a citation resulting from an informal conference where the informal settlement agreement was not maintained in the file.	NVOSHA should ensure all informal settlement agreements are maintained in the case file.	NVOSHA restructured the processes involved in the Informal Conference practices. This restructuring addressed findings FY 2017-04, 05, 06, 07. NV OSHA coordinated directly with the Las Vegas Area Office to exchange practices, procedures, and forms to ensure parallel performance.	November 6, 2018	Awaiting Verification, 01/29/2019
FY 2017-05	There were 10 of 19 (53%) of cases reviewed where informal settlement agreements were received and signed after the 15-working day contest period.	NVOSHA should ensure all informal settlement agreements are signed by all appropriate parties prior to the 15-working day contest period per the NOM Chapter 8.	NV OSHA restructured the processes involved in the Informal Conference practices. This restructuring addressed findings FY 2017-04, 05, 06, 07. NV OSHA coordinated directly with the Las Vegas Area Office to exchange practices, procedures, and forms to ensure parallel performance.	November 6, 2018	Awaiting Verification 01/29/2019



## Appendix C - Status of FY 2017 Findings and Recommendations

### FY 2018 Nevada Follow-up FAME Report

FY 2017-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
FY 2017-06	There were 4 of 19 (21%) cases with a signed informal settlement agreement in the file where the District Manager signed before the employer.	NVOSHA should ensure all informal settlement agreements are signed first by the employer, and last by the District Manager per the NOM Chapter 8.	NVOSHA restructured the processes involved in the Informal Conference practices. This restructuring addressed findings FY 2017-04, 05, 06, 07. NV OSHA coordinated directly with the Las Vegas Area Office to exchange practices, procedures, and forms to ensure parallel performance.	November 6, 2018	Awaiting Verification, 01/29/2019
FY 2017-07	Employers were provided an additional right to contest of 15-working days after receipt of an amended citation.	NVOSHA should ensure employers are not afforded any additional contest period beyond the initial 15-working days past receipt of the original citation.	NVOSHA restructured the processes involved in the Informal Conference practices. This restructuring addressed findings FY 2017-04, 05, 06, 07. NV OSHA coordinated directly with the Las Vegas Area Office to exchange practices, procedures, and forms to ensure parallel performance.	November 6, 2018	Awaiting Verification, 01/29/2019
FY 2017-08	Confidential worker interview statements taken during the course of the inspection were shared with the employer during an informal conference.	NVOSHA should ensure confidential worker interview statements are not released or shared with an employer at any time during an open investigation.	NVOSHA reviewed and retrained management and staff on practices associated with the handling of confidential information. This issue was brought before managing staff at meeting held on August 7, 2018.	August 7, 2018	Awaiting Verification, 01/29/2019

## Appendix C - Status of FY 2017 Findings and Recommendations

### FY 2018 Nevada Follow-up FAME Report

FY 2017-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
FY 2017-09	In FY 2016 and FY 2017, NVOSHA did not respond to notices of intent and adoptions for Federal Program Changes and Standards timely.	NVOSHA should ensure timely response of intent to adopt and date of adoption for Federal Program Changes and Promulgation of Standards	NVOSHA continued to respond timely to required adoptions within the limitations of Nevada’s legislative process. NVOSHA kept OSHA informed of current rulemaking status.	November 19, 2018	Completed
FY 2017-10	In two of eight (25%) whistleblower retaliation investigations that were dismissed, there was no evidence documented in the file that Respondents were either sent or received a closing letter.	NVOSHA should ensure closing letters are sent to all appropriate parties after a determination is made.	NVOSHA reviewed practices for finalization of whistleblower case files. At the completion of the file closure review, NVOSHA trained management and staff accordingly. The whistleblower supervisor continued to review the file prior to closure to ensure a closing letter was sent.	October 31, 2018	Awaiting Verification, 01/29/2019
FY 2017-11	In 10 of 19 (53%) cases reviewed, information on workplace retaliation investigations was not accurately entered into WebIMIS.	NVOSHA should ensure information is entered into WebIMIS in an accurate manner.	NVOSHA ensured that each employee had completed the requisite training towards the WebIMIS system no later than October 31, 2018. New employees completed the WebIMIS training as part of their new hire training pipeline and in conjunction with the senior investigator mentorship process. Furthermore, the direct supervisor reviewed each file at the time of submittal to ensure accurate completion.	October 31, 2018	Awaiting Verification, 01/29/2019

## Appendix D – FY 2018 State Activity Mandated Measures (SAMM) Report

FY 2018 Nevada Follow-up FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Nevada - NEVADA OSHA			FY 2018	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	4.84	14	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	3.62	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	1.81	5	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	1.40	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.

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<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 1.45	+/- 20% of SWRU: 1.82	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.46 to 2.18 for SWRU and from 0.78 to 1.18 for OTS.
		Other: 1.46	+/- 20% of Other: 0.98	
<b>6</b>	Percent of total inspections in state and local government workplaces	1.53%	+/- 5% of 3.33%	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 3.17% to 3.50%.
<b>7</b>	Planned v. actual inspections – safety/health	S: 663	+/- 5% of S: 840	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 798 to 882 for safety and from 342 to 378 for health.
		H: 317	+/- 5% of H: 360	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$2,002.12	+/- 25% of \$2,603.32	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,952.49 to \$3,254.15.
	a. Average current serious penalty in private sector (1-25 workers)	\$1,353.69	+/- 25% of \$1,765.19	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,323.89 to \$2,206.49.
	b. Average current serious penalty in private sector (26-100 workers)	\$2,415.61	+/- 25% of \$3,005.17	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,253.88 to \$3,756.46.
	c. Average current serious penalty in private sector (101-250 workers)	\$3,047.88	+/- 25% of \$4,203.40	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,152.55 to \$5,254.25.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$4,107.73	+/- 25% of \$5,272.40	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,954.30 to \$6,590.50.

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<b>9</b>	Percent in compliance	S: 36.77%	+/- 20% of S: 29.90%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 23.92% to 35.88% for safety and from 28.88% to 43.32% for health.
		H: 37.46%	+/- 20% of H: 36.10%	
<b>10</b>	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.
<b>11</b>	Average lapse time	S: 45.20	+/- 20% of S: 46.20	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 36.96 to 55.44 for safety and from 45.25 to 67.87 for health.
		H: 50.18	+/- 20% of H: 56.56	
<b>12</b>	Percent penalty retained	77.82%	+/- 15% of 66.81%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 56.79% to 76.83%.
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	45%	100%	The further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	28%	+/- 20% of 24%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 19.20% to 28.80%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	114	90	The further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	2%	+/- 25% of 1.24%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.93% to 1.55%.

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FY 2018 Nevada Follow-up FAME Report

**FY 2018 State OSHA Annual Report**

**STATE OF NEVADA**

**Department of Business & Industry  
Division of Industrial Relations**

**Occupational Safety & Health Administration**



**October 1, 2017 – September 30, 2018**

**Prepared by:  
Resty Malicdem, Program Coordinator, NVOSHA**

**Submitted: December 14, 2018**

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#### I. Executive Summary

Operating under an approved State Plan for 44 years, the Nevada Occupational Safety and Health Administration (NVOSHA) Program is a results-oriented program that strives to ensure that employers provide Nevada workers safe and healthful working conditions.

The Division of Industrial Relations (DIR), Department of Business, and Industry (DBI) administer the Program. Terry Reynolds is Interim Director of DBI, Ray Fierro is Administrator of DIR and the State Plan Designee, Jess Lankford is Chief Administrative Officer (CAO) of NVOSHA, and Todd Schultz is CAO of the Nevada Safety Consultation and Training Section (SCATS).

To meet OSHA requirements, NVOSHA established a Five-Year Strategic Plan in 2015 to set up agency goals for Fiscal Years 2016-2020. The agency also develops an annual performance plan at the beginning of each fiscal year to guide it towards its established goals.

NVOSHA's Strategic Plan focuses on three areas: Workplace Safety and Health, Employer Involvement, and Staff Professional Development.

More specifically, NVOSHA developed the plan to achieve the following results:

- Reduce workplace injuries and illnesses,
- Change workplace culture, and
- Enhance compliance officers' knowledge, skills, and abilities.

For FY2018, NVOSHA's Annual Performance Plan goals were to:

- *Goal 1.1* - Reduce worker injury and illness DART (Days Away, Restricted, or Transferred) rate by 1 percent.
- *Goal 1.2* - Remove at least 22,000 employees from exposure to potential workplace safety and health hazards.
- *Goal 2* - Increase the number of participants in the Nevada Voluntary Protection Program (VPP) Star Program by awarding one site.
- *Goal 3* - Conduct field training and evaluate the performance of at least 80 percent of field compliance safety and health officers (CSHOs).

NVOSHA met or exceeded the above goals except one: *Goal 1.2*. After raising the goal from 18,000 employees for FY2017 to 22,000 for FY2018, the agency came up 282 employees short from its goal. CSHOs removed 21,718 employees from exposure to potential workplace safety and health hazards this fiscal year.

The state's DART rate for all industries dropped 4.76% from CY2016's 2.1 to 2.0 in CY2017 (*Goal 1.1*), SCATS awarded the VPP Star to one establishment (*Goal 2*) and the agency trained/evaluated 100% of its field CSHOs (*Goal 3*).



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In FY2018, the agency conducted 958 inspections, 242 inspections below its projection of 1,200 inspections. 641 safety and 302 health inspections were in the private sector; six safety and nine health inspections were in the state and local government sectors.

The following pages further illustrate how NVOSHA activities measured up against its goals for FY2018 and its five-year strategic plan.

## II. Summary of Annual Performance Plan Results

**Strategic Goal 1. Workplace Safety and Health.** Reduce workplace injuries and illnesses within the state.

**Performance Goal 1.1:** Reduce worker injury and illness DART (Days Away, Restricted, or Transferred) rate by 1 percent.

### Strategies:

Focus inspections on construction and manufacturing, with emphasis on the most common causes of workplace fatalities (e.g., falls, electrocution, struck-by, caught-in/between objects).

- In Construction, primary targets for programmed inspections will be derived from Construction Dodge Reports. The inspection priority list will include construction projects that met the criteria set by Nevada Administrative Code 618.494.
- In Manufacturing, Nevada OSHA will select establishments using its Inspection Targeting Plan. For 2018, NVOSHA's inspections will focus on establishments that include the following industries:
  - Wood Product Manufacturing (NAICS 321xxx)
  - Fabricated Metal Manufacturing (NAICS 332xxx)
  - Plastics and Rubber Manufacturing (NAICS 326xxx)
  - Food Manufacturing (NAICS 311xxx)
- Inspect establishments that include the following industries under Local and Special Emphasis Programs:
  - Hotels (NAICS 721110)
  - Casino-Hotels (NAICS 721120)
  - General Auto Repair (NAICS 811111)
  - Automotive Body, Paint, and Interior Repair and Maintenance (NAICS 811121)
  - Linen Supply (NAICS 812331)
  - Industrial Launderers (NAICS 812332)
  - Shooting Ranges
  - Scaffolding

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#### Performance Indicator(s):

- Conduct 500 construction inspections, 200 manufacturing inspections, and 500 other inspections.
- Remove 18,000 employees from exposure to potential safety and health hazards.
- Decrease state DART rate by 1% in CY2016-CY2019.

#### FY2018 Results:

- NVOSHA conducted 372 inspections in construction, 193 inspections in manufacturing, and 393 inspections in other industries.
- NVOSHA removed 21,718 employees from exposure to potential safety and health hazards.
- Nevada DART rate for all industries dropped 4.76% in CY2017 (2.0) compared to CY2016 (2.1).

Source: OIS Reports (Inspection Summary and Violation Detail Reports) and BLS Survey of Occupational Injuries and Illnesses.

**Conclusion:** NVOSHA exceeded its goal of decreasing the state DART rate by 1% in CY2017.

**Strategic Goal 1. Workplace Safety and Health.** Reduce workplace injuries and illnesses within the state.

**Annual Performance Goal 1.2:** Remove at least 22,000 employees from exposure to potential safety and health hazards.

#### Strategies:

- Develop programmed inspection lists and target establishments in industries with the highest DART (Days Away, Restricted, and Transferred) rates.
- Select other industries not listed above that have high potential for employee exposures to injuries and illness.
- Increase focus of inspections in areas where employee exposure to hazards is likely.

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<p><b>Performance Indicator(s):</b></p> <ul style="list-style-type: none"><li>• Number of inspections conducted.</li><li>• Number of employees removed from hazards.</li></ul>
<p><b>FY2018 Results:</b></p> <ul style="list-style-type: none"><li>• NVOSHA conducted 958 inspections.</li><li>• NVOSHA removed 21,718 employees from exposure to potential safety and health hazards.</li></ul> <p>Source: OIS Reports (Inspection Summary and Violation Detail Reports).</p>
<p><b>Conclusion:</b> NVOSHA did not achieve its goal of removing 22,000 employees from exposure to potential safety and health hazards.</p>
<p><b>Strategic Goal 2: Employer Involvement.</b> Change workplace culture through education, outreach, and employer incentives.</p>
<p><b>Performance Goal 2:</b> Award the Nevada Voluntary Protection Program (VPP) Star to one establishment.</p>
<p><b>Strategies:</b></p> <ul style="list-style-type: none"><li>• Meet with employers and employer groups to discuss the VPP process and encourage employers to participate in the Nevada VPP Star Program.</li><li>• Advertise the VPP program on the NVOSHA website.</li></ul>
<p><b>Performance Indicators:</b></p> <ul style="list-style-type: none"><li>• Receive and review at least two VPP applications.</li><li>• Conduct at least one VPP audit.</li><li>• Award at least one VPP Star Site.</li></ul>
<p><b>FY2018 Results:</b></p> <ul style="list-style-type: none"><li>• Five VPP applications received/reviewed.</li><li>• Four VPP audits conducted (one new and three re-certifications).</li><li>• One new VPP Star Site awarded.</li></ul> <p>Source: VPP Log</p>
<p><b>Conclusion:</b> NVOSHA met its goal of awarding one VPP Star Site in FY2018.</p>

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<b>Strategic Goal 3: Staff Professional Development.</b> Enhance compliance officers' knowledge, skills, and abilities through formal and informal training.
<b>Performance Goal 3:</b> Conduct field training and evaluate the performance of at least 80% of field compliance officers every year.
<b>Strategies:</b> <ol style="list-style-type: none"><li>1. Review the agency's Master Training Task Guide and Training Directive(s) to identify requirements</li><li>2. Schedule and provide formal and informal training to compliance officers to meet requirements</li><li>3. Trainers or supervisors will schedule and conduct over-the-shoulder evaluations of compliance officers while conducting inspections/investigations in the field. Items such as case preparation, opening/closing conference, hazard recognition, interviewing skills, and case documentation will also be evaluated.</li><li>4. Trainers or supervisors will prepare evaluation report(s) for review; take corrective action(s), as appropriate.</li></ol>
<b>Performance Indicator:</b> <ul style="list-style-type: none"><li>• Percent of field compliance officers evaluated.</li></ul>
<b>FY2018 Results:</b> <ul style="list-style-type: none"><li>• Compliance supervisors/trainers trained/evaluated 36 of 36 CSHOs or 100% of the average number of field staff.</li></ul> <p>Source: Training Tracking Logs and Field Evaluation Reports.</p>
<b>Conclusion:</b> NVOSHA exceeded its goal of training /evaluating 80% of its staff.

### III. Progress toward Strategic Plan Accomplishments

**Strategic Goal 1. Workplace Safety and Health.** *Reduce workplace injuries and illnesses within the state.*

***5-Year Performance Goal 1.1:*** *Reduce worker injury and illness rate by five percent through FY2019.*

Nevada DART rates continue to drop as the BLS Survey of Occupational Injuries and Illnesses Tables for CY2016 and CY17 show—2.1 and 2.0 respectively. Compared to the strategic goal baseline of 2.2 (2013 DART rate), these numbers represent a 4.5% and 9% decrease for each of those years. If this trend continues, Nevada will more than meet its five-year goal.

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As part of its strategic plan, NVOSHA targets workplaces in the manufacturing and construction industries. Of its 958 inspections in FY18, 193 were in manufacturing and 372 were in construction.

CSHOs identified serious hazards in 48% of inspections in manufacturing (93 of 193 inspections) and 33% in construction (121 of 372 inspections). The in-compliance rates are 38% and 48%, respectively.

Understanding that hazard recognition is key to better identification and abatement of workplace hazards, the agency continues to work hard on improving training of compliance staff. The combination of formal classroom training and field evaluation of CSHOs remain to be mainstays of NVOSHA's training program.

***5-Year Performance Goal 1.2:*** *Remove 90,000 employees from exposure to potential safety and health hazards by the end of FY2020.*

After significantly exceeding its FY2016 and FY2017 goal of removing 18,000 employees removed from potential workplace safety and health hazards (26,501 and 23,846 employees, respectively), Nevada raised its goal to 22,000 employees for FY2018. However, the agency came up short with 21,718 employees. Despite this number, Nevada has already reached 80 percent of its five-year goal and should be able to achieve its five-year goal of 90,000 employees in the next two fiscal years.

**Strategic Goal 2. Employer Involvement.** *Change workplace culture through education, outreach, and employer incentives.*

***5-Year Performance Goal 2:*** *Encourage employer participation in the Nevada Voluntary Protection Program and award at least five new VPP Star Certifications through FY2020.*

Nevada awarded one VPP Star Certification and met its goal in FY2018.

Since taking over the administration of VPP in the latter part of FY17, SCATS received five new VPP applications and conducted four on-site audits (one new and four re-certifications). In addition to a ready pool of establishments already in SHARP (Safety and Health Recognition Program), SCATS actively reaches out to potential candidates for VPP. With its experienced team of consultants in SCATS, Nevada should be on track in awarding five new VPP Star Certification by the end of FY2020.

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***Strategic Goal 3. Staff Professional Development.*** Enhance compliance officers' knowledge, skills, and abilities through formal and informal training, and field performance evaluations.

***5-Year Performance Goal 3:*** *Conduct field training and evaluate the performance of at least 80% of compliance officers.*

Training of staff remains at the top of NVOSHA's priorities. On-site training and evaluation of CSHOs through supervisor-assisted visits are integral components of NVOSHA's training process. They help ensure a competent cadre of compliance staff. NVOSHA is 100% invested in this endeavor and should meet or exceed this goal every year.

#### **IV. Mandated Activities**

Nevada's penalty averages in FY18 were still lower than acceptable levels for Measure 8 of the SAMM (State Activity Mandated Measures). As noted in last year's annual report, changes to Nevada's penalty calculation at the outset of and within OIS (OSHA Information System) inadvertently triggered the decrease to the average penalties in all the categories under Measure 8. Since Nevada made the corrections in September 2017, the penalty averages increased significantly—over 50% in FY2018 when compared to FY2017 figures.

Nevada's numbers for Measure 9 of the SAMM (State Activity Mandated Measures) showed mixed results. The in-compliance rate (IC) for Health was within acceptable range when compared to the national average. However, the IC for Safety exceeded that range.

To improve these numbers, NVOSHA will continue providing CSHOs with training that focuses on specific inspection areas. Trainers will conduct classes with the goal of familiarizing CSHOs on frequently cited standards and improving hazard identification. Furthermore, staff will closely review results of targeted inspections and evaluate their effectiveness; particularly those listed in the agency's emphasis programs.

#### **V. Special Measures of Effectiveness/Special Accomplishments**

***OSHA 10-hour and OSHA 30-hour General Industry Courses.*** Beginning January 1, 2018, Nevada required certain workers in the entertainment industry to obtain these cards. Workers such as those whose primary occupation on site falls into one of these categories: (1) theatrical scenery, rigging or props; (2) wardrobe, hair or makeup; and (3) audio, camera, projection, video or lighting equipment are covered. The requirement also applies to workers involved with any other items or parts related to the previous three and which are used for in conjunction with the presentation of live entertainment, filmmaking or photography, television programs, sporting events, and theatrical performances.

***Safety and Health Practitioner Certification Program.*** SCATS continued its Safety and Health Practitioner Certificate program to heighten the standard of safety in Nevada. The program recognizes those who have completed a curriculum of 27 SCATS training classes within three years of the date of enrollment. As of September 30, 2018, 2,791 students (300 more than last fiscal year) were enrolled in the Safety and Health Practitioner Certificate Program and 770 have

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graduated.

#### **VI. Adjustments or Other Issues**

***Enforcement Staff experience.*** Nevada's CSHO retention in FY2018 improved by 12 percent compared to the previous fiscal year. CSHO turnover rate in FY2018 was 26 percent.

#### **VII. State Internal Evaluation Program (SIEP) Report.**

NVOSHA primarily uses OIS reports to assess the effectiveness of the state program. The data retrieved from the system provides indicators that help identify potential performance deficiencies, analyze trends, and formulate corrective action(s).

The agency also conducts routine case file reviews as directed by the Chief Administrative Officer. Reviewers use a checklist to evaluate inspection case files and record findings in a local database. The district offices use the compiled data to identify deficiencies and base needed corrective actions.