

FY 2014 Follow-up Federal Annual Monitoring and Evaluation (FAME) Report

Nevada Occupational Safety and Health Administration (NVOSHA)



Evaluation Period: October 1, 2013 – September 30, 2014

Initial Approval Date: December 28, 1973
Program Certification Date: August 13, 1981
Final Approval Date: April 18, 2000

Prepared by:
U. S. Department of Labor
Occupational Safety and Health Administration
Region IX
San Francisco, California



Contents

I. Executive Summary	3
A. State Plan Activities, Themes, and Progress	3
B. State Plan Introduction	3
C. Data and Methodology	4
D. Findings and Observations	4
II. Assessment of State Plan Performance	5
A. Major New Issues	5
B. Assessment of State Plan Progress in Achieving Annual Performance Goals.....	5
C. Highlights from the State Activity Mandated Measures (SAMM)	7
III. Assessment of State Plan Corrective Actions	9

Appendices

Appendix A – New and Continued Findings and Recommendations.....	A-1
Appendix B – Observations Subject to New and Continued Monitoring.....	B-1
Appendix C – Status of FY 2013 Findings and Recommendations.....	C-1
Appendix D – FY 2014 State Activity Mandated Measures (SAMM) Report....	D-1

I. Executive Summary

A. State Plan Activities, Themes, and Progress

The purpose of this report is to assess Nevada's Occupational Safety and Health Administration (NVOSHA) activities for Fiscal Year (FY) 2014 and its progress in resolving outstanding recommendations from the FY 2013 Federal Annual Monitoring and Evaluating (FAME) Report. NVOSHA is responsible for protecting most Nevada workers from exposure to workplace safety and health hazards.

There have been many improvements implemented since the 2009 Special Study. Improvements for FY 2014 included verifying abatement of serious hazards, increased inspection activity in targeted industries, significant increase in the number of programmed inspections, and continued emphasis on staff training and development. Staff turnover has decreased, but continues to be a hindrance to the State Plan's ability to retain an adequate number of experienced compliance safety and health officers (CSHOs).

NVOSH's ability to adopt identical or equivalent OSHA regulations within six months as required by the State Plan agreement was challenged by the revised recordkeeping regulation issued on September 11, 2014. This new requirement went into effect on January 1, 2015, and the state indicated the changes could not be adopted until the legislature meets again in 2017.

A continuous turnover in top leadership occurred over the past couple of years with three designees and three Chief Administrative Officers (CAO). This turnover decreased the State Plan's ability to implement many of the recommendations from the FY 2013 FAME in a timely fashion.

B. State Plan Introduction

The Department of Business and Industry, Division of Industrial Relations (DIR) is the designated agency for administering the OSHA-funded enforcement program in Nevada through NVOSHA. In 2014, Don Soderberg was replaced by Steve George as the State Plan designee and administrator of DIR, and John Wanamaker was replaced by Jess Lankford as the CAO. The consultation program is administered through Todd Schultz, CAO of the Nevada Safety Consultation and Training Section (SCATS). There are a total of 72 full-time equivalent (FTE) positions, of which SCATS has 14.5 FTE positions. The programs are headquartered in Henderson, with offices located in Reno and Elko.

NVOSHA received initial approval on December 28, 1973. Twenty-six years later on April 18, 2000, after completion of all developmental steps, the State Plan was granted final approval, and federal enforcement authority was relinquished. OSHA standards were adopted by reference. Standards contained within 29 CFR, Parts 1910 (General Industry), 1926 (Construction) and 1928 (Agriculture) are enforced. In addition, NVOSHA has adopted State Plan-specific requirements for safety programs, cranes, steel erection, and mandatory 10- and 30-hour training for construction projects, asbestos, explosives, ammonium perchlorate, and photovoltaic system projects.

The grant agreement established the final base award to fund the program at \$7,435,405 (\$1,451,300 federal and \$1,451,300 State Plan matching and \$4,532,805 from 100 percent State Plan funds). Money for inspection equipment (\$20,518 federal) was added to the award in August on a one-time only basis with a reallocation of \$20,518 from 100 percent State Plan funds to match the federal funds. The final program costs were \$4,843,835 (\$1,471,818 federal and \$1,471,818 State Plan matching and \$1,900,199 from 100 percent State Plan funds). No federal funds were lapsed. Over match funds for this grant cover both the Elevator and Boiler units. Once the grant is approved, funds for these units are routinely removed from the overmatch. Both the Boiler and Elevator Units were removed from NVOSHA oversight in the 2012-2013 legislative session; however, the budget changes have not yet transitioned.

C. Data and Methodology

Information and data referenced in this report were derived from the computerized State Activity Mandated Measures (SAMMs), OSHA Information Systems (OIS), Nevada's FY 2014 State OSHA Annual Report, the Bureau of Labor Statistics data, the FY 2014 23(g) grant, Complaint About State Program Administration investigations, and OSHA's Integrated Management Information System (IMIS) reports. The review of the State Plan included information from the four quarterly meetings with the state during the period of review. In addition, the Annual Performance Plan and Five-year Strategic Plan results were referenced. OSHA conducted discrimination case file reviews of 10 randomly selected cases that were closed during FY 2014 to verify if the State Plan has made progress towards meeting the 2013 Corrective Action Plan (CAP).

D. Findings and Observations

There were 10 findings (nine continued and one new) and three observations (two new and one continued) in FY 2014. Three of the 15 findings from FY 2013 were completed, one was closed, and two were converted to observations. Action has been taken on five of the findings, and these are awaiting verification by OSHA. Details on the findings and observations are provided in Section III of this report.

Appendix A describes new and continued findings and recommendations. Appendix B describes new observations and the observations subject to continued monitoring. Appendix C describes the status of each FY 2013 finding in detail.

II. Assessment of State Plan Performance

A. Major New Issues

Nevada's ability to adopt identical or equivalent OSHA regulations within six months as required by the State Plan agreement was challenged by the new recordkeeping regulation issued on September 11, 2014. Only the Nevada legislature, which meets biennially, has the authority to change those statutes. This was recognized as a problem when OSHA announced changes to the recordkeeping regulation on September 11, 2014. These new requirements went into effect on January 1, 2015, and the state has indicated the changes could not be adopted until the legislature meets again in 2017. This issue is currently under discussion.

B. Assessment of State Plan Progress in Achieving Annual Performance Goals

This is the fourth year of the Five-year Strategic Plan. The FY 2014 Annual Performance Plan was developed and submitted as part of the State Plan's grant application for federal funds.

Five-Year Strategic Goal 1: Workplace Safety and Health.
Reduce workplace injuries and illnesses within the state.

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

- Conduct 300 construction inspections.
- Programmed inspections for manufacturing will focus on non-metallic mineral products, plastic and rubber manufacturing, printing, and related support activities.
- 50% of compliance inspections resulting in serious, willful, or repeat (S/W/R) citations.
- 1% decrease in the DART rate.

Results:

- End of the year results indicate that 677 construction inspections were conducted.
- 1,030 programmed inspections were conducted in all targeted industries except for conventions and events.
- 34% of compliance inspections resulted in S/W/R citations.
- The DART rate decreased by 4%.

Assessment:

Although the construction inspection goal of 300 was exceeded, 56% (380/677) of those inspections were in-compliance. The in-compliance rate has been increasing over the past few years. Resources should be more carefully focused in workplaces where hazards are present.

Finding FY 2014-01: Hazards were not identified nor were citations issued in 56% of construction inspections.

Recommendation FY 2014-01: Identify the cause(s) for the high number of in-compliance construction inspections. Develop and implement an action plan to identify hazards in workplaces.

The State Plan did not set a goal for the number of inspections in targeted industries because most CSHO's (75%) have less than five years of experience. However, a total of 1,030 inspections were conducted in all industries but conventions and events. In response, the State Plan established inspection goals in the 2015 Annual Performance Plan for both construction and manufacturing. Table 1 details the inspections in all industries.

**Table 1
Industries Targeted for Inspections and Serious Violations Cited**

Inspections	Const.	Mfg.	Non-Metallic Mineral Prod	Plastics and Rubber	Printing and Related Support	Assay Lab	Asbestos	Conventions and Events	Casinos	Needle sticks
Total # Inspections	677	187	18	22	25	1	49	0	50	1
Incompliance Inspections	380	4	1	4	7	0	12	0	8	0
Total Serious Violations	144	306	28	41	33	2	1	0	41	1

The percentage of inspections with S/W/R citations issued (34%) was significantly less than the goal of 50%. This goal was not met. As an ongoing concern this issue was addressed during quarterly meetings. The DART rate decreased by 4%, exceeding the goal of a decrease of at least 1%.

Annual Performance Goal 1.2: Verify that 93% of serious hazards are abated in a timely manner.

Results:

Abatement was timely with 94% of all serious hazards verified as corrected.

Assessment:

The state met this measure, and hazard abatement verification efforts have been successful.

Five-Year Strategic Goal 2: Employer Involvement.

Change workplace culture through education, outreach, and employer incentives.

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

- Receive and review at least two VPP applications.
- Conduct at least one VPP audit.
- Award at least one VPP Star Site.

Results:

- One VPP application was received.
- Two VPP audits were conducted. One of the audits was for an application received the previous year.
- One VPP Star was awarded.

Assessment:

The State Plan met these goals as one employer achieved VPP Star site recognition, and even though only one of two projected applications was received, the State Plan made progress toward increasing VPP participation.

Five-Year Strategic Goal 3: Staff Professional Development.

Enhance compliance officer knowledge, skills, and abilities through formal and informal training.

Annual Performance Goal 3: Conduct field training and evaluate the performance of at least 50% of field-assigned compliance safety and health officers.

- Number of field trained contacts with compliance officers. Goal: 22 evaluations/45 field CSHOs
- Percent of compliance officers evaluated. Goal: 50%

Results:

A total of 59 field training and evaluations were completed, and 26 compliance officers (57%) were evaluated.

Assessment:

The State Plan exceeded the goal of 50%.

C. Highlights from the State Activity Mandated Measures (SAMM)

Denial of Entry (SAMM 5)

Two incidents resulted in denials of entry where a warrant was not obtained. The first incident occurred when a CSHO spotted improper roofing work at a residential site. The homeowner refused entry. At the time of the first attempt to gain entry, the CSHO could not identify who was on the roof. The warrant process was dropped for lack of any identifiable violation of standard. The second incident involved a roofing contractor that the CSHOs recognized and could easily view violations from the street. A warrant was not pursued because it was the homeowner and not the roofing employer that denied entry and citations were issued as the hazards were easily viewed from the street. This cannot be corrected in the NCR as there is no longer access for data corrections.

Serious/Willful/Repeat and Other than Serious Violations (SAMM 9)

The state had an average of 1.37 S/W/R violations and 1.25 other-than-serious violations per inspection with violations. The reference standard of 1.99 S/W/R violations and 1.22 other-than-serious violations per inspection with violations was not met. The IMIS Enforcement Statistics Report shows that 48.4 percent of all violations cited were other-than-serious. Table 2 provides a summary of this data:

**Table 2
Number Violations**

Violation Type	FY 2013	FY 2014
Total Violations	1,843	1,350
Serious	823	648
Willful	3	8
Repeat	56	38
Other	957	654
FTA	4	2

There was a significant reduction in both the total number of violations cited (27%) from the previous year and in the total number of serious violations cited (21%). This issue resulted in a finding and recommendation FY 2013-01 last year and repeated again as FY 2014-02. This measure appears to be impacted by not expanding the scope of complaint, referral, and fatality inspections when other serious hazards are present or reported during the inspection.

Number of Inspections (SAMM 17)

A total of 1,666 safety and health inspections were conducted during FY 2014. This goal was exceeded by 666 inspections. Table 3 below shows that over the past three years the State Plan has gradually increased the number of inspections conducted. The reduced turnover rate and the ability to retain staff may be a factor in the increased inspection numbers.

**Table 3
Total Number of Inspections (SAMM 17)**

Inspections	FY 2011	FY 2012	FY 2013	FY 2014
2014 State Goal	2,132	1,900	1,015	1,000
Conducted	1,265	1,203	1,475	1,666
Difference	-867	-697	+460	+666

In-compliance Inspections (SAMM 20)

The State Plan's nearly 50% in-compliance rate for safety inspections significantly exceeded the national average of 29.1%. The rate for health inspections was even higher at 56.3%. Table 4 below shows how the in-compliance rate increased over the past year. This was addressed during quarterly meetings and also last year in Finding FY 2013-01, which remains open.

Table 4

Percent in Compliance	FY 2013	FY 2014	Reference Standard
Safety	39.60 %	48.94 %	29.1 %
Health	51.76 %	56.34 %	34.1 %

Fatality Response (SAMM 21)

There were 25 reported fatality-related inspections. Of those 25 inspections, 21 (84%) were opened within one day. One fatality involved a multi-employer worksite that occurred in a remote location of the state that made a one day response prohibitive. In this instance, three inspections were opened. An inspection was opened with the employer of the victim, and as the investigation progressed, two additional inspections were opened with other employers present at the site. These two inspections were inadvertently coded as fatality inspections when they should have been coded as un-programmed related. The fourth fatality inspection started out as a hospitalization and the investigation was already underway before the fatality occurred. The SAMM indicator is not programmed to adjust correctly for this situation. Therefore, only one inspection was an outlier due to distance.

III. Assessment of State Plan Corrective Actions

Finding FY 2013-01: During the case file review of complaint generated inspections, serious violations were not addressed as citations or in hazard alert letters.

Recommendations FY 2013-01: All observed serious hazards during an onsite inspection must be addressed by citation and/or hazard letter.

Status: Awaiting Verification.

The Nevada Operations Manual (NOM) was reviewed and NVOSHA decided to add clarification for expanding the scope of inspections. The State Plan developed a training program for supervisors on case file reviews to ensure that hazards identified in the case files were properly documented. The training for supervisors was completed in late January. Supervisors have been also assigned to accompany CSHOs in the field for accompanied visits at least four times a year per CSHO. This finding will require a case file review to close.

Finding FY 2013-02: Air monitoring for workers 8-hour TWA exposure to chemicals was limited to 15-30 minutes.

Recommendation FY 2013-02: Every attempt to sample as much of the work shift as possible must be done when determining compliance with an 8-hour Time-Weighted Average (TWA) Permissible Exposure Limits (PEL).

Status: Awaiting Verification.

NVOSHA addressed this issue during management staff meetings and committed to ensuring case files include an explanation when a full shift sample was not possible. This finding will require a case file review to close.

Finding FY 2013-03: A high percentage (85%) of total inspections conducted were initiated by complaints/referrals/un-programmed inspections; which do not allow adequate resources for programmed inspections at high hazard worksites.

Recommendation FY 2013-03: The State Plan must direct adequate resources toward increasing the number of programmed inspections.

Status: Completed.

NVOSHA did a commendable job in significantly increasing the number of programmed inspections. In FY 2013, a total of 179 programmed inspections were conducted. This year 412 programmed inspections were conducted. This was an increase of 130% over the previous year.

Finding FY 2013-04: Incorrect standards were used to cite hazardous conditions.

Recommendation FY 2013-04: Each case file must be carefully reviewed by the supervisor to ensure the correct standards are issued.

Status: Awaiting Verification.

The State Plan developed a training program for supervisors on case file reviews to ensure proper standards were being cited. The training for supervisors was completed in late January. Supervisors have also been assigned to accompany CSHOs in the field for accompanied visits at least four times a year per CSHO. This finding will require a case file review to close.

Finding FY 2013-05: The serious hazards that could cause temporary or permanent disability were not classified as serious violations.

Recommendation FY 2013-05: Supervisors must carefully review each case file and ensure each violation is classified in accordance with the Nevada Operations Manual (NOM) Chapter 4, Section II. "Serious Violations."

Status: Awaiting Verification.

The State Plan developed a training program for supervisors on case file reviews to ensure that hazards identified in the case files were properly classified. The training for supervisors was completed in late January. Supervisors have been also assigned to accompany CSHOs in the field for accompanied visits at least four times a year per CSHO. This finding will require a case file review to close.

Finding FY 2013-06: There were case files that do not include the abatement certification information received from the employer.

Recommendation FY 2013-06: NVOSHA must ensure all abatement certification documents, received from the employer, are included in the case file as soon as possible.

Status: Awaiting Verification.

A staff meeting was conducted and an informational memorandum was distributed about abatement procedures. This finding will require a case file review to close.

Finding FY 2013-07: Four delinquent plan changes for directives have not been submitted. The State Plan has not provided a response and/or submitted a formal plan change supplement (PCS) and side-by-side comparison document for federal standard(s) that are not adopted identical.

Recommendation FY 2013-07: Submit federal program changes for CPL 02-00-148 Revisions to FOM November 2009, CPL 02-01-052 Enforcement Procedures for Incidents of Workplace Violence, CPL 02-03-003 Whistleblower Investigations Manual and CPL 03-00-153 2012 Communicating OSHA Fatality Inspection Procedures to a Victim's Family. Submit formal Federal Program Changes including side by side comparison documents for 29 CFR 1926.856 and 858 Direct Final Rule Cranes and Derricks in Construction and Under-ground Construction and Demolition and 29 CFR 1926 Cranes and Derricks in Construction.

Status: Open.

The State Plan has not submitted the four delinquent plan changes.

Finding FY 2013-08: All safety and health enforcement and whistleblower discrimination files did not contain documentation of worker statements obtained during the interview process, as required by The WIM Chapter 3(III), 3(VI)(D)(3), 3(VI)(E)(10), 3(VI)(H)(5), and 3(VI)(L)(1)..

Recommendation FY 2013-08: Develop procedures to ensure all safety and health enforcement and whistleblower discrimination files document worker statements in the case file and insert in the draft manual.

Status: Open for Enforcement Files. Completed for Whistleblower Files.

The State Plan developed a training program for supervisors on case file reviews to ensure that case files contain documentation of worker statements. The training for supervisors was completed in late January. Supervisors have also been assigned to accompany CSHOs in the field for accompanied visits at least four times a year per CSHO. This finding remains open for the safety and health enforcement files and will require a case file review to close.

For the whistleblower program, a review of the case files verified that the documentation of worker statements were appropriate, consistent with the WIM Chapter 3 and is completed.

Finding FY 2013-09: The whistleblower complainant was not provided an opportunity to respond to the employer's defense, as required by the WIM Chapter 1(XI)(A)(2).

Recommendation FY 2013-09: Develop and adopt a procedure to ensure that the complainant is provided an opportunity to respond to the employer's defense in line with the WIM Chapter 1(XI)(A)(2).

Status: Completed.

Direction was provided to the whistleblower staff during monthly meetings and included an emphasis on giving complainants the opportunity to respond to the employer's defenses. A review of the discrimination files found documentation indicating that the complainant was provided an opportunity to respond to the employers' defenses in accordance with the WIM Chapter 1(XI)(A)(2).

Finding FY 2013-10: NVOSHA remedies did not include or contemplate awarding punitive and/or compensatory damages to the whistleblower complainant in a recommended merit determination, as required, by the WIM Chapter 6(II) (C and D).

Recommendation FY 2013-10: Develop and adopt a procedure to award punitive and/or compensatory damages in recommended merit determinations.

Status: Closed.

State Plan and federal solicitors discussed and reviewed the Nevada statute 618.445 and 11(c) in the OSH Act. They determined punitive damages were not authorized by the Nevada statute and the OSH Act was silent on the issue. OSHA's authority to order punitive and compensatory damages comes from federal case law, not the statute; therefore, this item is closed.

Finding FY 2013-11: Discrimination investigations are often finalized where a more thorough investigation and analysis is warranted in order to meet the 90-day deadline.

Recommendation FY 2013-11: Revise policies and procedures to ensure the 90-day deadline is directory rather than an absolute deadline to conclude an investigation.

Status: Completed.

The practice of prematurely closing case files at the 90 day deadline was stopped. The cases reviewed indicated that discrimination investigations were not finalized in 90 days when a more thorough investigation and analysis were warranted. In fact, one case took 133 days to finalize, which was entirely appropriate given the complexity of the case.

Finding FY 2013-12: The final reports in some discrimination case files did not cite exhibits, as required by WIM Chapter 5(IV)(B).

Recommendation FY 2013-12: Develop and adopt a procedure to ensure that final reports cite to exhibits.

Status: Open.

The State Plan committed to developing a standardized approach to finalizing case files which included citing to exhibits by December 31, 2014. A preliminary review of four case files that required final reports, found three that failed to cite to exhibits.

Finding FY 2013-13: Discrimination investigations were not properly analyzed and documented in the final report, as required in WIM Chapter 3(VI) and NVOSHA's draft manual 3(b and e).

Recommendation FY 2013-13: Where applicable, develop procedures to ensure the proper analysis of adverse action, nexus, temporal, proximity, resolution of discrepancies, constructive discharge and/or company's defense within the final report

Status: Converted to Observation.

Three of those four case files reviewed included proper analysis and documentation in the final report, as required in WIM Chapter 3(VI) and NVOSHA's draft manual Chapter 3(b and e). Four of the ten cases reviewed required the analysis detailed in WIM Chapter 3(VI) and NVOSHA's draft manual 3(b and e). Since only one case file lacked the proper analysis and documentation in the final report, it is being changed to an observation so further review can be conducted before closing. The case was dismissed and characterized as a withdrawal for "lack of protected activity." However, the complaint should have warranted further analysis. In addition, there was no indication that NVOSHA made any attempt to refer this complaint to OSHA under the Food Safety Modernization Act (FMSA).

Finding FY 2013-14: Documentation of damage analysis was missing and/or incomplete in discrimination case files as required by WIM Chapters 5(IV)(B)(5) and 6(II).

Recommendation FY 2013-14: Develop procedures to ensure the documentation of damage analysis within the case file.

Status: Open.

Two of the ten case files reviewed required documentation of damage analysis as explained in the WIM Chapters 5(IV)(B)(5) and 6(II). Neither of those cases included documentation for a proper and complete damage analysis.

Finding FY 2013-15: Workers with three years of safety and health experience continue to leave employment with NVOSHA and SCATS for higher paying safety positions.

Recommendation FY 2013-15: Continue to pursue all available options to retain safety and health compliance officers, consultants and trainers.

Status: Converted to an Observation.

NVOSHA continues to struggle with high turnover.

Observation FY 2013-01: Based on the number of serious violations found during programmed inspections, the targeting system may not be getting CSHOs into high hazard workplaces.

Federal Monitoring Plan FY 2013-01: Monitor the percentage of programmed planned inspections in high hazard industries at quarterly meetings.

Status: Continued.

Appendix A – New and Continued Findings and Recommendations

FY 2014 NVOSHA Follow-up FAME Report

FY 2014-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
FY 2014-01	Hazards were not identified nor were citations issued for a majority of construction inspections (55 percent).	The targeting system should be evaluated and adjusted to allow resources to be focused into workplaces where hazards are present.	New
FY 2014-02	During the case file review of complaint generated inspections, serious violations were not addressed as citations or in hazard alert letters.	All observed serious hazards during an onsite inspection must be addressed by citation and/or hazard letter. Corrective action complete, awaiting verification.	FY 2013-01
FY 2014-03	Air monitoring for workers 8-hour TWA exposure to chemicals was limited to 15-30 minutes.	Every attempt to sample as much of the work shift as possible must be done when determining compliance with an 8-hour Time-Weighted Average (TWA) Permissible Exposure Limits (PEL). Corrective action complete, awaiting verification.	FY 2013-02
FY 2014-04	Incorrect standards were used to cite hazardous conditions.	Each case file must be carefully reviewed by the supervisor to ensure the correct standards are issued. Corrective action complete, awaiting verification.	FY 2013-04
FY 2014-05	Serious hazards that could cause temporary or permanent disability were not classified as serious violations.	Supervisors must carefully review each case file and ensure each violation is classified in accordance with the NOM, Chapter 4, Section II. Corrective action complete, awaiting verification.	FY 2013-05

Appendix A – New and Continued Findings and Recommendations

FY 2014 NVOSHA Follow-up FAME Report

FY 2014-06	There were case files that do not include the abatement certification information, received from the employer.	NVOSHA must ensure all abatement certification documents, received from the employer, are included in the case file as soon as possible. Corrective action complete, awaiting verification.	FY 2013-06
FY 2014-07	Four delinquent plan changes for directives have not been submitted. The state has not provided a response and/or submitted a formal plan change supplement (PCS) and side-by-side comparison document for federal standard(s) that are not adopted identical.	Submit federal program changes for CPL 02-00-148 Revisions to FOM November 2009, CPL 02-01-052 Enforcement Procedures for Incidents of Workplace Violence, CPL 02-03-003 Whistleblower Investigations Manual and CPL 03-00-153 2012 Communicating OSHA Fatality Inspection Procedures to a Victim's Family. Submit formal Federal Program Changes including side by side comparison documents for 29 CFR 1926.856 and 858 Direct Final Rule Cranes and Derricks in Construction and Under-ground Construction and Demolition and 29 CFR 1926 Cranes and Derricks in Construction. In FY 2014, the State Plan did not submit the four delinquent plan changes.	FY 2013-07
FY 2014-08	All safety and health enforcement files did not contain documentation of worker statements obtained during the interview process, as required by The WIM Chapter 3(III), 3(VI)(D)(3), 3(VI)(E)(10), 3(VI)(H)(5), and 3(VI)(L)(1).	Develop procedures to ensure all safety and health enforcement files document worker statements in the case file and insert in the draft manual.	FY 2013-08
FY 2014-09	The final reports in some discrimination case files did not cite to exhibits, as required by WIM Chapter 5(IV)(B).	Develop and adopt a procedure to ensure that final reports cite to exhibits.	FY 2013-12

Appendix A – New and Continued Findings and Recommendations

FY 2014 NVOSHA Follow-up FAME Report

FY 2014-10	Documentation of damage analysis was missing and/or incomplete in discrimination case files as required by WIM Chapters 5(IV)(B)(5) and 6(II).	Develop procedures to ensure the documentation of damage analysis within the case file.	FY 2013-14
------------	--	---	------------

Appendix B – Observations Subject to New and Continued Monitoring

FY 2014 NVOSHA Follow-up FAME Report

Observation # FY 2014-OB-#	Observation# FY 20XX-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2014-OB-1	FY 2013-13	Discrimination investigations were not properly analyzed and documented in the final report, as required in WIM Chapter 3(VI) and NVOSHA's draft manual Chapter 3(b and e).	OSHA will oversee that the State Plan continues to develop procedures to ensure the proper analysis of adverse action, nexus, temporal, proximity, resolution, of discrepancies, constructive discharge and/or company's defense within the final report.	New
FY 2014-OB-2	FY 2013-15	Workers with three years of safety and health experience continue to leave employment with NVOSHA and SCATS for higher paying safety positions.	OSHA will monitor the staffing levels at quarterly meetings.	New
FY 2014-OB-3	FY 2013-OB-1	Based on the number of serious violations found during programmed inspections, the targeting system may not be getting CSHOs into high hazard workplaces.	OSHA will monitor the percentage of programmed planned inspections in high hazard industries at quarterly meetings.	Continued

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 NVOSHA Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
FY 2013-01	During the case file review of complaint generated inspections, serious violations were not address as citations or in hazard alert letters.	All observed serious hazards during an onsite inspection must be addressed by citation and/or hazard letter.	The Nevada Operations Manual (NOM) was reviewed and NVOSHA decided to add clarification for expanding the scope of inspections. The State Plan developed a training program for supervisors on case file reviews to ensure that hazards identified in the case files were properly documented. The training for supervisors was completed in late January. Supervisors have been also assigned to accompany CSHOs in the field for accompanied visits at least four times a year per CSHO. This finding will require a case file review to close.	Not Completed	Awaiting Verification (11/14/14)
FY 2013-02	Air monitoring for workers 8-hour TWA exposure to chemicals was limited to 15-30 minutes.	Every attempt to sample as much of the work shift as possible must be done when determining compliance with an 8-hour Time-Weighted Average (TWA) Permissible Exposure Limits (PEL).	NVOSHA addressed this issue during management staff meetings and committed to ensuring case files include an explanation when a full shift sample was not possible. This finding remains open and will require a case file review to close.	Not Completed	Awaiting Verification (11/14/14)

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 NVOSHA Follow-up FAME Report

FY 2013-03	A high percentage (85 percent) of total inspections conducted were initiated by complaints/referrals/un-programmed inspections; which do not allow adequate resources for programmed inspections at high hazard worksites.	The state must direct adequate resources toward increasing the number of programmed inspections.	NVOSHA did a commendable job in significantly increasing the number of programmed inspections. In FY 2013, a total of 179 programmed inspections were conducted. This year 412 programmed inspections were conducted. This was an increase of 130% over the previous year.	8/12/14	Completed
FY 2013-04	Incorrect standards were used to cite hazardous conditions.	Each case file must be carefully reviewed by the supervisor to ensure the correct standards are issued.	The State Plan developed a training program for supervisors on case file reviews to ensure proper standards were being cited. The training for supervisors was completed in late January. Supervisors have also been assigned to accompany CSHOs in the field for accompanied visits at least four times a year per CSHO. This finding will require a case file review to close.	Not Completed	Awaiting Verification (11/14/14)

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 NVOSHA Follow-up FAME Report

FY 2013-05	Serious hazards that could cause temporary or permanent disability were not classified as serious violations.	Supervisors must carefully review each case file and ensure each violation is classified in accordance with the Nevada Operations Manual (NOM) Chapter 4, Section II. Serious Violations.	The State Plan developed a training program for supervisors on case file reviews to ensure that hazards identified in the case files were properly classified. The training for supervisors was completed in late January. Supervisors have been also assigned to accompany CSHOs in the field for accompanied visits at least four times a year per CSHO. This finding will require a case file review to close.	Not Completed	Awaiting Verification (11/14/14)
FY 2013-06	There were case files that do not include the abatement certification information, received from the employer.	NV OSHA must ensure all abatement certification documents, received from the employer, are included in the case file as soon as possible.	A staff meeting was conducted and an informational memorandum was distributed about abatement procedures. This finding remains open for the safety and health enforcement files and will require a case file review to close.	Not Completed	Awaiting Verification (11/14/14)

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 NVOSHA Follow-up FAME Report

FY 2013-07	Four delinquent plan changes for directives have not been submitted. The state has not provided a response and/or submitted a formal plan change supplement (PCS) and side-by-side comparison document for federal standard(s) that are not adopted identical.	Submit federal program changes for CPL 02-00-148 Revisions to FOM November 2009, CPL 02-01-052 Enforcement Procedures for Incidents of Workplace Violence, CPL 02-03-003 Whistleblower Investigations Manual and CPL 03-00-153 2012 Communicating OSHA Fatality Inspection Procedures to a Victim's Family. Submit formal Federal Program Changes including side by side comparison documents for 29 CFR 1926.856 and 858 Direct Final Rule Cranes and Derricks in Construction and Underground Construction and Demolition and 29 CFR 1926 Cranes and Derricks in Construction.	The State Plan has not submitted the four delinquent plan changes.	Not Completed	Open (11/14/14)
------------	--	--	--	---------------	-----------------

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 NIOSHA Follow-up FAME Report

FY 2013-08	All safety and health enforcement and whistle-blower discrimination files did not contain documentation of worker statements obtained during the interview process, as required by The WIM Chapter 3(III), 3(IV)(D)(3), 3(VI)(10), 3(VI)(H)(5), and 3(VI)(L)(1).	Develop procedures to ensure all safety and health enforcement and whistle-blower discrimination files document worker statements in the case file and insert in the draft manual.	<p>The State Plan developed a training program for supervisors on case file reviews to ensure that case files contain documentation of worker statements. The training for supervisors was completed in late January. Supervisors have also been assigned to accompany CSHOs in the field for accompanied visits at least four times a year per CSHO. This finding remains open for the safety and health enforcement files and will require a case file review to close.</p> <p>For the whistleblower program, a review of the case files verified that the documentation of worker statements were appropriate, consistent with the WIM Chapter 3 and is completed.</p>	Partially Completed	<p>Open for Enforcement Files. (11/14/14)</p> <p>Completed for Whistleblower Files. (03/22/2015)</p>
FY 2013-09	The whistleblower complainant was not provided as an opportunity to respond to the employers defenses, as required by the WIM Chapter 1(XI)(A)(2).	Develop and adopt a procedure to ensure that the complainant is provided an opportunity to respond to the employer's defense in line with the WIM Chapter 1(XI)(A)(2).	Direction was provided to the whistleblower staff during monthly meetings and included an emphasis on giving complainants the opportunity to respond to the employer's defenses. A review of the discrimination files found documentation indicating that the complainant was provided an opportunity to respond to the employers' defenses in accordance with the WIM Chapter 1(XI)(A)(2).	03/22/2015	Completed

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 NVOSHA Follow-up FAME Report

FY 2013-10	NV OSHA remedies did not include or contemplate awarding punitive and/or compensatory damages to the whistleblower complainant in a recommended merit determination, as required, by the WIM Chapter 6(II) (C and D).	Develop and adopt a procedure to award punitive and/or compensatory damages in recommended merit determinations.	State Plan and federal solicitors discussed and reviewed the Nevada statute 618.445 and 11(c) in the OSH Act. They determined punitive damages were not authorized by the Nevada statute and the OSH Act was silent on the issue. OSHA's authority to order punitive and compensatory damages comes from federal case law, not the statute; therefore, this item is closed.	03/22/2015	Closed
FY 2013-11	Discrimination investigations are often finalized where a more thorough investigation and analysis is warranted in order to meet the 90-day deadline.	Revise policies and procedures to ensure the 90-day deadline is directory rather than an absolute deadline to conclude an investigation.	The practice of prematurely closing case files at the 90 day deadline was stopped. The cases reviewed indicated that discrimination investigations were not finalized in 90 days when a more thorough investigation and analysis were warranted. In fact, one case took 133 days to finalize, which was entirely appropriate given the complexity of the case.	03/22/2015	Completed

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 NVOSHA Follow-up FAME Report

FY 2013-12	The final reports in some discrimination case files did not cite to exhibits, as required by WIM Chapter 5(IV)(B).	Develop and adopt a procedure to ensure that final reports cite to exhibits.	The State Plan committed to developing a standardized approach to finalizing case files which included citing to exhibits by December 31, 2014. A preliminary review of four case files that required final reports, found three that failed to cite to exhibits.	Not Completed	Open (03/22/2015)
FY 2013-13	Discrimination investigations were not properly analyzed and documented in the final report, as required in WIM Chapter 3(VI) and NVOSHA's draft manual 3(b and e).	Where applicable, develop procedures to ensure the proper analysis of adverse action, nexus, temporal, proximity, resolution, of discrepancies, constructive discharge and/or company's defense within the final report.	Three of those four case files reviewed included proper analysis and documentation in the final report, as required in WIM Chapter 3(VI) and NVOSHA's draft manual Chapter 3(b and e). Four of the ten cases reviewed required the analysis detailed in WIM Chapter 3(VI) and NVOSHA's draft manual 3(b and e). Since only one case file lacked the proper analysis and documentation in the final report, it is being changed to an observation so further review can be conducted before closing. The case was dismissed and characterized as a withdrawal for "lack of protected activity." However, the complaint should have warranted further analysis. In addition, there was no indication that NVOSHA made any attempt to refer this complaint to OSHA under the Food Safety Modernization Act (FMSA).	Not Completed	Converted to Observation (03/22/2015)

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 NVOSHA Follow-up FAME Report

FY 2013-14	Documentation of damage analysis was missing and/or incomplete in discrimination case files as required by WIM Chapters 5(IV)(B)(5) and 6(II).	Develop procedures to ensure the documentation of damage analysis within the case file.	Because of limited remedies available for complainants under the state statute, damage analyses are not currently used. This is to be developed with the development of increased remedy structures. Two of the ten case files reviewed required documentation of damage analysis as explained in the WIM Chapters 5(IV)(B)(5) and 6(II). Neither of those cases included documentation for a proper and complete damage analysis.	Not Completed	Open (03/22/2015)
FY 2013-15	Workers 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.	NVOSHA will continue to pursue all options to ensure that CSHOs are compensated competitively. The legislature approved a pay increase for CSHOs effective July 1, 2014. However, its impact is uncertain at this time and will be closely monitored for the next two years. The State Plan's merit pay freeze and furloughs are still in effect. NVOSHA continues to struggle with high turnover.	Not Completed	Converted to Observation (11/14/14)

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report

FY 2014 NVOSHA Follow-up FAME Report

OSHA is in the process of moving operations from a legacy data system (NCR) to a modern data system (OIS). During FY 2014, federal OSHA case files were captured on OIS, while most State Plan case files continued to be processed through NCR. Nevada opened 1,704 enforcement inspections in FY 2014. Of those, 1,666 inspections were captured in NCR, while 38 were captured in OIS. The SAMM Report, which is native to IMIS (a system that generates reports from the NCR), is not able to access data in OIS. Additionally, certain algorithms within the two systems are not identical. These challenges impact OSHA's ability to combine the data.

For FY14 we will use a format very similar to the one used for FY13. Below is an explanation of which date OSHA was able to use when calculating each metric.

- a. Measures 1 & 2 will use State Plan data for FY14 as captured in NCR and compared to the State Plan's negotiated number. Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- b. Measures 20a-b, 23, and 24 will use State Plan data for FY14 as captured in NCR and compared to the historical FY2011 national average (FY09-11). Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- c. Measures 5, 9, 11, 17, 19, 21, and 25 will use State Plan data for FY14 as tabulated manually to include both OIS and NCR data and compared to the fixed/negotiated/national numbers associated with them.
- d. Measures 13, 14 and 16 will be extracted from NCR (OIS conversion should not impact). National data will be pulled from WebIMIS for FY12-14.
- e. Measures 18a-e will use State Plan data for FY14 as captured in NCR. Any data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR. Much like FY13, no national data will be available for comparison.
- f. Measure 22 will be excluded from the report (other than as a placeholder to demonstrate that it is one of the agreed upon metrics, but not one we can currently generate).
- g. Measure 4 will use State Plan data for FY 14 as captured in NCR.

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report

FY 2014 NVOSHA Follow-up FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Nevada			FY 2014	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	5.3	14 days	State Plan data taken directly from SAMM report generated through IMIS. The reference/standard is a negotiated number for each State Plan.
2	Average number of work days to initiate complaint investigations	3.7	5 days	State Plan data taken directly from SAMM report generated through IMIS. The reference/standard is a negotiated number for each State Plan.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100.0%	100%	State Plan data taken directly from SAMM report generated through IMIS.
5	Number of denials where entry not obtained	2	0	State Plan data taken directly from SAMM report generated through IMIS and Open Inspection OIS report.
9a	Average number of violations per inspection with violations by violation type	1.4	SWR: 2.0	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2012-2014.
9b	Average number of violations per inspection with violations by violation type	1.3	Other: 1.2	

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report

FY 2014 NVOSHA Follow-up FAME Report

11	Percent of total inspections in the public sector	2.7%	5.00%	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS. The reference/standard is derived from the FY 14 grant application.
13	Percent of 11c Investigations completed within 90 calendar days	83%	100%	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
14	Percent of 11c complaints that are meritorious	36.23%	24.8%	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
16	Average number of calendar days to complete an 11c investigation	70.7 days	90 days	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
17	Planned vs. actual inspections - safety/health	1174/492	670/330	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS; the reference standard number is taken from the FY 2014 grant application. The reference/standard is a negotiated number for each State Plan.
18a	Average current serious penalty - 1 -25 Employees	1284.7		State Plan data taken directly from SAMM report generated through IMIS.
18b	Average current serious penalty - 26-100 Employees	2106.28		
18c	Average current serious penalty - 101-250 Employees	2592.46		
18d	Average current serious penalty - 251+ Employees	3005.83		
18e	Average current serious penalty - Total 1 - 250+	1865.01		

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report

FY 2014 NVOSHA Follow-up FAME Report

	Employees			
19	Percent of enforcement presence	3.9%	1.5%	Data is pulled and manually calculated based on FY 2014 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
20a	20a) Percent In Compliance – Safety	48.9%	29.1%	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2014 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
20b	20b) Percent In Compliance – Health	56.3%	34.%	
21	Percent of fatalities responded to in 1 work day	84%	100%	State Plan data is manually pulled directly from IMIS for FY 2013.
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days	n/a		Data not available.
23a	Average Lapse Time - Safety	40.2 days	43.4 days	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
23b	Average Lapse Time - Health	51.6 days	57.1 days	
24	Percent penalty retained	62.3%	66%	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report

FY 2014 NVOSHA Follow-up FAME Report

25	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State Plan data taken from SAMM report generated through IMIS and the Inspection where Workers Involved report generated in OIS.
-----------	---	------	------	--