

FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report

**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 (NVOSHA) program performance for Fiscal Year (FY) 2021. The criteria used to measure performance included those mandated by the Occupational Safety and Health Administration (OSHA) and progress toward resolving outstanding FY 2020 Follow-Up Federal Annual Monitoring Evaluation (FAME) findings. The FY 2021 State OSHA Annual Report (SOAR) addressed NVOSHA's achievement of the annual performance plan and five-year strategic goals.

As part of this comprehensive evaluation, OSHA conducted a remote program review, including workplace retaliation, enforcement, and state and local agency consultation case files. Case file development and management tools were generally noted as excellent for enforcement and whistleblower programs. In addition, the informal conference process was greatly improved, where settlement offers were well documented and achieved improved safety and health in areas beyond the cited conditions.

One of the more progressive efforts was the implementation of the training section, the Operations Support Unit (OSU). The OSU has four trainers who work directly with compliance officers (CSHOs). These trainers are primarily tasked with hands-on development of new CSHOs. The OSU accompanies CSHOs on inspections, mentors the case file completion, and conducts additional inspections as needed.

NVOSHA was the lead agency in the enforcement of the Governor's directives related to a COVID-19 public health emergency. This was a second year of unprecedented levels of complaints that resulted in impacting the goals for several enforcement indicators, such as the time to initiate a complaint investigation and complaint inspection, the time to issue citations, and the in-compliance rates. The 810 (67.5%) inspections conducted were short of the annual goal of 1,200. Despite challenges with staff retention, only three CSHO vacancies existed at the end of the year, and the overall performance outcome was positive.

There are seven findings and three observations in this evaluation. There were two findings and five observations from the FY 2020 Follow-Up FAME report. Both findings and three of the observations from the FY 2020 Follow-Up FAME report were completed /closed. Two of the previous observations were elevated to findings in this report. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of previous findings with associated completed corrective actions.

II. State Plan Background

I. 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 established on April 18, 2000.

The Division of Industrial Relations (DIR) is the designated agency for administering the OSHA-funded enforcement program under the Nevada Occupational Safety and Health Administration (NVOSHA). Victoria Carreon is the State Plan Designee and Administrator of DIR. William Gardner is the current Chief Administrative Officer (CAO). During the evaluation period, Jess Lankford served as the CAO until May 2021. The consultation program is administered through Todd Schultz, CAO of the Nevada Safety Consultation and Training Section (SCATS). The program is headquartered in Las Vegas with an additional office located in Reno.

There were 77 full-time and no part-time positions with hiring underway to fill the vacant positions. Nevada's CSHO turnover rate was 30% in FY 2021 compared to 12% in FY 2020, and NVOSHA is considering various strategies to ensure the recruitment and retention of qualified candidates.

Both the enforcement and consultation programs have jurisdiction and provide services to nearly 1.5 million workers in the State, except for federal workers, the United States Postal Service (USPS), Tribal lands, military installations, and other areas of exclusive federal jurisdiction.

The initial federal base award to fund the FY 2021 23(g) program was \$1,602,700. Nevada matched the federal funds and contributed an additional \$6,182,619 in 100% state funds, bringing the total budget to \$9,388,019. The State Plan matched an amendment increase of \$28,500 and the two one-time only awards of \$9,805 and \$7,475 in federal funds and reduced \$74,280 in 100% state funds, increasing total federal and state funds to \$9,405,299. Nevada did not lapse any 23(g) federal funds. Nevada spent an additional \$1,460,382 in 100% state funds, mostly on payroll costs being higher than anticipated.

In addition to the 23(g) grant, Nevada received \$246,046 in American Rescue Plan (ARP) federal funds for activities aimed at protecting workers during the COVID-19 pandemic and post pandemic recovery for the performance period of October 1, 2020, through September 30, 2023. Nevada matched the federal funds, bringing the total federal and state ARP funds to \$492,092. In FY 2021, the total expenses were \$207,140 for personnel, fringe benefits, and indirect costs.

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

II. New Issues

None.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2021 is a comprehensive year and as such, OSHA was required to conduct an onsite evaluation and case file review. A six-person OSHA team, which included two whistleblower protection investigators, was assembled to conduct a full case file and program review. The case file review was conducted remotely during the timeframe of January 5 - 28, 2022. A total of 87 safety and health case files, representing both offices, were selected for review. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period from October 1, 2020 to September 30, 2021. The total selected case files included:

- Seven (7) fatality case files
- Twenty-five (25) unprogrammed safety and health files
- Fifty-five (55) programmed safety and health files

A total of 46 retaliation investigations were completed and 143 complaints were administratively closed. A random selection of a statistically significant number of completed and administratively closed retaliation files were chosen for review. The percentage that each category comprised of the total completed cases was determined and applied to the sample size. A total of 80 case files were selected as follows:

- Eight (8) withdrawn
- Fourteen (14) dismissed
- Four (4) settled
- Four (4) settled other
- Fifty (50) administratively closed

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

- State Activity Mandated Measures Report (SAMM, Appendix D dated 11/08/2021)
- State Information Report (SIR, dated 11/08/2021)
- Mandated Activities Report for Consultation (MARC, dated 12/06/2021)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan
- FY 2021 State Plan 23(g) Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Full case file review
- Web Integrated Management Information System (WebIMIS)
- OSHA Information System (OIS)

- Bureau of Labor Statistics (BLS) data
- State Plan Application (SPA) Portal

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

B. Review of State Plan Performance

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

1. Program Administration

a) Training

The Mandatory Training Program for OSHA Compliance Personnel (2014) TED 01-00-019 was adopted and implemented. The OSU led the training activities and ensured required enforcement instruction occurred for every CSHO. In addition to the required training courses, the OSU staff ensured other internal issues and trends were conveyed to the district managers (DMs) to train their staff during day-to-day operations. This entailed a combination of the initial formal classroom training and on-the-job training with a senior CSHO to share field experience and knowledge. On-the-job evaluations were conducted prior to the CSHO being released into the field.

Training consists of formal training classes held in-house and utilizing the same coursework as the OSHA Training Institute (OTI). OSU has brought in third party vendors, such as Asbestos Hazard Emergency Response Act (AHERA) Building Inspector and scaffolding training provided by a national scaffolding vendor. Additionally, virtual OTI classes, such as OTI 1411 Inspection Techniques and Legal Aspects, OTI 2451 Evaluation of Safety and Health Management Systems, and 9450 Advanced Legal Aspects for OSHA Managers, have been provided.

For whistleblower protection investigators, the Mandatory Training Program for OSHA Whistleblower Investigators (2015) TED 01-00-020 was adopted and implemented. Initial formal classroom training consisted of four one-week courses either completed in-house or utilizing OTI 1420 Whistleblower Investigations Fundamentals, 1610 Interviewing Techniques for Whistleblower Investigators, 2710 Legal Concepts for Whistleblower Investigators, and 2720 Whistleblower Complaint Resolution.

b) OSHA Information System

All State Plan enforcement and whistleblower investigation data continued to be captured in OIS and WebIMIS. OIS and WebIMIS reports were used to assess the effectiveness of the program. The data retrieved from the system provided indicators that helped identify potential performance deficiencies, analyze trends, and formulate corrective actions. The results were discussed in regularly scheduled meetings with the

DMs.

c) State Internal Evaluation Program Report (SIEP)

The SIEP is managed by the program coordinators, and under the direct supervision of the CAO. NVOSHA primarily uses OIS reports to assess the effectiveness of the State Plan's enforcement performance. The data retrieved from OIS provides indicators that help identify potential performance deficiencies, analyze trends, and formulate corrective action(s).

NVOSHA also conducts routine case file reviews as directed by the CAO. Reviewers use a checklist to evaluate inspection case files and record findings in a local database. The most recent review was conducted in July 2021. This review consisted of non-contested closed cases between January and July of 2021. The data is currently being analyzed to support the development of a written report to be provided to the district offices during the second quarter of 2022.

d) Staffing

There was significant turnover during the year with 12 of 40 (30%) CSHO positions either vacated through staff leaving the agency or created by promotions and upward mobility, compared to 12% in the previous year. Thirteen new CSHOs were hired, resulting in a net increase of one position. However, there were 37 CSHOs at the end of the year with 3 remaining vacancies. NVOSHA looked at different strategies to recruit qualified candidates, such as attending the Las Vegas City job fair. NVOSHA is currently evaluating the potential for college interns/recent graduates to assist in the industrial hygiene section to further support recruitment efforts.

2. Enforcement

The Nevada Operations Manual (NOM), NVOSHA's version of the Field Operations Manual (FOM), provides staff with guidance on how to conduct field enforcement.

a) Complaints

In support of OSHA's COVID-19 enforcement initiatives, NVOSHA prioritized the processing of 6,140 unprogrammed activities (UPA). This was the second year of unprecedented levels of complaints due to the pandemic. With the volume of work and staffing shortages, the time to initiate complaint inspections and investigations increased in FY 2021.

The average number of workdays to initiate complaint inspections was 27.6 workdays (SAMM 1A), exceeding the negotiated goal for this measure of 14.0 workdays. By comparison, the FY 2019 and FY 2020 measures were at 7.6 and 16.1 workdays, respectively.

Finding FY 2021-01: The average number of workdays to initiate complaint inspections was 27.6 workdays (SAMM 1A), exceeding the negotiated goal of 14.0 workdays.

Recommendation FY 2021-01: NVOSHA should ensure complaint inspections are initiated timely.

The time to initiate complaint investigations was 6.47 workdays (SAMM 2A), slightly above the negotiated goal of five workdays. This measure continued to increase from 2.2 workdays in FY 2019 to 3.6 workdays in FY 2020.

Observation FY 2021-OB-01: The average number of workdays to initiate complaint investigations was 6.47 workdays (SAMM 2A), above the negotiated goal of five days.

Federal Monitoring Plan FY 2021-OB-01: OSHA will continue monitoring the progress quarterly to ensure complaint investigations are initiated timely.

The response to imminent danger complaints and referrals within one workday was 75% (SAMM 3), which was identified as a coding error and addressed in the quarterly meetings.

There were no denials of entry experienced (SAMM 4).

b) Fatalities

Of the 13 fatality investigations conducted, 11 (84.6%) (SAMM 10) were responded to within one day. The FRL for this measure was 100%. In six fatality investigation case files reviewed, three were opened within one day, as required by the NOM. Only one (16%) investigation was untimely, and it was a result of an employer reporting the fatality to NVOSHA by email, which was not identified for 15 days. The other two outliers were a result of a month-old referral from another state agency and the inability to access a site due to COVID-19 precautions.

Finding FY 2021-02: The number of fatality investigations, 1 of 6 (16%), was not opened within one day.

Recommendation FY 2021-02: NVOSHA should ensure that all fatality investigations are initiated within one day.

c) Targeting and Programmed Inspection

Percent of enforcement presence (SAMM 17) describes the number of safety and health inspections conducted compared to the number of employer establishments in the State. NVOSHA had an enforcement presence of 1.56%, which was higher than the FRL range of 0.74% to 1.24%. The high enforcement presence indicates that the State Plan is reaching more employers with enforcement activity than the three-year national average.

A total of 810 (SAMM 7) enforcement inspections were conducted during FY 2021. This fell short of the projected goal of 1,200 (67.5%) inspections for the second consecutive evaluation period. There were 469 safety inspections conducted. This number was below the lower FRL range of 798 to 882. There were 341 health inspections (one less

than the minimum FRL). The FRL range for health was 342 to 378. Contributing factors were the shortage and high turnover of compliance staff, significant increase of UPAs, and data entry issues, where open inspections were unaccounted for. Staff was retrained to finalize all inspections in OIS to assure accurate reporting.

Finding FY 2021-03: The total number of enforcement inspections, 810 (67.5%), was below the goal of 1,200 (SAMM 7).

Recommendation FY 2021-03: NVOSHA should implement corrective action to meet inspection goals.

NVOSHA conducted 267 inspections in construction and 96 inspections in manufacturing. This was below the goal of 500 and 200 inspections, respectively. CSHOs identified serious hazards in 47.9% of inspections in manufacturing (46 of 96 inspections) and 28.8% in construction (77 of 267 inspections).

d) Citations and Penalties

NVOSHA was the lead agency in the enforcement of the Governor's directives related to the COVID-19 public health emergency. This impacted the increase of in-compliance inspections for both safety and health from the previous year. The percentage of in-compliance safety inspections was 46.84% (SAMM 9), up from 36.83% in FY 2020, exceeding the FRL limit of 37.98%. The percentage of in-compliance health inspections was 61.54%. This measure exceeded the FRL limit of 48.77% and increased from 33.33% in FY 2019 and 44.92% in FY 2020.

Finding FY 2021-04: The percentage of in-compliance inspections for both safety (46.84%) and health (61.54%) inspections exceeded the FRL of 37.98% and 48.77% respectively.

Recommendation FY 2021-04: NVOSHA should determine the cause of the high in-compliance rates and implement corrective action.

The average number of serious, willful, repeat, or unclassified (SWRU) violations was 1.40 per inspection, slightly under the FRL range of 1.42 to 2.14 (SAMM 5A). The average number of violations classified as other-than-serious (OTS) was 0.91 and within the FRL range of 0.73 to 1.09 (SAMM 5B).

Generally, case files reviewed during the remote evaluation were well organized and the documentation adequately supported the violations cited. Table 1 shows the average current penalty per serious violation based on the number of workers controlled by an establishment (SAMM 8).

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

Number of Workers	NVOSHA FY 2021	3-Year National Average	FRL
1-250+	\$4,648.35	\$3,100.37	\$2,325.28 to \$3,875.46
1-25	\$2,879.00	\$2,030.66	\$1,523.00 to \$2,538.33
26-100	\$5,660.24	\$3,632.26	\$2,724.20 to \$4,540.33
101-250	\$6,296.85	\$5,320.16	\$3,990.12 to \$6,650.20
250+	\$8,320.71	\$6,575.70	\$4,931.78 to \$8,219.63

The average current penalty per serious violation in the private sector (1 to greater than 250 workers) continued to increase from the previous years to \$4,648.35. With the subcategories based upon employer size, NVOSHA penalties were within or exceeded the FRL of the three-year national average. This, along with the case files reviewed, supports the position that NVOSHA is developing inspection files that support penalty retention.

The average lapse time for safety inspections decreased from 68 days in FY 2020 to 60.54 days (SAMM 11) in FY 2021 and was within the FRL of 41.94 to 62.90 days. The average lapse time for health inspections were issued in an average of 50.12 days. This was below the FRL range of 52.88 – 79.32. Observation FY 2020-OB-01 was closed.

e) Abatement

Abatement periods, overall timeliness, and classification were generally identified as appropriate during the case file review. Of the 87 case files reviewed, 27 (31%) had citations issued. All 27 files contained corrective action documentation to show that the employer corrected the hazards. Abatement periods were set in accordance with the NOM guidance. Files with abatement noted as “Corrected During Inspection” were documented correctly. Observation FY 2020-OB-02 was closed.

f) Worker and Union Involvement

The NOM provides adequate policies and procedures addressing worker involvement during the inspection process. OIS data indicated that the percent of initial inspections with worker walk around representation or worker interview was 100% (SAMM 13). However, the case file review revealed that in 7 of 87 (8%) inspections, documentation of employee interviews was not included in either the OIS or the narrative. This condition was noted as a continued observation in the FY 2020 Follow-Up FAME and is being converted to a finding.

Finding FY 2021-05 (FY 2020-OB-03): In 7 of 87 (8%) inspections, documentation of employee interviews was not included in the case file.

Recommendation FY 2021-05: NVOSHA should ensure employee interviews are documented in accordance with the NOM.

Eight cases were reviewed where employees were represented by a union. In six cases, the union was not involved at the opening conference and walkaround portion of the inspection. In five cases, the union was not involved at the closing conference.

Finding FY 2021-06: In six of eight (75%) case files with union involvement, the union participation or declination at the opening and closing conference was not documented. In five of eight (62.5%) of these cases, union participation in the walkaround portion of the inspection was not documented in the case file.

Recommendation FY 2021-06: NVOSHA should ensure union representatives are provided the opportunity to participate - or document the declination - in the opening conference, walkaround portion of the inspection, and closing conference.

3. Review Procedures

a) Informal Conferences

Informal settlement provisions provided employers the right of review, as well as workers or their representatives the opportunity to participate in the proceedings. The penalty retention rate was 66.26% (SMM 12) of the assessed penalties, which is within the FRL range of 58.72% to 79.44%. Informal conference procedures in the NOM were similar to OSHA's. An informal conference worksheet was utilized to ensure proper documentation of the main issues, potential courses of action, proposed settlement offers, justification for reclassification, and CAO approval, where the penalty reduction exceeded 50%. The case files reviewed found the outcomes and justifications from the informal conference process to be adequately documented and satisfactory. Findings FY 2020-01 and FY 2020-02 are considered completed.

b) Formal Review of Citations

There are five members of the Occupational Safety and Health Review Board appointed by the Governor – two members from management, two members from labor, and a representative of the general public. Hearings are open to the general public and Review Board decisions are available upon request.

NVOSHA's Administrative Rules contain procedures that afford employers the right to administrative and judicial review of alleged violations, initial penalties, and abatement periods. These procedures also provide workers and their representatives the opportunity to participate in Review Board proceedings and to contest citation abatement dates.

The Review Board provides administrative review of appeals for contested citations. There is an additional provision that gives the employer the opportunity to have the case reviewed by the CAO (or designee) prior to a review board hearing. Affected workers are entitled to participate in hearings before the Review Board. Decisions of the Review Board may be appealed to the appropriate State District Court. Appeals from the Nevada District Courts go up to the State Supreme Court. At the end of the fiscal year, there were 47 cases scheduled for hearings at the Review Board.

The average lapse time from receipt of a contest to a first level decision was 167.85 workdays (SIR 8), which is fewer than OSHA's lapse time of 190.62 workdays and the national average of 189.28 workdays. Private sector violations were vacated 21.54% (SIR 5B), which was higher than the national rate of 14.48%.

The reclassification rate of private sector violations was higher at 45.10% (SIR 6B) compared with 19.55% for OSHA, and 12.17% for the national average. Penalties were retained at a slightly lower rate at 42.76% (SIR 7B), compared with 61.70% for OSHA, and 63.30% for the national average.

Observation FY 2021-OB-02: The reclassification rate of private sector violations was higher at 45.10% than the national average of 12.17%.

Federal Monitoring Plan FY 2021-OB-02: OSHA will monitor NVOSHA's progress towards this measure at quarterly meetings.

4. Standards and Federal Program Change (FPC) Adoption

a) Standards Adoption

The Nevada Revised Statutes (NRS) 618 has acceptable procedures for promulgating standards that are at least as effective as those issued by OSHA. The statute provides for the emergency adoption of standards and adopts by reference all occupational safety and health standards, which the Secretary of Labor promulgates, modifies, or revokes, and any amendments, unless the State Plan opts to provide an alternative standard that allows for equal protection.

Standards and federal program changes were typically adopted identically and on time, except those requiring approval by the Nevada Legislature. The Legislature only meets biennially; this does not always allow for timely adoption of standards.

The table below represents NVOSHA's response to federal standards.

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

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
29 CFR Part 1926 Final Rule on Crane Operator Certification Requirements (11/9/2018)	1/9/2019	11/15/2019	Yes	Yes	5/9/2019	5/9/2019

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
29 CFR Part 1904 Final Rule on the Tracking of Workplace Injuries and Illnesses (1/25/2019)	7/6/2021	8/5/2019	Yes	Yes	2/1/2020	2/1/2019
29 CFR 1904, 1910, 1915, 1926 Final Rule on the Standards Improvement Project – Phase IV (5/14/2019)	7/13/2019	7/15/2019	Yes	Yes	11/14/2019	7/15/2019
29 CFR Part 1903 Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation (1/10/2020)	3/15/2020	5/22/2020	Yes	Yes	7/15/2020	1/1/2020
29 CFR 1910 Final Rule on the Beryllium Standard for General Industry (7/14/2020)	9/14/2020	6/24/2021	Yes	Yes	1/14/2021	1/14/2021
29 CFR Part 1913 Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records (7/30/2020)	9/28/2020	8/3/2021	Yes	Yes	1/26/2021	1/26/2021

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
29 CFR Part 1926 Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work (9/15/2020)	11/14/2020	7/13/2021	Yes	Yes	3/14/2021	3/14/2021
29 CFR 1915, 1926 Final Rule on the Beryllium Standard for Construction and Shipyards (8/31/2020)	10/30/2020	8/3/2021	Yes	Yes	2/27/2021	8/31/2020
29 CFR Part 1903 Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	1/25/2021	Yes	Yes	7/14/2021	1/15/2021
29 CFR 1910 Occupational Exposure to COVID-19; Emergency Temporary Standard (6/21/2021)	7/6/2021	6/23/2021	Yes	Yes	7/21/2021	7/1/2021

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

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
29 CFR Part 1913 Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records (7/30/2020)	9/28/2020	8/3/2021	Yes	Yes	1/26/2021	7/30/2020
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work	11/14/2020	7/13/2021	Yes	Yes	3/14/2021	3/14/2021

b) Federal Program Change (FPC) Adoption

Generally, federal program changes were adopted identically and on time. Table 4 represents NVOSHA's response to federal program changes.

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

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
CPL 02-00-161 National Emphasis Program on Trenching and Excavation (10/1/2018)	11/30/2018	11/27/2018	Yes	Yes	4/1/2019	4/1/2019
CPL 03-00-022 Amputations in Manufacturing Industries NEP (12/10/2019)	2/10/2020	2/24/2020	Yes	Yes	6/10/2020	2/24/2020
CPL 03-00-023 Respirable Crystalline Silica NEP (2/4/2020)	4/4/2020	2/24/2020	Yes	Yes	8/4/2020	2/24/2020

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

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
CPL 02-03-007 Whistleblower Investigations Manual (01/28/2016)	4/27/2016	4/27/2016	Yes	No	Not Applicable	9/08/2016
CPL 02-00-163 Field Operations Manual (FOM) (9/13/2019)	11/12/2019	11/12/2019	Yes	No	3/13/2020	11/12/2019
CPL 02-00-164 Field Operations Manual (4/14/2020)	6/13/2020	12/23/2020	Yes	No	10/14/2020	6/13/2020
CPL 02-02-080 Inspection Procedures for the Respirable Crystalline Silica Standards (6/25/2020)	8/24/2020	8/3/2021	Yes	Yes	12/25/2020	8/24/2020
CSP 02-00-004 Consultation Policies and Procedures Manual (3/19/2021)	5/19/2021	4/30/2021	Yes	No	9/19/2021	4/30/2021
CPL 02-01-062 Site-Specific Targeting (SST) (12/14/2020)	2/12/2021	6/23/2021	Yes	No	6/14/2021	8/5/2021
DIR 2021-02 (CPL 02) Inspection Procedures for the COVID-19 Emergency Temporary Standard (6/28/2021)	7/13/2021	6/28/2021	Yes	Yes	12/28/2021	7/1/2021

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
CPL 02-00-165 Compliance Directive for the Excavation Standard, 29 CFR 1926, Subpart P (7/1/2021)	8/30/2021	8/3/2021	Yes	Yes	1/1/2022	8/3/2021
DIR 2021-03 (CPL 03) Revised National Emphasis Program-Coronavirus Disease 2019 (COVID-19) (7/7/2021)	7/22/2021	7/20/2021	Yes	Yes	1/7/2022	7/20/2021

Table 6

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

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	State Plan Adoption Date
CSP 03-01-005 Voluntary Protection Programs Policies and Procedures Manual (1/30/2020)	3/30/2020	2/24/2020	Yes	No	2/24/2020
CPL 02-03-009 Electronic Case File System Procedures for the Whistleblower Protection Program (6/18/2020)	8/18/2020	6/23/2021	No	Not Applicable	Not Applicable
DIR 2021-01 (CPL-03) National Emphasis Program-Coronavirus Disease 2019 (COVID-19) (3/12/2021)	5/12/2021	4/1/2021	Yes	No	4/1/2021
CPL 02-00-166 Communicating OSHA Fatality Inspection Procedures to a Victim's Family (7/7/2021)	9/7/2021	8/3/2021	Yes	Yes	8/3/2021

Table 7
State-Initiated Changes

Rulemaking	Effective Date	Concurrence Date
None	Not Applicable	Not Applicable

5. Variances

There were no permanent and/or temporary variances granted during this evaluation period.

6. State and Local Government Worker Program

The process for conducting inspections in state and local government agencies is the same as the private sector, including the issuance of penalties. Public Administration is comprised of approximately five percent of the State’s employment. In FY 2021, 7 of 810 (0.86%) of total inspections were conducted in state and local government workplaces (SAMM 6). State-wide closures of government offices substantially impacted the inspection targeting mechanism. As a result, the number of inspections in state and local government agencies was below the goal of 15 and lower than the FRL range of 3.17% to 3.50%.

Observation FY 2021-OB-03: The number of inspections for state and local government entities was 7 of 810 and lower than the goal of 15.

Federal Monitoring Plan FY 2021-OB-03: OSHA will monitor NVOSHA’s targeting mechanism and progress towards this measure at quarterly meetings.

7. Whistleblower Program

Claims of workplace retaliation for reporting occupational safety and health issues are investigated by the Nevada Occupational Safety and Health Whistleblower Investigations Unit. There were four whistleblower protection investigators assigned to the unit. These investigators attended the required OSHA-specific whistleblower training.

A total of 46 retaliation investigations were completed and 143 complaints were administratively closed. NVOSHA completed 37% (SAMM 14) of their retaliation investigations within 90 days, which is above the national average of 27%. The merit rate was 22% (SAMM 15), which is within the FRL of 16% to 24%. In addition, the average days to complete a retaliation investigation was 123 days (SAMM 16), which was below the national average of 284, but above the FRL of 90 days.

Based on a case file review, NVOSHA generally followed OSHA policies and procedures outlined in the Whistleblower Investigations Manual (WIM). In several of the closed cases, there were copies of the associated health and safety inspections, pointing to an effective relationship between the NVOSHA enforcement section, and the Whistleblower Investigations Unit.

Settlement agreements must be reviewed to ensure procedural guidance is followed. While there were still minor inconsistencies in the eight settlement cases reviewed, the improvement is significant enough to close Observation FY 2020-OB-05.

Administratively closed cases require a review by the supervisor to ensure all procedures are followed. During the case file review, 35 of 50 (70%) cases did not contain evidence or documentation that a supervisory review was conducted. In addition, there was no documentation of the complainant's agreement with the administrative closure, or documentation of notification to the complainant of the administrative closure. Observation FY 2020-OB-04 was elevated to a finding.

Finding FY 2021-07 (FY 2020-OB-04): In 35 of 50 (70%) administratively closed investigation files, there was no evidence of a supervisory review.

Recommendation FY 2021-07: NVOSHA should ensure a supervisory review is documented in the file.

8. Complaint About State Program Administration (CASPA)

There were no CASPAs filed during this period.

9. Voluntary Compliance Program

The Nevada Voluntary Protection Program (VPP) promotes effective worksite-based safety and health. In the VPP, management, labor, and SCATS establish cooperative relationships at workplaces that have implemented a comprehensive safety and health management system. Approval into VPP is OSHA's official recognition of the outstanding efforts of employers and employees.

In FY 2021, there were 10 VPP sites, two new applications, and one Star status renewal for Sherman Williams Emulsion in Fernley, Nevada. While outreach activities to eligible and interested businesses were hampered by the pandemic, SCATS provided outreach at the VPPPA National Conference and the Tesla Gigafactory.

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

Consultation services to state and local government agencies are provided through SCATS. The private sector consultation program is funded under Section 21(d) of the OSH Act and evaluated separately in the FY 2021 RACER. This section covers consultation services provided solely to state and local government employers that are funded under Section 23(g) of the OSH Act.

In FY 2021, 30 initial consultation visits were conducted in state and local government workplaces. Of the 30 visits conducted, 29 (96.7%) in high hazard establishments exceeded the goal of 90% (MARC 1). Visits to smaller businesses with fewer than 250 employees, as well as 500 employees were both at 96.7% (MARC 2A and 2B). In all consultation visits, the consultant conferred with employees 100% of the time (MARC 3).

During this evaluation period, 81 serious hazards were identified, and all (100%) were corrected in a timely manner. A total of 22 serious hazards were corrected on-site, 42 within the original time, 16 within the extension timeframe, and 1 within 14 days of the latest correction due date (MARC 4A). Of these, 64 of 81 (79%) were corrected within the original timeframe or on-site, exceeding the goal of 65% (MARC 4D). There were no uncorrected serious hazards with correction dates 90 days past due (MARC 5).

An off-site review was conducted of the state and local government program on January 26-29, 2021. The purpose of the visit was to assess the quality of the program's services and its internal quality assurance program in accordance with Consultation Policies and Procedures Manual (CSP 02-00-003) and 29 Code of Federal Regulations (CFR) Part 1908 – Consultation Agreements.

Overall, program requirements were met. Of the 19 visit files reviewed, 14 (74%) lacked a Form 33. SCATS timely submitted an action plan to resolve this item and is pending verification at the next consultation case file review.

Appendix A – New and Continued Findings and Recommendations
FY 2021 Nevada Occupational Safety and Health Administration Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-01	The average number of workdays to initiate complaint inspections was 27.6 workdays (SAMM 1A), exceeding the negotiated goal of 14.0 workdays.	NVOSHA should ensure complaint inspections are initiated timely.	New
FY 2021-02	The number of fatality investigations, 1 of 6 (16%), was not opened within one day.	NVOSHA should ensure all fatality investigations are initiated within one day.	New
FY 2021-03	The total number of enforcement inspections, 810 (67.5%), was below the goal of 1,200 (SAMM 7).	NVOSHA should implement corrective action to meet inspection goals.	New
FY 2021-04	The percentage of in-compliance inspections for both safety (46.8%) and health (61.5%) inspections exceeded the FRL of 37.98% and 48.77% respectively.	NVOSHA should determine the cause of the high in-compliance rates and implement corrective action.	New
FY 2021-05	In 7 of 87 (8%) inspections, documentation of employee interviews was not included in the case file.	NVOSHA should ensure employee interviews are documented in accordance with the NOM.	FY 2020-OB-03
FY 2021-06	In six of eight (75%) case files with union involvement, the union participation or declination at the opening and closing conference was not documented. In five of eight (62.5%) of these cases, union participation in the walkaround portion of the inspection was not documented in the casefile.	NVOSHA should ensure union representatives are provided the opportunity to participate – or document the declination in the opening conference, walkaround portion of the inspection, and closing conference.	New
FY 2021-07	In 35 of 50 (70%) administratively closed investigation files, there was no evidence of a supervisory review.	NVOSHA should ensure a supervisory review is documented in the file.	FY 2020-OB-04

Appendix B – Observations Subject to New and Continued Monitoring
FY 2021 Nevada Occupational Safety and Health Administration Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB-# or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
FY 2021-OB-01		The average number of workdays to initiate complaint investigations was 6.47 workdays (SAMM 2A), above the negotiated goal of five days.	OSHA will continue monitoring the progress quarterly to ensure complaint investigations are initiated timely.	New
FY 2021-OB-02		The reclassification rate of private sector violations was higher at 45.10% than the national average of 12.17%.	OSHA will monitor NVOSHA's progress towards this measure at quarterly meetings.	New
FY 2021-OB-03		The number of inspections for state and local government entities was 7 of 810 and lower than the goal of 15.	OSHA will monitor NVOSHA's targeting mechanism and progress towards this measure at quarterly meetings.	New
	FY 2020-OB-01	In FY 2020, the citation lapse time for safety inspections (SAMM 11) increased each year for the past four years.	OSHA will monitor this issue and work with NVOSHA to identify potential sources of the increase and recommend improvement measures. Note: Observation FY 2019-OB-01 included citation lapse time for health inspections. The reference was removed in FY 2020 because NVOSHA performed better than the FRL range for that metric.	Closed
	FY 2020-OB-02	In FY 2019, in 3 of 32 (9.4%) of inspections with citations, the abatement was marked as "Corrected During Inspection;" however, the CSHO did not observe the abatement during the on-site portion of the inspection.	OSHA will monitor NVOSHA's progress and discuss at quarterly meetings to ensure staff has been appropriately trained towards the classification requirements of the NOM Ch.7.6.b.	Closed
	FY 2020-OB-03	In FY 2019, in 4 of 44 (9.1%) case files, worker involvement was not documented in the inspection narrative or the OSHA 1A (Inspection Report).	OSHA will monitor NVOSHA's progress to ensure the revision to the NOM regarding worker involvement data entry is completed.	Converted to Finding

Appendix B - Observations Subject to New and Continued Monitoring
 FY 2021 Nevada Occupational Safety and Health FY 2021 Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB-# or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
	FY 2020-OB-04	In FY 2019, in 22 of 42 (52%) of administratively closed investigation files there was no evidence of a supervisory review noted in the files.	OSHA will monitor quarterly that Nevada OSHA is conducting and documenting a supervisory review of the file.	Converted to Finding
	FY 2020-OB-05	In FY 2019, in 5 of 13 (38%) of settlement cases, procedural guidance was not followed.	OSHA will monitor quarterly that Nevada OSHA is ensuring documentation and procedural guidance are followed in settlement cases.	Closed

Appendix C – Status of FY 2020 Findings and Recommendations
FY 2021 Nevada Occupational Safety and Health Administration Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-01	In FY 2019, in 7 of 14 (50%) case files where citations were reclassified and/or the penalty amount was reduced, the justification for the change was not documented in the case files.	NVOSHA should develop and implement procedures to ensure the justification for citation and/or penalty reduction is documented where required by the NOM. Corrective action complete, awaiting verification.	A meeting was held on 8/17/2020 with District Managers (DM) which included this CAP item. A revised Informal Conference Worksheet was dispersed and discussed, which included the requirement to provide a more in-depth justification for all changes made during an Informal Conference.	8/17/2020	Completed
FY 2020-02	In FY 2019, in 4 of 8 (50%) case files where penalty reductions of greater than 50% were offered, the Chief Administrative Officer (or designee) approval was not documented in the case files.	NVOSHA should develop and implement procedures to ensure the Chief Administrative Officer (or designee) approval is documented where required by the NOM. Corrective action complete, awaiting verification.	A meeting was held on 8/17/2020 with District Managers (DM) which included this CAP item. A revised Informal Conference Worksheet was dispersed and discussed, which included the requirement to document CAO's/designee's approval for penalty reductions greater than 30%. The revised Informal Conference Worksheet now includes a designated section for indicating if a reduction of more than 30% was approved by CAO/designee.	8/17/2020	Completed

**Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report
FY 2021 Nevada Occupational Safety and Health Administration Comprehensive FAME Report**

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of workdays to initiate complaint inspections (state formula)	27.62	14	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of workdays to initiate complaint inspections (federal formula)	3.73	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of workdays to initiate complaint investigations (state formula)	6.47	5	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of workdays to initiate complaint investigations (federal formula)	2.32	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)	75%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5a	Average number of violations per inspection with violations by violation type (SWRU)	1.40	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
5b	Average number of violations per inspection with violations by violation type (other)	0.91	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report
 FY 2021 Nevada Occupational Safety and Health Administration 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	0.86%	+/- 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%.
7a	Planned v. actual inspections (safety)	469	+/- 5% of 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.
7b	Planned v. actual inspections (health)	341	+/- 5% of 360	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 342 to 378 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$4,648.35	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
	a. Average current serious penalty in private sector (1-25 workers)	\$2,879.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
	b. Average current serious penalty in private sector (26-100 workers)	\$5,660.24	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.
	c. Average current serious penalty in private sector (101-250 workers)	\$6,296.85	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,990.12 to \$6,650.20.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$8,320.71	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
9a	Percent in compliance (safety)	46.84%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report
 FY 2021 Nevada Occupational Safety and Health Administration Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
9b	Percent in compliance (health)	61.54%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
10	Percent of work-related fatalities responded to in one workday	84.62%	100%	The further review level is fixed for all State Plans.
11a	Average lapse time (safety)	60.54	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
11b	Average lapse time (health)	50.12	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
12	Percent penalty retained	66.26%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.
13	Percent of initial inspections with worker walkaround representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	37%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	22%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
16	Average number of calendar days to complete an 11(c) investigation	123	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.56%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.