

**FY 2012 Abridged Federal Annual Monitoring and Evaluation (FAME) Report**

**Nevada Occupational Safety and Health Administration (NvOSHA)**



**Evaluation Period: October 1, 2011 – September 30, 2012**

**Initial Approval Date: January 4, 1974**  
**Program Certification Date: April 18, 2000**  
**Final Approval Date: April 18, 2000**

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## I. Executive Summary

The State of Nevada, under an agreement with Occupational Safety and Health Administration (OSHA), operates an occupational safety and health plan under the provisions of Section 18(e) of the Occupational Safety and Health Act of 1970. The Division of Industrial Relations (DIR) is the designated state agency for the administration of the program. During fiscal year (FY) 2012, Mr. Donald Jayne was the Director of the DIR and the State Plan Designee. Within the DIR, Nevada Occupational Safety and Health Administration (NvOSHA) is responsible for the enforcement and Voluntary Protection Program (VPP) programs and Safety Consultation and Training Section (SCATS), is responsible for the safety and health consultation and training programs. During this evaluation period, Mr. Steve Coffield, Chief Administrative Officer (CAO) administered the NvOSHA program. Mr. Coffield recently left the program in March, 2013. Mr. Joe Nugent was the CAO of SCATS. In December of 2012 Mr. Nugent passed away and currently Todd Shultz is the Acting CAO of SCATS.

NvOSHA generally adopts Federal OSHA's occupational safety and health standards and most of its interpretations and compliance policies. Nevada has also adopted state specific requirements for the following: safety programs, cranes, steel erection, mandatory 10 and 30 hour training for construction projects, asbestos, explosives, ammonium perchlorate and photovoltaic system projects. In FY 2012, the NvOSHA program was funded at \$6,898,751 of which \$1,834,072 were federal funds. NvOSHA conducted 1,203 enforcement inspections during FY 2012 which did not meet the projected 1,900 inspections recorded in the grant application.

The 23(g) operational program agreement covers enforcement of private and public sector employees, consultation of public sector employees and training. The state maintains a total of 79.4 authorized staff positions in the central/district office in Henderson and a second district office located in Reno. The two offices currently have 41 compliance officers including 30 safety compliance and 11 health compliance staff. This exceeds the Nevada benchmark of 11 safety and five health compliance officers. Whistleblower discrimination investigators are conducted by safety compliance officers who have successfully completed Whistleblower Investigation training at the OSHA Training Institute. Due to the increased number of discrimination complaints at least one safety compliance officer has been dedicated to only conducting discrimination investigations.

The 21(d) consultation program agreement covers consultation of private sector employees and has a staff of 14 consultants; however, public sector consultation is administered by private sector consultants. The equivalent of 1.4 FTE is allocated from the 23(g) grant to provide public sector consultations.

The training program has a goal of developing knowledge and understanding of OSHA and State of Nevada safety requirements. This is accomplished through improving hazard recognition skills of management and employees, identifying management activities to protect employees from workplace hazards, and enabling a more efficient and cost effective business operation. During FY 2012, a total of 354 training courses held were attended by 6,912 employees and 2,792 employers.

The turnover rate continues to be high at 53% for FY 2012. This is the highest to date, presenting an ongoing challenge in Nevada. The imposed wage reductions, along with the pay step freeze, furlough days and mandate for all new state employees to be brought in at the first step of the salary range has created a revolving door for most compliance officers. The lack of experienced staff with more than two years' experience has put the NvOSHA program at risk of not being able to sustain an effective program.

This FAME report resulted in one new recommendation that had previously been closed. This recommendation addresses the state's failure to meet projected inspection goals.

Also addressed in this report are the recommendations from the FY 2011 Federal Annual Monitoring and Evaluation (FAME). Corrective actions were completed for 12 of the 21 enforcement-related recommendations. Of the remaining nine recommendations: four remain open and five await verification during the onsite visit following fiscal year (FY) 2013. The four open recommendations address: the high rate of CSHO turnover, the low number of programmed inspections, abatement issues, and a state law that requires discrimination complainants to notify their employer of their intent to file a complaint. The five recommendations awaiting verification are all related to the discrimination part of the program: the resolution of discrepancies between the complainant and the respondent, documentation of the closing conference, citing exhibits, inputting the correct date of filing into the data system, and using proper investigation techniques. The first open recommendation (12-01) has been ongoing each year since the 2009 Special Study and requires legislative action. This recommendation directed the state to pursue all available options to increase the salaries of the safety and health compliance officers. The failure to enact this recommendation has had a significant impact on the state's ability to recruit and retain qualified compliance staff and first line supervisors.

The state took acceptable steps such as pursuing changes to Nevada law, updating complaint and whistleblower policies, conducting follow-up audits, and providing training to resolve the 2011 findings. There is one exception, Finding 12-01 (formerly 11-01) the failure of the state to pay competitive salaries and thus retain staff.

The Nevada Annual Performance Goals for three out of the four goals were met. The goals focused on reducing injuries/illnesses by 1%, increasing the number of VPP sites, staff development and abatement of serious hazards. The goal for timely abatement of hazards was not met.

Overall, acceptable progress was made in many areas with significant compliance program improvements. The number of findings has decreased each year from a high of 56 findings in the 2009 Special Study to 10 for this 2012 FAME report. Management's attention to whistleblower program improvements and continued due diligence in the compliance program ensured Nevada employees were adequately protected on the job.

Information and data referenced in this report were derived from computerized State Activity Mandated Measures (SAMMs), FY 2012 State OSHA Annual Report (SOAR), FY 2012 23(g) Grant, Complaints About State Program Administration (CASPA's), Integrated Management Information System (IMIS) reports, and discussions with State staff. No on-site state case file monitoring was conducted this fiscal year.

## II. Major New Issues

This year staffing turnover rate was 53%, the highest to date which continues to be an ongoing challenge. Currently, employees are under an imposed 2.5% wage reduction that went into effect July 1, 2011, with no step increases and 12 hours of unpaid furlough days per quarter. New state employees are brought in at the first step of the salary range and have no prospect for salary increases. The lack of experienced staff with more than two years' experience has put the program at risk of being less effective than the federal program.

The state took on the challenge of writing a whistleblower manual, writing a voluntary protection policy manual and modifying the Nevada Operations Manual. The whistleblower and voluntary protection manual are in final internal review and the Nevada Operations Manual has been submitted to OSHA for review.

The internal training program has been fully staffed with a supervisor, two trainers and an administrative assistant. This program has been instrumental in the training of new compliance staff.

The Safety Consultation and Training Section (SCATS), under 23(g) funding, continued to reach out to the Hispanic community. This outreach effort resulted in 32 safety and health training classes to 996 Spanish speaking participants.

## III. State Progress in Addressing FY 2011 FAME Report Recommendations

The state completed 12 out of 21 corrective actions in the FY 2011 corrective action plan. One of the findings, 11-01 has been carried over since the 2009 Special Study and requires legislative action. This recommendation directed the state to pursue all available options to increase the salaries of the safety and health compliance officers. The failure to enact this recommendation has had a significant impact on the state's ability to recruit and retain qualified compliance staff and first line supervisors.

**Finding 12-01 (formerly 11-01 and 10-17):** Employees with three years of safety and health experience continued to leave employment with NvOSHA and SCATS for higher paying safety positions.

**Recommendation 12-01 (formerly 11-01 and 10-17):** Continue to pursue all available options to retain safety and health compliance officers, consultants and trainers.

**Status: Open**—As in years past, a request was submitted for pay increases for safety and health staff through the state personnel system and budgetary process. This year, the Governor's proposed budget included a salary increases for state workers. NvOSHA's budget, which includes a salary increase, is gaining support and currently making its way through the legislative process.

**Finding 11-02:** The complaint inquiry tracking date entered into IMIS was the date the letter was mailed and was usually one to three days after the complaint was received.

**Recommendation 11-02:** The date the complaint is received must be entered into IMIS.

**Status: Completed**—Administrative Assistants and Management were reminded to input the date the complaint was received or the date where enough information to process was received from the complainant/referrer, on the Complaint and Referral Forms and also into the IMIS/NCR.

**Finding 11-03:** The employer was not immediately contacted and it was not known when the employer was notified of complainant alleged hazards that were investigated through the inquiry process.

**Recommendation 11-03:** The employer must be immediately contacted and informed of alleged hazards that are investigated through the complaint inquiry process.

**Status: Completed**—NvOSHA changed their complaint policy and now all complaint allegations of serious hazards are investigated with an onsite inspection. Since all allegations of serious hazards are addressed by inspection, the concern, that nonformal allegations of serious hazards are not timely addressed, has been mitigated. Alleged other-than-serious hazards are addressed by letter within 5 days through the complaint inquiry process. The latest SAMM report indicates complaint inquiry's (other than serious hazards) are addressed within 2 days.

**Finding 12-10 (formally 11-04):** The state failed to meet their inspection goals by 41 percent.

**Recommendation 12-10 (formally 11-04):** Focus attention and the necessary resources to meet inspection goals.

**Status: Open**—This is a repeat recommendation. Yearly inspection goals were modified in the FY 2012 grant to more closely match available resources. The goal was reduced from 2,132 to 1,900 inspections for FY 2012 and this year the state failed to meet the reduced goals by 37 percent. The recommendation will be modified to Recommendation 12-10: Reasonable inspection goals based on history and available resources should be established.

**Finding 11-05:** The number and compliance data for NEP and LEP inspections were not reliable due to coding errors.

**Recommendation 11-05:** The state must check and correct coding errors to ensure inspection and compliance data is accurate.

**Status: Completed**—The codes were updated effective October 1, 2011 and the state conducted an internal review to ensure inspection and compliance data was accurate. A code listing/checklist was provided to District Managers, Program Coordinators, Supervisors, Trainer Supervisor and Trainers to assist in entering the correct codes.

**Finding 12-02 (formerly 11-06):** A high percentage (82%) of total inspections conducted are initiated by complaints (non-programmed inspections) which does not allow adequate resources for programmed inspections at high hazard worksites.

**Recommendation 12-02 (formerly 11-06):** The state must direct adequate resources toward increasing the number of programmed inspections.

**Status: Open**—This was caused by the high staff turnover rate and subsequent lack of experienced compliance officers.

**Finding 11-07:** Many other-than-serious violations were documented with serious injuries, illness and in some cases death.

**Recommendation 11-07:** Supervisors and District Directors must ensure violations are documented in accordance with the policies in the NOM Chapter 4 and appropriate citations are issued for all serious hazards.

**Status: Completed**—NvOSHA briefed District Managers, Supervisors and CSHO's on the requirements of the NOM Chapter 4 to ensure the type of violation match the probable injuries and the injuries & illnesses on the OSHA 1B worksheet match. Several case files were reviewed during CASPA investigations and all violations reviewed were appropriately classified and documented.

**Finding 11-08:** NvOSHA lapse time for citation issuance did not meet the reference standard of 51.9 days for safety citations and 64.8 days for health citations.

**Recommendation 11-08:** Take all appropriate actions to ensure citations are issued timely.

**Status: Completed**—This measure was tracked quarterly during FY 2012 and the renewed supervisory emphasis on citation lapse time has resolved this finding.

**Finding 12-03 (formerly 11-09):** For FY 2011, 56 out of 915 serious hazards were not verified as abated.

**Recommendation 12-03 (formerly 11-09):** NvOSHA must track and investigate all cases with outstanding abatement and promptly take corrective actions to ensure employees are not exposed to ongoing serious hazards that have not been abated. This is a repeat recommendation from FY 2010.

**Status: Open**—This measure was discussed during quarterly meetings. Several attempts were made to correct data entry errors in the NCR without success. A recent onsite meeting and review of the screens determined that some abatement dates had been entered into the wrong fields. The state is currently in the process of correcting these errors.

**Finding 12-04 (formerly 11-10):** Discrimination complainants were required to notify their employer of the intent to file a retaliation complaint. In some cases they were required to make personal delivery to the respondent of their NvOSHA complaint. NRS 618.445(2) may have created a chilling effect on a worker who wished to file a whistleblower retaliation complaint and may hamper NvOSHA's ability to conduct inspections regarding the underlying occupational safety and health complaint at issue.

**Recommendation 12-04 (formerly 11-10):** Amend NRS 618.445(2) to not require discrimination complainants to serve the employer a copy of the complaint prior to NvOSHA commencing an investigation.

**Status: Open**—Proposed Bill AB 12 was introduced in the Nevada State Assembly on 12/19/2012 to amend State law that, if enacted, removes the requirement for an employee to notify the employer before filing an 11c complaint with NvOSHA. Closure of finding is pending removal of the requirements for complainant to notify employer of intent to file a discrimination complaint. See 11-17.

**Finding 11-11:** Interviews with the discrimination complainant were sometimes missing and/or incomplete.

**Recommendation 11-11:** Full discrimination complainant interviews must be conducted and documented; including obtaining relevant documents and ascertaining the restitution sought by the complainant.

**Status: Completed**—A second onsite case file review of the whistleblower cases was done and it was determined that interviews had been conducted. Discrimination case files were double-checked and found that 9 of the 10 cases included documentation of complainant interview. Case files included either a form entitled “Discrimination Screening”, “Pre-Screening”, or “Interview Form”, and/or included a CD or audio tape. The tenth interview was not documented though the interview had been conducted and noted on the telephone/event log. The discrimination investigator was briefed on the importance of documenting the interview in the case file when interviewing over the phone.

**Finding 12-05 (formerly 11-12):** In some cases, discrepancies were not resolved and discrimination complainants were not provided an opportunity to respond to respondent’s defenses.

**Recommendation 12-05 (formerly 11-12):** After completing the respondent’s side of a discrimination investigation, investigators must resolve discrepancies, including providing the complainant an opportunity to respond to the respondent’s defenses.

**Status: Open**—Improvements to the whistleblower program were discussed throughout the year during quarterly and other meetings. The whistleblower manual is currently under revision. Whistleblower investigators and safety supervisors for the investigators attended the 1420 Basic Whistleblower Investigation Course and a request for a whistleblower supervisory position, with required legal training qualifications, has been submitted.

**Finding 11-13:** Relevant discrimination complainant witnesses were not always identified and interviewed. Witness interviews were not appropriately documented in the case file.

**Recommendation 11-13:** The complainant’s side of the investigation must be developed as thoroughly as possible, and the investigator must attempt to identify, interview and document all relevant complainant witnesses in the case file.

**Status: Closed**—The state disputed this finding and a second onsite case file review of the whistleblower files was done by the area office. The second onsite review found that many of the missing interviews were on microcassettes and after listening to the tapes it was determined that interviews had been conducted. Other interviews were documented on various forms entitled Discrimination Screening, Pre-Screening, Interview Form, or noted on the telephone/event log. The discrimination investigator was briefed on the importance of documenting the interview in the case file when interviewing over the phone.

**Finding 12-06 (formerly 11-14):** Closing conferences with discrimination complainants at the end of a discrimination investigation were not documented in the case file.

**Recommendation 12-06 (formerly 11-14):** The discrimination investigator must document the closing conference with the complainant at the end of the investigation where the investigator informs the complainant about the breadth and findings of the investigation and advises the complainant of their rights to appeal a non-merit determination.

**Status: Awaiting verification**—A closing letter will be included in the revision to the discrimination manual. The letter is currently being updated and will include documentation on the closing conference.

**Finding 12-07 (formerly 11-15):** Discrimination Investigative reports did not cite to exhibits.



**Recommendation 12-07 (formerly 11-15):** The discrimination investigator must cite to exhibits in the investigative report.

**Status: Open**—The NvOSHA Discrimination Procedure Manual is under revision. When the manual is complete, the investigators will be trained on its contents to include Case File Set-Up. Estimated date for completion of the whistleblower manual and investigator training is April 1, 2013. The state is making acceptable progress.

**Finding 11-16:** In some cases, the final discrimination report contained improper analysis of the evidence.

**Recommendation 11-16:** Final discrimination reports shall contain proper analysis of the evidence collected.

**Status: Closed**—Supervisors and Discrimination Investigators have attended the 1420 Basic Whistleblower Investigation Courses in January/February and July/August 2012. This finding is closely related and will be addressed with Finding 11-18

**Finding 12-04 (formerly 11-17):** The complaint date of filing entered into IMIS was the date the discrimination investigation commenced and not the date the complaint was received.

**Recommendation 12-04 (formerly 11-17):** The date the discrimination complaint is received must be entered into IMIS as the complaint date of filing rather than the date NvOSHA commences an investigation.

**Status: Open** —Proposed Bill AB 12 was introduced in the Nevada State Assembly on 12/19/2012 to amend State law that, if enacted, removes the requirement for an employee to notify the employer before filing an 11c complaint with NvOSHA. Closure of finding is pending removal of the requirements for complainant to notify employer of intent to file a discrimination complaint. This recommendation has been combined and addressed with Recommendation 12-04 (formally 11-10)

**Finding 12-09 (formerly 11-18):** Several discrimination investigations failed to adequately test the respondent's defenses or failed to provide an adequate analysis of the evidence, including considering temporal proximity, disparate treatment, and animus.

**Recommendation 12-09 (formerly 11-18):** The discrimination investigator must broadly view and test defenses offered by respondent in addition to other evidence to determine if there is evidence that the complainant suffered disparate treatment or animus, suffered adverse action in temporal proximity to the respondent learning of the protected activity, and/or whether there is evidence that the respondent's defense was developed in response to, rather than independently of, complainant's protected activity.

**Status: Awaiting verification**— An investigation of NvOSHA discrimination investigators included testing and analysis which resulted in their conclusions in each case file. This finding is addressed in finding 11-16. Supervisors and Discrimination Investigators attended the 1420 Basic Whistleblower Investigation Courses in January/February and July/August 2012. Closure pending case file review.

**Finding 11-19:** Whistleblower IMIS data was not accurate and reliable.

**Recommendation 11-19:** NvOSHA must use IMIS to track opened, closed, administratively closed, and pending whistleblower investigations.

**Status: Completed**—The Project Coordinator self-taught along with networking with fellow students from the 1420 Whistleblower class to learn the program and database. Recent quarterly data reports are showing marked improvement in the data.

**Finding 11-20:** NvOSHA was administratively closing discrimination complaints incorrectly.

**Recommendation 11-20:** NvOSHA must only administratively close discrimination complaints upon receipt prior to opening an investigation if (1) the case is untimely as filed, NvOSHA lacks jurisdiction, or the complainant fails to allege an essential element of a prima facie case of retaliation (protected activity, employer knowledge, adverse action, and nexus) and (2) the complainant concurs with NvOSHA not conducting an investigation.

**Status: Completed**— The Project Coordinator was self-taught and networked with fellow students from the 1420 Basic Whistleblower Investigation course to learn the whistleblower program and data base. The Project Coordinator is updating the data in the IMIS Discrimination Intranet. All employees conducting whistleblower investigations have been briefed on the required input. Recent quarterly data reports are showing marked improvement.

**Finding 11-21:** FY 2011 whistleblower investigators and supervisors did not attend the mandated 1420 Basic Whistleblower Investigation Course.

**Recommendation 11-21:** Investigators and supervisors shall attend the 1420 Basic Whistleblower Investigation course.

**Status: Completed**—Supervisors and Discrimination Investigators attended the 1420 Basic Whistleblower Investigation Courses in January/February and July/August 2012.

## IV. Assessment of FY 2012 State Performance of Mandated Activities

### A. **Enforcement**

#### • **Complaints**

NvOSHA met their complaint policy in the Nevada Operations Manual (NOM) for timely response with an on-site inspection (14 days) and/or inquiry letter (5 days). On average the state took 5.8 days to open an inspection and 3.1 days to initiate an inquiry.

A total of 670 complaints were filed with NvOSHA for FY 2012; 470 inspections were conducted and 200 inquiries were processed.

Last year there were two findings related to the processing of complaint inquiry's; Finding 11-02 that addressed the date the complaint was received and Finding 11-03 the date the employer was notified of the alleged hazards. The state addressed the findings by reminding administrative assistants and management to input the date the complaint was received and or the date where enough information to process was received into the IMIS/NCR and limited the use of the inquiry process to allegations of other than serious hazards. This state initiated program change was included in the Nevada Operations Manual and submitted for review.

**Table 1**  
**Complaints (SAMM 1, 2, 3)**

	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>Goal</b>
Days to Initiate Inspection (SAMM 1)	5.45 days	6.24 days	5.85 days	14
Days to Initiate Investigation (SAMM 2)	2.05 days	2.68 days	3.07 days	5
Complainants Notified Timely (SAMM 3)	96.67%	97.79%	95.80%	100%

• **Fatalities / Imminent Danger**

The state conducted timely investigation in 20 out of 22 (91%) fatality/catastrophe inspections. There were two fatalities that were not investigated timely; one case involved a flood victim whose body was not found for several days. The second case was reported as a heart attack and it was later learned that heat may have been a factor and therefore an inspection was opened. The state’s performance continues to be acceptable.

A FAT/CAT checklist was used to ensure families of victims were contacted by letter in English and/or Spanish and were kept informed on the status of the investigation.

• **Targeting and Programmed Inspections**

The inspection goal of 1900 for FY 2012 was not met. A total of 1,203 safety and health inspections were conducted during FY 2012 and the goal was missed by 697 inspections (37%). The target number has not been achieved for the past three years in a row. Last year, the state failed to meet their inspection goals by 41 percent (Finding 11-04) and in response yearly inspection goals were modified in the FY 2012 grant to more closely match available resources. The goal was reduced from 2,132 to 1,900 inspections for FY 2012.

For 2012, the failure to meet inspection goals was due to the 53% turnover in staff and the ongoing challenge to recruit and train compliance officers. Reasonable inspection goals based on history and available resources should be established. This is again a finding and recommendation since the steps taken were not effective and the state has again missed their inspection goal numbers.

**Table 7**  
**Total Number of Inspections**

<b>Inspections</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
Goal	2,565	2,132	1,900
Conducted	1,611	1,265	1,203
Difference	954	867	697

**Finding 12-10:** The state failed to meet their inspection goals by 37%.

**Recommendation 12-10:** Reasonable inspection goals based on history and available resources should be established.

**Status: Open**—A wage reduction of 2.5% went into effect July 1, 2011 which included no step increases and 12 hours of unpaid furlough days per quarter. In addition, new state employees

can only be brought in at the first step of the salary range. Although an adequate number of applications for open positions were received, many promising candidates refused to interview when told of the low salary cap. In the last quarter there were no qualified applicants. The state must continue to pursue all available options to hire and retain technically qualified staff. This has been an ongoing issue since 2009 and continues to significantly impact the ability to sustain an effective program—refer to Finding and Recommendation 12-1.

The mandated activity goal (SAMM measure 8) for percent of programmed inspections with serious/willful/repeat violations (S/W/R) was not met. The state S/W/R was 56.7% for safety and 47.8% for health programmed inspections. The goal for this measure is 58.5% for safety and 53% for health.

**Table2**  
**Percent Programmed Inspections with S/W/R Violations (SAMM 8)**

	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2012 National Data (3 years)</b>
Safety	39.52%	58.43%	56.71%	58.5%
Health	40.30%	40.91%	47.83%	53.0%

The failure to meet this goal was addressed last year in Finding 11-05 for coding errors and Finding 11-06 for the high percentage of complaint inspections conducted which did not allow adequate resources for programmed inspections at high hazard worksites. The state corrected the errors by updating the codes and conducting an internal review to ensure inspection and compliance data was accurate. However, limited progress was made in directing adequate resources toward increasing the number of programmed inspections.

Like last year, the low number of programmed inspections actually conducted (total of 164) is a factor impacting the ability to meet this mandated activity. A critical part of a state program is conducting programmed inspections in high hazard industries. Without inspections, employees working in those industries may be at increased risk of injury or illness. Due to the states high turnover rate of 53% NvOSHA has an inability to focus adequate inspection resources in their high hazard targeted industries.

**Finding 12-02 (formerly 11-06):** A high percentage (82%) of total inspections conducted are initiated by complaints (non-programmed inspections) which does not allow adequate resources for programmed inspections at high hazard worksites.

**Recommendation 12-02 (formerly 11-06):** The state must direct adequate resources toward increasing the number of programmed inspections.

Most of the federal national emphasis programs (NEP) are adopted with a few exceptions for industries not present in Nevada, i.e. Popcorn NEP. NvOSHA also has their own local emphasis programs (LEP) based on the Bureau of Labor Statistics (BLS) high injury and illness rate. These LEP’s targeted ASSAY Laboratories, Asbestos in Pre-1980 buildings, set up and break down activities at conventions and events, hotels, motels and casinos, needle sticks and theatrical stage productions.

- **Citations and Penalties**

In 2011 there were two findings related to citations and penalties; Finding 11-07 addressed the many other-than-serious violations that were documented with serious injuries, illness and in some cases death and. Finding 11-08 for citation lapse time that did not meet the reference standard. In response NvOSHA briefed managers and CSHO's on the policy requirements to ensure the type of violation matched the probable injuries & illnesses and renewed supervisory emphasis on citation lapse time. Both findings were completed.

Safety citations had a lapse time of 46.7 days and health citations were on average issued in 65.6 days. This is better than the corresponding national average of 55.9 for safety and 67.9 for health.

**Table 3  
Safety Citation Lapse Time**

	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
Goal	47.3	51.9	55.9
Actual	43.46	58.20	46.73
Difference	3.84	-6.3	9.17

**Table 4  
Health Citation Lapse Time**

	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
Goal	61.9	64.8	67.9
Actual	61.2	81.34	65.57
Difference	0.7	-16.54	2.33

NvOSHA adopted the 2010 OSHA Administrative Penalty Policy which has impacted SAMM measure 10, Average Initial Penalty per Serious Violation. The average penalty assessed per serious violation was \$3,257 which is higher than the reference standard of \$1,991.

SAMM measure 9 addresses average violation per inspection. The rate of S/W/R violations per inspection was 1.43 and did not meet the national reference standard of 2.1. The other-than-serious rate was 1.2 which met the 1.2 national data reference standard.

This number was directly impacted by the high turnover rate of 53% resulting in inexperienced staff limited to conducting simple complaint inspections. Staff with two or more years of experience was involved with the training of new staff. Therefore, there were limited resources available to conduct inspections at high hazard targeted industries.

The high turnover in staffing and subsequent lack of experienced compliance officers is addressed in Finding and Recommendation 12-01 and 12-02.

- **Abatement**

This mandated activity was not met. The state did not meet their goal or the Reference Standard of 100% verifying abatement for private employers. A total of 63 out of 620 serious hazards were not verified as abated. Recognized serious hazards without abatement verification unnecessarily put employees at risk of injury, illness or death. Recently, it was found that the state was incorrectly entering data for some cases. However the state must be able to ensure and promptly take corrective action for all serious/willful/repeat violations without abatement verification.

The state has not met this goal for the last three years and this is a repeat finding—refer to Finding and Recommendation 12-03 (formerly 11-09).

- **Employee and Union Involvement**

During inspections, employees were given the opportunity to participate either through interviews or by having employee representatives accompany inspectors. Employees were also afforded the opportunity to privately express their views about the workplace away from the employer. In addition, inspection results were provided to employee representatives and complainants.

B. **Review Procedures**

- **Informal Conferences**

Informal settlement provisions provided employers the right of review and, employee or their representatives, the opportunity to participate in the proceedings. The indicators were equivalent to the federal program.

On average, violations were vacated at a rate of 7.9% which was higher than the Federal rate of 7.1%. Penalty retention was 58.7% compared to the 59.1% federal retention rate. In the area of violation reclassification, NvOSHA reclassified 3.2% compared to OSHA's reclassification rate of 4.9%. OSHA finds this performance acceptable.

- **Formal Review of Citations**

Nevada's Administrative Rules and NvOSHA's Operations Manual contained procedures that afford employers the right to administrative and judicial review of alleged violations, initial penalties and abatement periods. Those procedures also provided employees and their representatives the opportunity to participate in Review Board proceedings and to contest citation abatement dates.

C. **Standards and Federal Program Changes Adoption**

- **Standards Adoption**

NvOSHA had acceptable procedures for promulgating standards that were at least as effective as those issued by OSHA. Table 6 lists the FY 2012 Standards on the Automated Tracking System:

**Table 5**

<b>Standard:</b>	<b>State Response Date:</b>	<b>Intent to Adopt:</b>	<b>Adopt Identical:</b>	<b>Adoption Due Date:</b>	<b>State Adoption Date:</b>
29 CFR 1910.102 Revising Standards Reference in the Acetylene Standard (03/08/2012)	03/13/2012	Yes	Yes	09/08/2012	09/01/2012
29 CFR 1910, 1915, 1917, 1918, 1926 Hazard Communication- Globally Harmonized System of Classification (03/26/2012)	05/11/2012	Yes	Yes	09/26/2012	09/26/2012

During this evaluation period, there was one final rule issued by OSHA. NvOSHA adopted the identical rules for Hazard Communication – Globally Harmonized System within the required timeframe.

- **Federal Program/State Initiated Changes**

The state adopted and timely submitted all of the federal program changes. State initiated, legislative and/or regulatory changes were not initiated.

**Table 6**

<b>FPC Directive/Subject:</b>	<b>State Response Date:</b>	<b>Intent to Adopt:</b>	<b>Adopt Identical:</b>	<b>Adoption Due Date:</b>	<b>State Adoption Date:</b>
CPL 02-00-148 Field Operations Manual	06/01/2009	Yes	No	09/26/2009	Revised NOM submitted 02/15/2013
CPL 02-00-148 Revisions to FOM November 2009	03/23/2010	Yes	No	07/17/2010	Revised NOM submitted 02/15/2013
STD 03-11-002 Compliance Guidance for Residential Construction	12/29/2010	Yes	Yes	02/26/2011	06/16/2011
CPL 02-01-052 Enforcement Procedures for Incidents of Workplace Violence	11/09/2011	Yes	No	03/08/2012	Pending submission of plan change
CPL 02-03-003 Whistleblower Investigations Manual	11/17/2011	Yes	No	03/20/2012	Pending submission of plan change
CPL 02-01-053 2012 482 Compliance Policy for Manufacture, Storage, Sale, Handling, Use, and Display of Pyrotechnics (10/27/2011)	12/30/2011	Yes	Yes	12/31/2011	04/01/2012
CPL 03-00-014 2012 483 National Emphasis Program- PSM Covered Chemical Facilities (11/29/2011)	03/09/2012	Yes	Yes	05/29/2012	05/01/2012
CPL 03-00-016 2012 484 Nursing Home NEP (04/05/2012)	04/06/2012	Yes	Yes	06/05/2012	10/01/2012

CPL 03-00-153 2012 504 Communicating OSHA Fatality Inspection Procedures to a Victim's Family (04/17/2012)	05/23/2012	Yes	No	10/17/2012	Included in revised NOM submitted 02/15/2013
CPL 02-00-154-2012 524 Longshoring and Marine Terminals Tool Shed Directive (07/31/2012)	09/28/2012	Yes	Yes	04/01/2013	01/01/2013
CPL 02-03-004 2012 544 Section 11(c) Appeals (09/12/2012)	11/08/2012	No	N/A	N/A	N/A

Out of the seven federal program changes for FY 2012, the state adopted four identical National Emphasis Programs (NEPs) and three exceptions. The state did not adopt CPL-02-00153 Communicating OSHA Fatality Inspection Procedures to a Victim's Family, CPL 02-03-003 Whistleblower Investigations Manual and CPL 02-01-052 Enforcement Procedures for Incidents of Workplace Violence.

**D. Variances**

NvOSHA did not grant permanent or temporary variances during this evaluation period.

**E. Public Employee Program**

This mandated activity was met with 49 inspections (4.1% of inspection activity) conducted in the public sector. This exceeded their projected goal of 38 inspections and the established reference standard of 4%.

**F. Discrimination Program**

Whistleblower discrimination investigations are conducted by safety compliance officers who have successfully completed Whistleblower Investigation training at the OSHA Training Institute. Due to the increased number of discrimination complaints at least one safety compliance officer has been dedicated to only conducting discrimination investigations.

The SAMM measures 13 through 15 addresses Whistleblower related mandated activities. An in depth study of the whistleblower program, including case file reviews was conducted in FY 2011. As a result, there were eleven findings addressing complainant's required notification to their employer, unresolved discrepancies, interview and closing conference documentation, case file documentation, data entry into IMIS and training. Five of the findings have been completed or closed. The six remaining findings are listed as follows:

**Finding 12-04 (formerly 11-10):** Discrimination complainants were required to notify their employer of the intent to file a retaliation complaint. In some cases they were required to make personal delivery to the respondent of their NvOSHA complaint. NRS 618.445(2) may have created a chilling effect on a worker who wished to file a whistleblower retaliation complaint and may hamper NvOSHA's ability to conduct inspections regarding the underlying occupational safety and health complaint at issue.



**Recommendation 12-04 (formerly 11-10):** Amend NRS 618.445(2) to not require discrimination complainants to serve the employer a copy of the complaint prior to NvOSHA commencing an investigation.

**Finding 12-05 (formerly 11-12):** In some cases, discrepancies were not resolved and discrimination complainants were not provided an opportunity to respond to respondent's defenses.

**Recommendation 12-05 (formerly 11-12):** After completing the respondent's side of a discrimination investigation, investigators must resolve discrepancies, including providing the complainant an opportunity to respond to the respondent's defenses.

**Finding 12-06 (formerly 11-14):** Closing conferences with discrimination complainants at the end of a discrimination investigation were not documented in the case file.

**Recommendation 12-06 (formerly 11-14):** The discrimination investigator must document the closing conference with the complainant at the end of the investigation where the investigator informs the complainant about the breadth and findings of the investigation and advises the complainant of their rights to appeal a non-merit determination.

**Finding 12-07 (formerly 11-15):** Discrimination Investigative reports did not cite to exhibits.

**Recommendation 12-07 (formerly 11-15):** The discrimination investigator must cite to exhibits in the investigative report.

**Finding 12-04 (formerly 11-17):** The complaint date of filing entered into IMIS was the date the discrimination investigation commenced and not the date the complaint was received.

**Recommendation 12-04 (formerly 11-17):** The date the discrimination complaint is received must be entered into IMIS as the complaint date of filing rather than the date NvOSHA commences an investigation. NOTE: This recommendation has been combined and addressed with Recommendation 12-04 (formally 11-10)

**Finding 12-09 (formerly 11-18):** Several discrimination investigations failed to adequately test the respondent's defenses or failed to provide an adequate analysis of the evidence, including considering temporal proximity, disparate treatment, and animus.

**Recommendation 12-09 (formerly 11-18):** The discrimination investigator must broadly view and test defenses offered by respondent in addition to other evidence to determine if there is evidence that the complainant suffered disparate treatment or animus, suffered adverse action in temporal proximity to the respondent learning of the protected activity, and/or whether there is evidence that the respondent's defense was developed in response to, rather than independently of, complainant's protected activity.

The state is making acceptable progress in meeting their corrective action plan for this program. See the above Section III State Progress in Addressing FY 2011 FAME Report Recommendations for information on actions taken and progress made by the state to resolve last year's findings.

#### **G. Voluntary Compliance Program**

During FY 2012 NvOSHA has been in the process of updating their VPP manual and incorporating the recent changes in federal OSHA's VPP policies. The state indicated that an updated VPP manual is under final review.

Companies participating in the VPP program were only approved at the Star level. For FY 2012 two VPP site participants were awarded the VPP Star and two VPP audits were conducted. NvOSHA also received one new VPP application for consideration.

#### **H. Program Administration**

##### **Staffing:**

As stated above for a number of program areas including number of inspections, programmed inspections, violation rate, rate of S/W/R and complaint inspections have all been impacted by the ongoing turnover rate in staffing. The staffing turnover rate for FY 2012 was 53%, the highest to date which continues to be an ongoing challenge. Currently, employees are under an imposed 2.5% wage reduction that went into effect July 1, 2011, with no step increases and 12 hours of unpaid furlough days per quarter. New state employees are brought in at the first step of the salary range and have no prospect for salary increases. Although an adequate number of applications for open positions were received, many promising candidates refused to interview when told of the low salary cap. In the last quarter there were no qualified applicants.

The lack of experienced staff with more than two years' experience has put the program at risk of being able to sustain an effective program. The state must continue to pursue all available options to hire and retain technically qualified staff. This has been an ongoing issue since 2009 and continues to significantly impact the ability to sustain an effective program—refer to Finding and Recommendation 12-1.

##### **Information Technology:**

The state continued to experience issues with Information Management systems. Problems have included significant latency with opening the NCR, unexplained program failures/shut-downs, and the NCR rejecting abatement and other updates to files. The Help Desk has not been able to resolve many of these problems. These issues were addressed and resolved at the OSHPA.

##### **State Internal Evaluation Program:**

A full-time Special Projects Officer was involved with program monitoring and updating written policy and procedures. Other program managers i.e. VPP and training, were also involved in updating procedures and program evaluation projects.

In addition to quarterly meetings, other meetings were held to resolve NCR data issues, whistleblower processes, implementation of the new monitoring measures etc. Despite some animated discussions over certain issues, lines of communication remained open and acceptable resolutions were reached. The state was timely in all their responses.

## V. State Progress in Achieving Annual Performance Goals

NvOSHA is in the second year of their five-year strategic plan which ends FY 2015. NvOSHA developed and submitted its FY 2012 annual performance plan as part of its grant application for federal funds.

The state's report on meeting its annual goals are attached in Appendix E, the State OSHA Annual Report (SOAR). The following is OSHA's assessment of NvOSHA's performance toward meeting its FY 2012 annual performance goals and the state's progress in achieving its 2011-2015 Strategic Plan.

**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) by 1 percent.

### **Results:**

#### Performance Measure

- a. 50% of serious willful and repeat citations issued.  
The state did not meet this measure; 40% of serious, willful and repeat citations were issued.
- b. 33% of compliance inspections with no violations found.  
The state did not meet this measure; 40% of inspections did not have violations.
- c. 1% decrease in DART rate CY2009-2010 (minus 0.02).  
The state met this measure; the DART rate remained the same as FY2011, but has decreased by 17% from the FY2008 baseline.

**Outcome:** Overall the performance goal was met. The 2008 baseline DART rate of 2.4 was reduced by 17%. Two out of the three performance measures were not met: the percent of citations with serious, willful and repeat violations was 40%; inspections conducted without violations were also 40%. The high percentage of inspections without violations is addressed in Section IV.A.3 of this report as a **Finding and Recommendation 12-02.**

**Performance Goal 1.2:** Verify that 100% of serious hazards are abated in a timely manner (per SAMM #6 – verify abated within the abatement due date plus 30 calendar days).

### **Results:**

#### Performance Measure

- a. Percent of serious hazards with verified abatement.  
The state did not meet this measure; 89% of serious hazards had timely verified abatement.

**Outcome:** The state only verified that 89% of serious hazards identified were corrected. As a result, employees could continually be exposed to 67 out of 635 identified serious hazards in Nevada. The failure to meet this goal is addressed in Section IV.A.5. of this report as a **Finding and Recommendation 12-03.**

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

**Performance Goal 2:** Increase the number of participants in the Nevada Voluntary Protection Program (VPP) Star Program by one site.

**Results:**

Performance Measure

- a. Receive and review at least two VPP applications.  
The state did not meet this measure; one VPP applications was received and reviewed.
- b. Conduct at least one VPP audit.  
The State met this measure; two VPP audits were conducted.
- c. Award at least one VPP Star Site.  
The State met this measure; two VPP star sites were awarded

**Outcome:** NvOSHA received and reviewed one new VPP application for consideration. In addition, NvOSHA awarded two VPP Stars for a total of four VPP Stars. They are on track toward meeting their FY 2015 goal of awarding five VPP sites. This goal was met.

**Strategic Goal 3: Staff Professional Development.**

**Performance Goal 3:** Conduct field training and evaluate the performance of at least 30% of field-assigned compliance safety and health officers.

**Results:**

Performance Measure

- a. Number of field training contacts with compliance officers (Goal: 11 Evaluations/35 Field CSHOs). The state met this measure; 11 compliance officers had in the field evaluations.
- b. Percent of compliance officers evaluated relative to the number of field assigned compliance officers (Goal: 30%). The state met this measure; 33% of compliance officers were evaluated.

**Outcome:** In 2011 NvOSHA hired a full time supervisor for a newly created training unit. In 2012 the vacant positions in this section were filled with two trainers and one administrative assistant. The training sections responsibilities include, monitoring, field and classroom training and evaluation of compliance officers. This goal was met

## VI. Other Areas of Note

### **Complaint About State Plan Administration (CASPA's):**

Two new CASPA's were filed in FY 2012; and one was found to be partially valid. The state met the timeframes for response. These CASPA's were not significant and both have been closed.

The first CASPA involved an inspection that was conducted at an extended stay facility. The CASPA allegations were focused on NvOSHA's informal conference and settlement processes. The investigation found the state was not abiding by the process and timeframes required by their field operations manual. However, irregularities in penalty reductions and other aspects of case settlement were not found.

The second CASPA alleged an inadequate complaint investigation, hazards observed were not documented, informal conference policies were not followed, and casinos are given greater reductions in penalties than other businesses. Final determination found the CASPA items to not be valid.

**Appendix A – New and Continued Findings and Recommendations**  
 FY 2012 NvOSHA State Plan Abridged FAME Report

Rec #	Finding	Recommendations	FY 11
12-01	Employees with three years of safety and health experience continued to leave employment with NvOSHA and SCATS for higher paying safety positions.	Continue to pursue all available options to retain safety and health compliance officers, consultants and trainers.	11-01 and 10-17
12-02	A high percentage (82%) of total inspections conducted are initiated by complaints (non-programmed inspections) which does not allow adequate resources for programmed inspections at high hazard worksites.	The state must direct adequate resources toward increasing the number of programmed inspections.	11-06
12-03	For FY 2011, 56 out of 915 serious hazards were not verified as abated.	NvOSHA must track and investigate all cases with outstanding abatement and promptly take corrective actions to ensure employees are not exposed to ongoing serious hazards that have not been abated. This is a repeat recommendation from FY 2010.  Corrective Action Complete – Awaiting Verification	11-09
12-04	Discrimination complainants were required to notify their employer of the intent to file a retaliation complaint. In some cases they were required to make personal delivery to the respondent of their NvOSHA complaint. NRS 618.445(2) may have created a chilling effect on a worker who wished to file a whistleblower retaliation complaint and may hamper NvOSHA’s ability to conduct inspections regarding the underlying occupational safety and health complaint at issue.	Amend NRS 618.445(2) to not require complainants to serve the employer a copy of the complaint prior to NvOSHA commencing an investigation.	11-10 And 11-17
12-05	In some cases, discrepancies were not resolved and complainants were not provided an opportunity to respond to respondent’s defenses.	After completing the respondent’s side of an investigation, investigators must resolve discrepancies, including providing the complainant an opportunity to respond to the respondent’s defenses.	11-12

**Appendix A – New and Continued Findings and Recommendations**  
 FY 2012 NvOSHA State Plan Abridged FAME Report

Rec #	Finding	Recommendations	FY 11
12-06	Closing conferences with discrimination complainants at the end of a discrimination investigation were not documented in the case file.	The discrimination investigator must document the closing conference with the complainant at the end of the investigation where the investigator informs the complainant about the breadth and findings of the investigation and advises the complainant of their rights to appeal a non-merit determination.  Corrective Action Complete – Awaiting Verification	11-14
12-07	Discrimination investigative reports did not cite to exhibits.	The discrimination investigator must cite to exhibits in the investigative report	11-15
12-09	Several discrimination investigations failed to adequately test the respondent's defenses or failed to provide an adequate analysis of the evidence, including considering temporal proximity, disparate treatment, and animus.	The discrimination investigator must broadly view and test defenses offered by respondent in addition to other evidence to determine if there is evidence that the complainant suffered disparate treatment or animus, suffered adverse action in temporal proximity to the respondent learning of the protected activity, and/or whether there is evidence that the respondent's defense was developed in response to, rather than independently of, complainant's protected activity.  Corrective Action Complete – Awaiting Verification	11-18
12-10	The state failed to meet their inspection goals by 41%.	Reasonable inspection goals based on history and available resources should be established. Focus attention and the necessary resources to meet inspection goals.	11-04 modified

**Appendix B – Observations Subject to Continued Monitoring**  
FY 2012 NvOSHA State Plan Abridged FAME Report

Nevada does not have any new or continued observations.



**Appendix C - Status of FY 2011 Findings and Recommendations**  
 FY 2012 NvOSHA State Plan Abridged FAME Report

<b>Rec #</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Corrective Action Plan</b>	<b>State Action Taken</b>	<b>Status</b>
11-01	Employees with three years of safety and health experience continue to leave employment with NvOSHA and SCATS for higher paying safety positions.	Continue to pursue all available options to retain safety and health compliance officers, consultants and trainers.	Work with legislature to increase CSHO salaries & explore other available options that may affect staff retention. Pay increases will be pursued through the personnel system & the legislative process.	NvOSHA and SCATS management have requested but have not received approval of pay increases for safety and health staff through the state personnel system and legislative process.	Open
11-02	The complaint inquiry tracking date entered into IMIS was the date the letter was mailed which was usually one to three days after the complaint was received.	The date the complaint is received must be entered into IMIS.	Remind Administrative Assistants and Management to input into IMIS NCR the date the complaint was received or the date where enough information to process was received.	Accepted on 1/7/2013 Administrative Assistants and Management have been reminded to input the date the complaint was received or the date where enough information to process was received from the complainant/referrer, on the Complaint and Referral Forms and also into the IMIS/NCR	Completed
11-03	The employer was not immediately contacted and it was not known when the employer was notified of complainant alleged hazards investigated through the inquiry process.	The employer must be immediately contacted and informed of alleged hazards that were investigated through the complaint inquiry process.	Revise the policy to read as follows: NvOSHA will promptly mail a letter to the employer addressing the alleged Other-Than-Serious hazards.	Accepted on 9/24/2012 An email Policy from the CAO to the District Managers is in effect until the Nevada Operations Manual was revised and published. This Interim Policy revises the Inquiry Complaint section to read as follows -	Completed

**Appendix C - Status of FY 2011 Findings and Recommendations**  
 FY 2012 NvOSHA State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				"NvOSHA will promptly mail a letter to the employer addressing the alleged Other-Than-Serious hazards.	
11-04	The state failed to meet their inspection goals by 41 percent.	Focus attention and the necessary resources to meet inspection goals.	Review 2012 goals based on actual staffing and experience levels. Modify CSHO performance standards for numbers of inspections conducted.	NvOSHA has completed their review of next year's goals based on actual staffing and experience levels. Until there is an increase in CSHO salaries, NvOSHA will not be able to meet high inspection level goals. CSHO performance standards were modified to 60 inspections per year.	Open
11-05	The numbers and compliance data for NEP and LEP inspections were not reliable due to coding errors.	The state must check and correct coding errors to ensure inspection and compliance data is accurate.	Conduct a quarterly review to ensure inspection and compliance data is accurate. Provide code listing / checklist to District management and CSHO's.	Accepted on 12/17/2012 NvOSHA completed a quarterly review on 10/1/12 to ensure inspection and compliance data was accurate. Code list and checklist was provided to District Managers, Program Coordinators, Supervisors, Trainer Supervisor, CSHO's and Trainers.	Completed
11-06	A high percentage (82%) of	The state must direct	Stabilize work force to	Due to the continual	Open

**Appendix C - Status of FY 2011 Findings and Recommendations**  
 FY 2012 NvOSHA State Plan Abridged FAME Report

<b>Rec #</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Corrective Action Plan</b>	<b>State Action Taken</b>	<b>Status</b>
	total inspections conducted are initiated by complaints (non-programmed inspections) which does not allow adequate resources for programmed inspections at high hazard worksites.	adequate resources toward increasing the number of programmed inspections.	reduce turnover and conduct as many programmed inspections as possible.	turnover of CSHOs, and a less than adequate number of experienced staff, NvOSHA cannot conduct a large number of programmed planned general industry inspections at this time. NvOSHA will continue to conduct as many unprogrammed inspections as we can until the workforce stabilizes.	
11-07	Many other-than-serious violations were documented with serious injuries, illness and in some cases death.	Supervisors and District Managers must ensure violations are documented in accordance with the policies in the NOM Chapter 4 and appropriate citations are issued for all serious hazards.	Brief Supervisors, District Managers and CSHO's on the requirements of the NOM Chapter 4 to ensure the type of violation match the probable injuries.	Accepted on 12/17/2013 All CSHOs and district management staff were briefed by 9/13/12.	Completed
11-08	NvOSHA lapse time for citation issuance did not meet the reference standard of 51.9 days for safety citations and 64.8 days for health citations.	Take all appropriate actions to ensure citations are issued timely.	Place supervisory emphasis on reducing citation lapse time.	Accepted on 10/8/2012 Supervisory emphasis has resulted in reduced lapse time that met the SAMM measure.	Completed
11-09	For FY 2011, 56 out of 915 serious hazards were not verified as abated.	NvOSHA must track and investigate all cases with outstanding abatement and promptly take corrective actions to ensure employees	Hire another Administrative Assistant in Henderson to assist in the process of citations and abatement. Brief the Administrative	Accepted on 10/17/2012 NvOSHA has hired another Administrative Assistant in Henderson	Awaiting Verification

**Appendix C - Status of FY 2011 Findings and Recommendations**  
 FY 2012 NvOSHA State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
		are not exposed to ongoing serious hazards that have not been abated. This is a repeat recommendation from FY 2010.	Assistants on the importance of abatement verification in a timely manner and run and utilize the IMIS Abatement Tracking reports on a weekly basis	to assist in the process of citations and abatement. - COMPLETED 5/21/12. Special Project Officer has briefed the Administrative Assistants on the importance of timely abatement verification and how to run and utilize the IMIS Abatement Tracking reports on a weekly basis	
11-10	Discrimination complainants were required to notify their employer of the intent to file a retaliation complaint. In some cases, they were required to make personal delivery to the respondent of their NvOSHA complaint. NRS 618.445(2) may have created a chilling effect on a worker who wished to file a whistleblower retaliation complaint and may hamper NvOSHA's ability to conduct inspections regarding the underlying occupational safety and health complaint at issue.	Amend NRS 618.445(2) to not require discrimination complainants to serve the employer a copy of the complaint prior to NvOSHA commencing an investigation.	Submit a request to the Administration for a bill to amend the Nevada statute.	Bill AB 12 was passed out of the Assembly Committee on Commerce & Labor, and is currently making its way through the Nevada legislative process. See 11-17.	Open
11-11	Interviews with the	Full discrimination	Brief the discrimination	Accepted on 10/8/2013	Completed

**Appendix C - Status of FY 2011 Findings and Recommendations**  
 FY 2012 NvOSHA State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	discrimination complainant were sometimes missing and/or incomplete.	complainant interviews must be conducted and documented; including obtaining relevant documents and ascertaining the restitution sought by the complainant.	investigator on the importance of documenting the interview in the case file when interviewing over the phone.	Discrimination case files were double-checked and found that 9 of the 10 cases included documentation of complainant interview. Case files included either a form entitled "Discrimination Screening", "Pre-Screening", or "Interview Form", and/or included a CD or audio tape. The tenth interview was not documented though the interview had been conducted and noted on the telephone/event log. The discrimination investigator was briefed on the importance of documenting the interview in the case file when interviewing over the phone.	
11-12	In some cases, discrepancies were not resolved and discrimination complainants were not provided an opportunity to respond to respondent's defenses.	After completing the respondent's side of a discrimination investigation, investigators must resolve discrepancies, including providing the complainant an opportunity to respond to	Revise Discrimination Investigation Manual and train investigators on the revised procedures. Include documentation in the case file on resolution of discrepancies in the	The Discrimination Investigation Manual is under revision. Documentation of follow-up questions to resolve discrepancies are now included in the	Open

**Appendix C - Status of FY 2011 Findings and Recommendations**  
 FY 2012 NvOSHA State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
		the respondent's defenses.	Activity/Investigation Log. Obtain approval and hire a discrimination supervisor.	Activity/Investigation Log. Waiting for approval on requested supervisor position which will be recommended again in the 2014/2015 legislative session.	
11-13	Relevant discrimination complainant witnesses were not always identified and interviewed. Witness interviews were not appropriately documented in the case file.	The complainant's side of the investigation must be developed as thoroughly as possible, and the investigator must attempt to identify, interview and document all relevant complainant witnesses in the case file.	Discrimination case files were double-checked and found that cases included documentation of the complainant's witnesses and interviews conducted. Case files included either a Cast of Characters with date and time the interviews were conducted, interview forms, and/or included a CD or audio tape. Interviews were conducted unless the witnesses could not be contacted. Three cases did not include witness interviews due to - 1 discrimination complaint was not filed timely, 1 case was settled with a Pre-Settlement Agreement and 1 case was settled at the Opening Conference - with Area Director.	Accepted on 10/8/2013	Closed
11-14	Closing conferences with discrimination complainants at the end of a	The discrimination investigator must document the closing conference with	Document the closing conference in the Activity/Investigation Log.	Case files were double-checked revealing that cases did include	Awaiting Verification

**Appendix C - Status of FY 2011 Findings and Recommendations**  
 FY 2012 NvOSHA State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	discrimination investigation were not documented in the case file.	the complainant at the end of the investigation where the investigator informs the complainant about the breadth and findings of the investigation and advises the complainant of their rights to appeal a non-merit determination.	Update the closing letter to include information on the Closing Conference.	documentation of a closing conference via the closing conference letter. One case file was missing the letter but a post-it note was found stating that the letter had not been copied but had been sent to the employee, employer and Region IX. A computer copy of the letter was obtained, stamped with "COPY" and included in the case file with the post-it note. A closing letter will be included in the revision to the discrimination manual. The letter is currently being updated and will include documentation on the closing conference.	
11-15	Discrimination investigative reports did not cite to exhibits.	The discrimination investigator must cite to exhibits in the investigative report.	Revise the Discrimination Procedure Manual. Train investigators on the revised procedures to include Case File Set-Up	The Discrimination Procedure Manual is currently under revision.	Open
11-16	In some cases, the final discrimination report contained improper analysis of the evidence.	Final discrimination reports shall contain proper analysis of the evidence collected.	Ensure supervisors and investigators attend the 1420 Basic Whistleblower Investigation Courses in	Accepted on 10/8/2012 Supervisors and Investigators have attended the 1420 Basic	Closed

**Appendix C - Status of FY 2011 Findings and Recommendations**  
 FY 2012 NvOSHA State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
			January/February and July/August 2012	Whistleblower Investigation Courses. This finding is closely related and will be addressed under Finding 11-18.	
11-17	The complaint date of filing entered into IMIS was the date the discrimination investigation commenced and not the date the complaint was received.	The date the discrimination complaint is received must be entered into IMIS as the complaint date of filing, rather than the date NvOSHA commences an investigation.	See 11-10 - Submit a request to the Administration for a bill to amend the Nevada statute. See 12-04 (formally 11-10)	Bill AB 12 was passed out of the Assembly Committee on Commerce & Labor, and is currently making its way through the Nevada legislative process.	Open
11-18	Several discrimination investigations failed to adequately test the respondent's defenses or failed to provide an adequate analysis of the evidence, including considering temporal proximity, disparate treatment, and animus.	The discrimination investigator must broadly view and test defenses offered by respondent in addition to other evidence to determine if there is evidence that the complainant suffered disparate treatment or animus, suffered adverse action in temporal proximity to the respondent learning of the protected activity, and/or whether there is evidence that the respondent's defense was developed in response to, rather than independently of, complainant's protected activity.	Disagree with the findings completely. The discrimination investigators investigation included testing and analysis which resulted in their conclusions in each case file.	This finding is also addressed in finding 11-16. Supervisors and Discrimination Investigators attended the 1420 Basic Whistleblower Investigation Courses in January/February and July/August 2012. Closure pending case file review.	Awaiting Verification
11-19	Whistleblower IMIS data	NvOSHA must use IMIS to	Update the data in the IMIS	Program Coordinator	Completed



**Appendix C - Status of FY 2011 Findings and Recommendations**  
 FY 2012 NvOSHA State Plan Abridged FAME Report

<b>Rec #</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Corrective Action Plan</b>	<b>State Action Taken</b>	<b>Status</b>
	was not accurate and reliable.	track opened, closed, administratively closed, and pending whistleblower investigations.	Discrimination Intranet.	learned the program and updated the data. Recent quarterly data reports are showing marked improvement.	
11-20	NvOSHA was administratively closing discrimination complaints incorrectly.	NvOSHA must only administratively close discrimination complaints upon receipt prior to opening an investigation if (1) the case is untimely as filed, NvOSHA lacks jurisdiction, or the complainant fails to allege an essential element of a prima facie case of retaliation (protected activity, employer knowledge, adverse action, and nexus), and (2) the complainant concurs with NvOSHA not conducting an investigation.	Same as 11-19. Update the data in the IMIS Discrimination Intranet.	Program Coordinator learned the program and updated the data. Recent quarterly data reports are showing marked improvement.	Completed
11-21	FY2011 whistleblower investigators and supervisors did not attend the mandated 1420 Basic Whistleblower Investigation Course.	Investigators and supervisors shall attend the 1420 Basic Whistleblower Investigation course.	Ensure supervisors and discrimination investigators attend the 1420 Basic Whistleblower Investigation Courses in January/February and July/August 2012.	Accepted on 10/8/2013 Supervisors and investigators have attended the 1420 Basic Whistleblower Courses in January/February and July/August 2012.	Completed

## Appendix D - FY 2012 State Activity Mandated Measures (SAMM) Report FY 2012 NvOSHA State Plan Abridged FAME Report

NOV 09, 2012      RID: 0953200

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	2753 5.85 470	274 7.82 35	Negotiated fixed number for each state
2. Average number of days to initiate Complaint Investigations	614 3.07 200	54 2.45 22	Negotiated fixed number for each state
3. Percent of Complaints where Complainants were notified on time	456 95.80 476	45 100.00 45	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	8 100.00 8	0 0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	557 89.84 620	26 70.27 37	100%
Public	11 73.33 15	0 0 0	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	26171 46.73 560	2987 55.31 54	2032800 55.9 6
Health	13508 65.57 206	1079 56.78 19	647235 67.9 9527

0\*Nv FY12

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

**Appendix D - FY 2012 State Activity Mandated Measures (SAMM) Report**  
**FY 2012 NvOSHA State Plan Abridged FAME Report**

NOV 09, 2012      RID: 0953200

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	93	3	76860
Safety	56.71	50.00	58.5
	164	6	131301
	22	0	9901
Health	47.83		53.0
	46	0	18679
9. Average Violations per Inspection with Violations			
	1098	101	367338
S/W/R	1.43	1.36	2.1
	766	74	175950
	924	87	216389
Other	1.20	1.17	1.2
	766	74	175950
10. Average Initial Penalty per Serious Violation (Private Sector Only)	3250868	270298	624678547
	3257.38	2845.24	1990.5
	998	95	313826
11. Percent of Total Inspections in Public Sector	49	2	158
	4.13	2.33	4.0
	1186	86	3974
12. Average lapse time from receipt of Contest to first level decision	12610	535	3197720
	135.59	133.75	187.0
	93	4	17104
13. Percent of 11c Investigations Completed within 90 days*	5	5	100%
	100.00	100.00	
	5	5	
14. Percent of 11c Complaints that are Meritorious*	1	4	1619
	20.00	80.00	23.4
	5	5	6921
15. Percent of Meritorious 11c Complaints that are Settled*	1	4	1444
	100.00	100.00	89.2
	1	4	1619

\*Note: Discrimination measures have been updated with data from SAMM reports run on 1/3/2013

0\*Nv FY12

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

**Appendix E – FY 2012 State OSHA Annual Report (SOAR)**  
FY 2012 NvOSHA State Plan Abridged FAME Report

*[Available Upon Request]*