

FY 2015 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report

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



Evaluation Period: October 1, 2014 – September 30, 2015

Initial Approval Date: January 4, 1974
Program Certification Date: April 18, 2000
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, Trends, and Progress.....	3
	B. State Plan Introduction.....	3
	C. Data and Methodology.....	4
	D. Findings and Recommendations.....	4
II.	Major New Issues.....	4
III.	Assessment of State Plan Performance.....	5
	A. State Plan Administration.....	5
	B. Enforcement.....	6
	C. Review Procedures.....	9
	D. Standards and Federal Program Changes (FPCs) Adoption.....	10
	E. Variances.....	12
	F. State and Local Government Worker Program.....	12
	G. Workplace Retaliation Program.....	13
	H. Complaints About State Program Administration (CASPA)s.....	14
	I. Voluntary Compliance Program.....	15
	J. State and Local Government 23(g) On-Site Consultation Program.....	15
IV.	Assessment of State Plan Progress in Achieving Annual Performance Goals.....	15
V.	Other Special Measures of Effectiveness and Areas of Note.....	17

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 2014 Findings and Recommendations.....	C-1
Appendix D	– FY 2015 State Activity Mandated Measures (SAMM) Report.....	D-1

I. Executive Summary

A. State Plan Activities, Trends, and Progress

The Federal Annual Monitoring and Evaluation (FAME) report assesses the Nevada Occupational Safety and Health Administration (NVOSHA) program performance during Fiscal Year (FY) 2015. Performance is measured by criteria mandated by the Occupational Safety and Health Administration (OSHA), by progress toward resolving recommendations from the FY 2014 FAME and by achievement of the annual performance plan and five-year strategic goals. As part of this comprehensive evaluation, workplace retaliation and enforcement case files were also reviewed.

This was the fifth and final year of NVOSHA's Five-year Strategic Plan. Overall, the program met their goals to reduce workplace injuries and illnesses within the state, change workplace culture through outreach initiatives, and train their staff. Progress was made in addressing many of the findings from the FY 2014 Corrective Action Plan (CAP). Changes in inspection procedures that were made in the fourth quarter of FY 2015 should lead to improvements in the average number of serious violations per inspection and high number of in-compliance inspections. Those changes were as a result of the findings and recommendations in the FY 2014 Report, published in the third quarter of FY 2015. A focused follow-up case file review will be conducted to see if these changes have had a positive impact.

NVOSHA's ability to adopt either 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 18, 2014. This new requirement went into effect on January 1, 2015, but cannot be adopted until the legislature meets again in 2017. This regulation requires a legislative change to the statute unlike most of the standard changes which are easily adopted within the required timeframe.

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. Steve George is the State Plan designee and administrator of DIR, and Jess Lankford is the Chief Administrative Officer (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 additional offices located in Reno.

The grant agreement established the final award to fund the program at \$7,786,675 (\$1,457,900 federal, \$1,457,900 State Plan matching, and \$4,870,875 from 100 percent State Plan funds). This funding included an increase award of \$6,600 to the final federal base award, which the State Plan matched. No federal funds were lapsed.

C. Data and Methodology

An on-site review of case files was conducted to determine the effectiveness of the program to assure safe and healthful working conditions for employees, to ensure they are following their policies and procedures, and to verify outstanding items from the FY 2014 Corrective Action Plan (CAP). Information and data referenced in this report were derived from Computerized State Activity Mandated Measures (SAMMs) attached as Appendix D; the FY 2015 23(g) Grant; Integrated Management Information System (IMIS) reports; OSHA Information System (OIS) reports; discussions with state staff during the quarterly meetings and the on-site audit; and the case file review.

The sample size was determined based on the overall number of inspections opened and closed during FY 2015. The number of programmed and un-programmed inspections selected was based on the overall ratio of total programmed and un-programmed inspections conducted. Inspections were selected randomly. A total of 102 enforcement case files were reviewed. An additional 10 randomly selected older case files that had been open longer than one year were reviewed to ensure there was no outstanding abatement. In addition, seven fatality inspection case files closed during the year were added to the sample for review. As part of the onsite review, OSHA conducted a monitoring study to determine the cause of the high in-compliance rate.

For the workplace retaliation section of the audit, the cases were chosen based on type (dismissed/non-merit, settled, settled other, withdrawn) and by investigator.

D. Findings and Observations

A total of seven findings and five observations are identified in this FY 2015 FAME Report. Two findings are related to enforcement and five are related to the workplace retaliation program. Six findings were new. Of the ten findings identified last fiscal year: four were completed, five were converted to observations, and one remains open. All three observations identified last fiscal year were closed based on the results of federal monitoring.

Specific details of the findings and recommendations are provided in Appendix A; observations are provided in Appendix B; and the status of the FY 2014 Findings and Recommendations are provided in Appendix C.

II. Major New Issues

There were no major new issues.

III. Assessment of State Plan Performance

A. STATE PLAN ADMINISTRATION

1) Training

A training unit, created three years ago, was instrumental in the state's achievement of their training goals. Eight training modules were developed to address internal policies and recent workplace accidents. The training conducted included violation classification, penalties, skylight hazard awareness, material handling, and communication towers. In addition, a two-month orientation program was implemented for newly hired CSHOs. This includes conducting mock-up inspection training. The CSHOs' supervisors observed the training and documented the completion of the exercise.

2) Funding

The initial award to fund the program was \$7,773,475 (\$1,451,300 federal and \$6,322,175 state funds). An additional \$6,600 was added to the federal base on April 14, 2015. The State Plan matched this increase. The total final award was \$7,786,675. No funds were lapsed this year.

The grant provided funding for full-time staff comprised of 6.55 managers, 7 first line supervisors, 31 safety compliance officers, 13 health compliance officers, 1 Discrimination Investigator, 16.20 clerical staff, 6.75 trainers, 1.40 public sector safety and health consultants, and 0.45 compliance assistance specialists.

3) Staffing

There are a total of 72 full-time equivalent positions. These positions include 31 safety and 13 health compliance safety and health officers (CSHO's), surpassing the benchmark of 11 safety and 5 health CSHOs.

4) Information Management

OIS was implemented at the beginning of FY 2015. As new OIS reports became available these were used to track mandated activities and progress toward meeting state goals.

5) State Internal Evaluation Program (SIEP) Report

Previously IMIS reports were the primary tool used for internal evaluation. Recognizing the need to improve the quality of their program, supervisors were required to complete four on the job evaluations with each compliance officer each year and conduct an internal review of all contested cases. At this time there is no formal SIEP.

B. ENFORCEMENT

1) Complaints

The state took an average of 6.0 days to respond to a complaint inspection and an average of 3.8 days to initiate an inquiry letter. Both of these measures were well within the negotiated goals (SAMM 1 and 2) of 7 days to initiate a complaint inspection and 5 days to initiate a complaint investigation. A total of 14 alleged imminent danger complaints/referrals were responded to within one day (SAMM 3).

During the case file review, it was noted that complaint inspections were missing letters notifying complainants of the inspection results. An OIS report verified only 121 of the 468 complaint inspections conducted indicated the complainant was notified of inspection results.

Finding 2015-01: Complainants were not provided with information on the results of the inspection in 121 of the 468 (25.8%) complaint inspections conducted.

Recommendation 2015-01: NVOSHA should ensure that complainants have been notified of inspection results.

2) Fatalities

OSHA reviewed seven fatality investigations and determined all investigations were opened within one day (SAMM 10). While many of these fatalities occurred in high hazard industries (construction and manufacturing), four of these inspections were in compliance.

3) Targeting and Programmed Inspections

A total of 1,593 safety and health inspections were conducted during FY 2015. The goal was exceeded by 493 inspections. The State Plan adopts most Federal National Emphasis Programs (NEPs) with a few exceptions for industries not present in Nevada. The Local Emphasis Programs (LEPs) are based on the Bureau of Labor Statistics (BLS) for industries with high injury and illness rates. These LEPs targeted Wood Product Manufacturing, Fabricated Metals, Plastic and Rubber Manufacturing, Asbestos, Casinos/Motels/Hotels, and Medical and Dental Clinics.

4) Citations and Penalties

Nevada's average current penalty per serious violation in the private sector (SAMM 8 Total: 1-250+ workers) was \$1081.00 in FY 2015. The Further Review Level (FRL) is -25% of the National Average (\$2,002.86), which equals \$1,502.14. Penalty levels are at the core of effective enforcement, and all State Plans are therefore required to adopt penalty policies and procedures that are "at least as effective as" (ALAE) those contained in the FOM, which was revised on October 1, 2015 to include changes in the penalty structure in Chapter 6 – Penalty and Debt Collection.

Note that with the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA is now required to raise its maximum penalties in 2016 and to increase penalties according to the Consumer Price Index (CPI) each year thereafter. State Plans are required to follow suit. As a result of this increase in maximum penalties, OSHA will be revising its penalty adjustment factors in Chapter 6 of the FOM. Following completion of the FOM revision, and after State Plans have the opportunity to adopt the required changes in a timely manner, OSHA will be moving forward with conducting ALAE analysis of State Plan penalty structures, to include evaluation of average current penalty per serious violation data.

There continued to be a high percentage of in-compliance inspections (57.9% for safety and 56% for health) (SAMM 9). The national average is 28.5% for safety and 33.6% for health. As shown in the chart below, safety in-compliance rate has risen steadily since 2013. Contributing to this increase are factors such as opening inspections with every construction employer on a multi-employer worksite, regardless of whether they have workers exposed to a hazard; not expanding the scope of complaint, referral, and fatality inspections to include serious hazards in plain view that may not be directly related to the complaint or referral; and an informal complaint/referral policy that requires an inspection for all allegations of serious hazards and formal complaints (see Nevada Operations Manual, page 155).

Table 1
In-Compliance Rate

Federal Fiscal Year	2013	2014	2015
Safety	39.6%	48.9%	57.9%
Health	51.8%	56.3%	56.0%

In response to this problem, NVOSHA changed its inspection procedure for multi-employer worksites, increased the number of programmed inspections, and changed their complaint, referral and fatality policies. However, these changes were adopted in the fourth quarter of FY 2015 and therefore the results are not evident yet in the FY 2015 data.

Limiting the scope of inspection and the informal complaint/referral policy has also impacted the number and percentage of serious, willful and repeat violations (SWR). The SWR violation rate was 1.2 violations per inspection, which is more than 20% below the national average of 1.92. (SAMM 5) However, NVOSHA exceeded the national average of .87 other-than-serious violations per inspection with violation, with their average of 1.19 other-than-serious violations per inspection. (SAMM 5). In addition, the State Plan is recognized for the total of eight cases with willful violations cited.

OSHA conducted a monitoring study where ten different compliance officers were accompanied to see if they identified and cited plain view hazards during inspections. These accompanied visits were done 11/17/15 - 11/19/15 and 11/24/15 -11/25/15. With the new changes to their policies and procedures, it was noted that compliance officers are now citing hazards in plain view even though they were not related to the complaint, referral or fatality.

Based on the state's actions at the end of the year and the results of the monitoring study, finding FY 2014-01 will be changed to address the in-compliance rate of all inspections, and converted to an observation. The case file review did not reveal evidence to support continuation of Findings FY 2014-02 and FY 2014-05; therefore these findings were completed. An onsite visit will be conducted to verify if there is continued progress in reducing the in-compliance rate and increasing the number of serious violations.

Observation 2015-OB-01 (FY 2014-01): The in-compliance rate of all inspections was 57.9% for safety and 56.0% for health.

Federal Monitoring Plan 2015-OB-01 (FY 2014-01): OSHA will monitor the high in-compliance rate.

NVOSHA's safety citations had a lapse time of 40.7 days and health citations were on average issued in 45.9 days. The corresponding national average reference standard is 42.8 for safety and 53.5 for health (SAMM 11) and the State Plan performed well for this measure.

NVOSHA appropriately pursued willful and repeat violations. NVOSHA had eight inspections with a total of 12 willful violations. These violations were well documented and penalties were issued in accordance with the Nevada Operations Manual (NOM). In addition there were 34 inspections with a total of 42 repeat violations issued. Classification of violations was not identified as a problem during the case file review. This completes FY 2014-05.

Industrial Hygiene Sampling was conducted in five case files reviewed. Air monitoring was taken for the appropriate amount of time in determining compliance with the 8-hour time weighted average exposure limits. No over-exposures were found. There were two case files identified where sampling should have been conducted. Given that there was no evidence of sampling being conducted for only 15-30 minutes as reported in the FY 2013 FAME, Finding FY 2014-03 is now considered completed.

The case files reviewed noted adequate documentation to support the violations. Supervisors were reviewing case files to ensure the correct standard for the hazard is cited and in accordance with policy. Finding FY 2014-04 is now considered completed.

5) Abatement

The case file review found appropriate abatement periods and overall timeliness. There were four instances out of 29 cases (13.8%) where citations did not have evidence of abatement in the case file. This is an improvement when compared to the 35 percent of files found without evidence of abatement during the 2013 comprehensive review. Given the improvement noted in the case file reviews, finding FY 2014-06 will be changed to an observation.

Observation 2015-OB-02 (FY 2014-06): Four of 29 case files (13.8%) where citations were issued did not have evidence of abatement in the case file

Federal Monitoring Plan 2015-OB-02 (FY 2014-06): OSHA will monitor that abatement certification documents received from the employer are in each case file.

There were no follow-up inspections conducted.

6) Worker and Union Involvement

A review of the NOM provides adequate policies and procedures addressing worker involvement during inspection process. During the case file review it was determined worker interviews were not being conducted within the guidelines of the NOM and documentation was not completed by the compliance officer. There were 12 out of 102 case files (12%) where there was no evidence of employee interviews. According to the SAMM 13 exception report there were 60 instances where no walk-around or employee-interview occurred. According to an OIS Report run on 3/21/2016, there were 53 inspections where there was no employee walk-around or employee interview conducted.

Finding 2015-02: There was no evidence that employee interviews were conducted in 12 out of 102 case files (12%) reviewed.

Recommendation 2015-02: NVOSHA should ensure that employee interviews are conducted in all inspections.

C. REVIEW PROCEDURES

1) Informal Conferences

Employers are granted penalty reductions for size, history, good faith and quick-fix. During the informal conference, penalties, on average, are retained at a rate of 56.4% (SAMM 12) which is just outside the acceptable range of 57.8% to 78.2%.

Informal conference procedures are equivalent to OSHA's. However, NVOSHA has an additional provision that gives the employer the opportunity to have the case reviewed by the CAO prior to a review board hearing.

There were no issues with NVOSHA's violations vacated and/or reclassified and penalty reductions. The informal conference notes documented the rationale for any changes and the settlements were appropriate. Informal settlement provisions provided employers the right of review and, worker or their representatives, the opportunity to participate in the proceedings.

2) Formal Review of Citations

The five members of the Occupational Safety and Health Review Board are appointed by the Governor and are made up of two members from management, two from labor, and a representative from the general public. Hearings are open to the general public and Review Board decisions are available to the public upon request. Nevada's Administrative Rules

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

The Board provides administrative review of appeals for contested citations issued by Nevada OSHA and affected workers are entitled to participate in hearings before the Board. Decisions of the Board may be appealed to the appropriate State District Court. Appeals from the Nevada District Courts go to the states supreme court. There are at least two cases the state appealed a Board decision to the District court.

D. STANDARDS AND FEDERAL PROGRAM CHANGES (FPCs) ADOPTION

1) Standards Adoption

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

Federal Standard 29 CFR 1926.1200 Final Rule for Confined Spaces in Construction was adopted timely. The Occupational Injury and Illnesses Recording and Reporting Requirements final rule was published in the Federal Register on September 18, 2014. The State Plan indicated this rule required a statute change and could not be adopted until the Nevada legislature meets again in 2017. The State Plan did not adopt 29 CFR 1904 Occupational Injury and Illnesses Recording and Reporting Requirements (9/19/2014) within the six month timeframe. Finding FY 2014-07 combined late response and adoption for both standards adoption and Federal Program Changes and is being separated into a two observations in this year’s FAME.

Table 2
Status of 2015 Federal Standards Adopted

Standard:	State Response Date:	Intent to Adopt:	Adopt Identical:	Adoption Due Date:	State Adoption Date:
29 CFR 1926.1200 Confined Space in Construction (05/04/2015)	07/04/2015	Yes	Yes	02/04/2016	02/04/2016
29 CFR1904 Occupational Injury and Illnesses Recording and Reporting Requirements. (9/19/2014)	12/05/2014	Yes	No	03/19/2015	Not yet adopted

29 CFR 1926 Cranes and Derricks in Construction Operator Certification Final Rule (09/26/2014)	09/30/2015	No	N/A	NA	Adoption not Required
--	------------	----	-----	----	-----------------------

Observation 2015-OB-03: The state did not adopt 29 CFR 1904 Occupational Injury and Illnesses Recording and Reporting Requirements (9/19/2014) within the six month timeframe.

Federal Monitoring Plan 2015-OB-03: OSHA will monitor the adoption of 29 CFR 1904 Occupational Injury and Illnesses Recording and Reporting Requirements (9/19/2014).

2) OSHA/State Plan-Initiated Changes

Eight Federal Program Changes (FPCs) were issued during this evaluation period and only three were responded to with notices of intent in a timely manner. The FPCs regarding federal compliance and/or training and education directives; TED 03-01-004 Special Government Employee Program Policies and Procedures Manual for the OSHA Voluntary Protection Programs (VPP) Directive (07/30/2015); CPL 02-03-005 Whistleblower Investigations Manual; CPL 03-00-019 National Emphasis Program on Amputations. CPL 03-00-018 Revision - National Emphasis Program – Primary Metal Industries have not been responded to regarding the intent to adopt. The response for adoption of CPL 02-01-057 Compliance Directive for the Cranes and Derricks in Construction Standard was late and has still not been adopted. There were no State Plan-initiated changes during this evaluation period.

The CPL 02-02-078 Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis, and the CPL 02-02-079 2015 784 Inspection Procedures for the Hazard Communication Standard were responded to and adopted timely. The TED 04-01-002 2015 804 OSHA Alliance Program Directive was not adopted because NVOSHA does not plan to develop an Alliance Program at this time.

Table 3
Status of Federal Program Changes (FPCs) Adoption

FPC Directive/Subject:	State Response Date:	Intent to Adopt:	Adopt Identical:	Adoption Due Date:	State Adoption Date:
CPL 02-01-057 Compliance Directive for the Cranes and Derricks in Construction Standard (10/17/2014)	9/25/2015 (late)	Yes	Pending	12/29/2014	Pending submission of plan change
CPL 03-00-018 Revision – National Emphasis Program – Primary Metal Industries (10/20/2014)	Pending	Pending	Pending		Pending submission of plan change
CPL 02-03-005 Whistleblower Investigations Manual (04/21/2015)	Pending	Pending	Pending		Pending submission of plan change

CPL 02-02-078 Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis (06/30/2015)	08/30/2015	Yes	Yes	12/30/2015	12/30/2015
CPL 02-02-079 Inspection Procedures for the Hazard Communication Standard (07/09/2015)	09/09/2015	Yes	Yes	01/09/2016	01/09/2016
TED-04-01-002 OSHA Alliance Program Directive (07/29/2015)	09/29/2015	No	No	N/A	N/A
TED-03-01-004 Special Government Employee Program Policies and Procedures Manual for the OSHA Voluntary Protection Programs Directive (07/30/2015)	09/23/2015	No	No	N/A	N/A
CPL 03-00-019 National Emphasis Program on Amputations (06/30/2015)	09/24/2015	Yes	Yes	12/30/2015	12/30/2015

Observation 2015-OB-04: NVOSHA’s response to Federal Program Changes for two directives has not been submitted.

Federal Monitoring Plan 2015-OB-04: OSHA will monitor the response on the State’s intent to adopt. If the intent is to adopt equivalent but not identical, submit the federal program changes.

E. VARIANCES

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

F. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

Public Administration comprises five percent of the state’s employment. A total of 39 inspections (2.45 percent of inspection activity) were conducted in the state and local government sector. This fell short of the projected goal of 50 state and local government inspections and the negotiated reference standard of 3 percent. The process and procedure for conducting inspections in the state and local government sector are the same as the private sector including the issuance of penalties.

NV Safety Consultation and Training Section (NV SCATS) projected 30 state and local government sector visits. This is a decrease from last year’s projection of 50 visits. The state funded 1.30 public sector safety and health consultant positions in FY 2014 and 1.40 positions in FY 2015 of which 1.30 positions were filled in both years.

G. WORKPLACE RETALIATION PROGRAM

Claims of whistleblower retaliation for reporting occupational safety and health issues are investigated under statute 618.445. NVOSHA followed Federal OSHA's *Whistleblower Investigations Manual* (WIM) CPL 02-03-003 up to April 20, 2015 and CPL 02-03-005 April 21, 2015, thereafter. In FY 2015, a total of 82 whistleblower retaliation cases were closed. Twenty-five cases were reviewed during the onsite.

Based on the case file review, NVOSHA appears to have correctly applied their statute according to the evidence collected in the case files.

Two dismissed cases had no evidence complainants were provided a copy of all respondents' submissions that were responsive to the complaint. This may have affected the ability to conduct a complete investigation given complainants were not aware of what evidence they needed to provide to rebut respondents' assertions.

Similarly, in two dismissed cases, one being the same case discussed above, there was no evidence respondents were provided additional information given by the complainant that was pertinent to the resolution of the complaint. NVOSHA should conduct this document exchange to ensure respondents are aware of the evidence they need to provide to rebut the complainants' assertions.

Finding FY 2015-03: In three of seven dismissed/non-merit cases reviewed, information gathered during workplace retaliation investigations was not consistently shared between the Respondent and Complainant.

Recommendation FY 2015-03: NVOSHA should ensure that Complainant and Respondent documents are exchanged to allow for any additional information given by the either party that is pertinent to the resolution of the complaint.

There was no evidence closing letters were sent in a "settled" case and a "settled other" case. It is important to send closing letters to all complainants to ensure Complainants know about the determination and that NVOSHA's involvement in the investigation has ended.

Finding FY 2015-04: In two of twelve cases reviewed that either were coded as settled or settled other, closing letters were not sent.

Recommendation FY 2015-04: NVOSHA should ensure that closing letters are sent in all settled and settled other cases.

The closing letters for three dismissed cases did not document the factual findings, narrate the events relevant to the determination, and document the analysis of the elements of a violation. As a result, these complainants did not know why their cases were dismissed and had insufficient information to file their appeal. Moreover, three other complainants recently complained to OSHA that their cases were dismissed and the closing letters had the same deficiencies.

Finding FY 2015-05: In three of seven dismissed/non-merit cases reviewed, closing letters for dismissed worker retaliation cases did not document the factual findings, narrate the events

relevant to the determination, and document the analysis of the elements of a violation.

Recommendation FY 2015-05: NVOSHA should ensure that closing letters document the factual findings, narrate the events relevant to the determination, and document the analysis of the elements of a violation.

Information was not accurately entered in the WebIMIS database in eight cases reviewed. This included information such as: the filing date, adverse action date, the date the Report of Investigation (ROI) was submitted to the supervisor, and the date the supervisor approved the ROI. Not accurately entering data into the data base creates an opportunity for information to be lost and prevents the effective management of the program.

Finding FY 2015-06: In 8 of 25 cases reviewed, information on workplace retaliation investigations was not accurately entered into Web IMIS.

Recommendation FY 2015-06: NVOSHA should enter information into Web IMIS in an accurate manner.

It should be noted that finding FY 2014-09, which addressed a deficiency to cite to evidence in the final report, was closed because OSHA did not find evidence of its re-occurrence during the file review. The remaining open finding (FY 2014-10) addressed the documentation of damage analysis for merit/litigation cases. This finding could not be addressed as there were no merit cases to review and is being changed to an Observation until it can be assessed.

Observation 2015-OB-05 (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).

Federal Monitoring Plan 2015-OB-05 (FY 2014-10): OSHA will monitor procedures to ensure the documentation of damage analysis is within the case file.

In three workplace retaliation case files reviewed, interview statements were not documented. Since this was a finding in FY 2014, that finding remains open.

Finding 2015-07 (FY 2014-08): Three safety and health retaliation 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 2015-07 (FY 2014-08): NVOSHA should develop procedures to ensure that safety and health enforcement files document worker statements in the case file and insert in the draft manual.

H. COMPLAINTS ABOUT STATE PROGRAM ADMINISTRATION (CASPAS)

One enforcement CASPA investigation was opened during the FY 2014-2015 time period. This CASPA found no merit in the allegations and was closed.

One whistleblower CASPA Appeal was opened in FY 2015 and is now closed. The whistleblower CASPA was directly related to Finding 2015-05 described in the Workplace Retaliation section of this report. At least two additional complainants filed for CASPA

consideration relating to the same issue, namely, that there was no explanation as to why their cases had been dismissed. These complaints did not meet the criteria for a CASPA; however, OSHA will be monitoring future complaints generated due to this finding.

I. VOLUNTARY COMPLIANCE PROGRAM

The Nevada Voluntary Protection Program (VPP) is consistent with OSHA policies and has 10 sites in the program. During FY 2014, one VPP site participant was awarded the Star. During FY 2015, one VPP application was received and reviewed, three recertification VPP audits were conducted, and one site participant was awarded the Star.

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

The 23(g) state and local government consultation activities were conducted by SCATS. There were no issues of concern with the 23g public sector consultation program. A total of 29 initial visits were completed during this monitoring period of which 27 visits were in high hazard establishments. Public administration makes up for five percent of the workforce.

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

This was the fifth year of the Five-year Strategic Plan. The FY 2015 Annual Performance Plan was developed and submitted as part of the State Plan's grant application for federal funds. The following is an assessment of NVOSHA's performance toward meeting its FY 2015 annual performance goals and the state's progress in achieving its FY 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) rate by 1 percent.

Outcome Measures and Results:

- Conduct 40% of inspections in the construction industries. The State Plan met this goal; 44% of their inspections were in the construction industries according to the SOAR.
- Conduct 40% of inspections in the manufacturing industries. The State Plan did not meet this goal; 14 % of their inspections were in the manufacturing industries according to the SOAR.
- Conduct 20% of inspections in other industries. The State Plan exceeded this goal; 42% of their inspections were in the other industries according to the SOAR.

- Issue inspections where 50% of these had S/W/R citations. The State Plan did not meet this goal; only 23% of the inspections issued had S/W/R citations.
- Decrease the DART rate from CY 2013 to CY 2014 by 1%. The State Plan did not meet this goal, as the DART Rate stayed the same.

**Table 4
DART Rates**

Industry	2008 DART Rate Baseline	2013 versus 2014 DART Rate (Percent Change)	2008 versus 2014 DART Rate (Percent Change)
Total All Industries	2.4	2.2 vs. 2.2 (0)	2.4 vs. 2.2 (-8%)

Assessment: The annual performance goal to reduce workplace injuries and illnesses within the state was not met. The state planned to distribute their inspections among various industries, but failed to focus targeting in the manufacturing industries. However, according to the SOAR, the 105 inspections of selected manufacturing industries resulted in 69 with serious hazards identified. Also according to the SOAR, of the 719 construction inspections, only 177 (25%) found serious, willful or repeat violations. Further, only 23% of the inspections issued had S/W/R citations. Finally, the reported DART rate showed no decrease from 2013 to 2014.

Performance Goal 1.2: Verify 94% of serious hazards are abated in a timely manner.

Outcome Measures and Results:

This measure was previously determined by SAMM 6. This goal was to verify violations were abated within 30 calendar days. The closest equivalent to this is the State Indicator Report (SIR) 3B. This measure determines the number of open, non-contested cases with incomplete abatement for greater than 60 calendar days. The SIR 3B Report run on 3/21/2016 shows there were 18 violations of open, non-contested cases with abatement incomplete in excess of 60 calendar days. This calculates to 98.9% of the 1,676 violations issued that were later verified as abated in a timely fashion.

Assessment:

The State Plan met its goal to verify that 94% of serious hazards were abated in a timely manner. Nearly 99% of hazards were verified as abated in a timely fashion.

Five-year Strategic Goal 1 Assessment: The annual performance goal to reduce workplace injuries and illnesses within the state was met. Overall, there was a decrease in the DART Rate by 8% over 5 years, exceeding the rate of 5% through FY 2015. The process of verifying hazards are abated has improved such that nearly 99% of hazards were verified as abated in a timely fashion.

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.

Outcome Measures and Results:

- Receive and review at least one VPP application. The state met this measure as one VPP application was received and reviewed.
- Conduct at least one VPP audit. The State Plan exceeded this measure; four VPP audits were conducted.
- Award at least one VPP Star Site. The state met this measure; one VPP star site was awarded.

One new VPP application was received for consideration and reviewed. In addition, one VPP star site was awarded for a total of 10 VPP Stars.

Assessment: This goal was met. The State Plan has successfully met all their metrics and added one new VPP site.

Five-year Strategic Goal 2 Assessment: This goal was partially met but only due to some companies who voluntarily withdrew. The State Plan successfully added at least one new VPP site per year over five years. However, two employers discontinued their VPP programs. The state currently has 10 VPP sites – just short of their five-year goal of 12 sites.

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

Performance Goal 3: Conduct field training and evaluate the performance of at least 60% of field-assigned compliance safety and health officers.

Outcome Measures and Results:

- Conduct field training contacts with 60% of the compliance officer staff. The state exceeded this measure. There were 26 of 39 compliance officers (67 percent) that were trained and evaluated on-site by the training section. Individuals on special assignment and vacant positions were not included in the calculation.

Assessment: This goal was met.

Five-Year Strategic Goal 3 Assessment: NVOSHA achieved or exceeded its goals for each of the fiscal years FY 2011-2015.

V. Other Special Measures of Effectiveness and Areas of Note

None.

Appendix A – New and Continued Findings and Recommendations
 FY 2015 NV OSHA Comprehensive FAME Report

FY 2015-#	Findings	Recommendations	FY 2014-#
FY 2015-01	Complainants were not provided with information on the results of the inspection in 121 of the 468 (25.8%) complaint inspections conducted.	NVOSHA should ensure that complainants have been notified of inspection results.	New
FY 2015-02	There was no evidence that employee interviews were conducted in 12 out of 102 case files (12%) reviewed.	NVOSHA should ensure that employee interviews are conducted in all inspections.	New
FY 2015-03	In three of seven dismissed/non-merit cases reviewed, information gathered during workplace retaliation investigations was not consistently shared between the Respondent and Complainant.	NVOSHA should ensure that Complainant and Respondent documents are exchanged to allow for any additional information given by the either party that is pertinent to the resolution of the complaint.	New
FY 2015-04	In two of twelve cases reviewed that either were coded as settled or settled other, Closing letters were not sent for two settled worker retaliation cases	NVOSHA should ensure that closing letters are sent in all settled and settled other cases.	New
FY 2015-05	In three of seven dismissed/non-merit cases reviewed, closing letters for dismissed worker retaliation cases did not document the factual findings, narrate the events relevant to the determination, and document the analysis of the elements of a violation.	NVOSHA should ensure that closing letters document the factual findings, narrate the events relevant to the determination, and document the analysis of the elements of a violation.	New
FY 2015-06	In 8 of 25 cases reviewed, information on workplace retaliation investigations was not accurately entered into Web IMIS.	NVOSHA should enter information into Web IMIS in an accurate manner.	New
FY 2015-07	Three safety and health retaliation 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).	NVOSHA should develop procedures to ensure that safety and health enforcement files document worker statements in the case file and insert in the draft manual.	FY 2014-08

Appendix B – Observations Subject to New and Continued Monitoring

FY 2015 NV OSHA Comprehensive FAME Report

Observation # FY 20XX-OB-#	Observation# FY 20XX-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2015-OB-01	FY 2014-01	The incompliance rate of all inspections was 57.9% for safety and 56.0% for health.	OSHA will monitor the high in-compliance rate.	Converted from Finding
FY 2015-OB-02	FY 2014-06	Four of 29 case files (13.8%) where citations were issued did not have evidence of abatement in the case file	OSHA will monitor that abatement certification documents received from the employer are in each case file.	Converted from Finding
FY 2015-OB-03	FY 2014-07	The state did not adopt 29 CFR 1904 Occupational Injury and Illnesses Recording and Reporting Requirements (9/19/2014) within the six month timeframe.	OSHA will monitor the adoption of 29 CFR 1904 Occupational Injury and Illnesses Recording and Reporting Requirements (9/19/2014).	Converted from Finding
FY 2015-OB-04	FY 2014-07	The state's response to Federal Program Changes for two directives has not been submitted.	OSHA will monitor the response on the State's intent to adopt. If the intent is to adopt equivalent but not identical, submit the federal program changes.	Converted from Finding
FY 2015-OB-05	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).	OSHA will monitor procedures to ensure the documentation of damage analysis is within the case file.	Converted from Finding
	FY 2014-OB-1	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).		Closed
	FY 2014-OB-2	Workers with three years of safety and health experience continue to leave employment with NVOSHA and SCATS for higher paying safety positions.		Closed
	FY 2014-OB-3	Based on the number of serious violations found during programmed inspections, the targeting system may not be getting CSHOs into high hazard workplaces.		Closed

Appendix C – Status of FY 2014 Findings and Recommendations

FY 2015 NV OSHA Comprehensive FAME Report

FY 2014 #	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
2014-01	Hazards were not identified nor were citations issued for a majority of construction inspections (55%)	The targeting system should be evaluated and adjusted to allow resources to be focused into workplaces where hazards are present.	NVOSHA reviewed and found targeting practices to be adequate. To address the high in-compliance rate in construction, NVOSHA changed its inspection procedures at multi-employer sites. District managers were instructed on 6/2/15 to limit inspections to contractors with employees who are actively involved with the project and/or potentially exposed to safety and health hazards.	3/25/2016	Converted to observation 3/25/2016
2014-02	During the case file review of complaint generated inspections, serious violations were not addressed as citations or in hazard alert letter. changes to	All observed serious hazards during an onsite inspection must be addressed by citation and/or hazard letter.	The “pre-determined criteria” in NOM Chapter 3, (page 3 "Inspection Scope") will be amended by administrative memo to expand the scope of the inspection. The training unit will develop training for changes to NOM and definitions associated with pre-determined criteria.	3/25/2016	Completed 3/25/2016
2014-03	Air monitoring for workers 8 hours 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 TWA PEL.	NVOSHA to ensure the documentation in case file includes rationale for sampling time, identified work tasks and employee assignment lengths to support limited sampling times. Finding 14-03 was addressed during management staff meeting 6/2/15.	3/25/2016	Completed 3/25/2016

Appendix C – Status of FY 2014 Findings and Recommendations
 FY 2015 NV OSHA Comprehensive FAME Report

2014-04	Incorrect standards were used to cite hazardous conditions. management staff me	Each case file must be carefully reviewed by the supervisor to ensure the correct standards are issued.	Supervisors received training on case file reviews. Additionally, supervisors will accompany and evaluate CSHOs during onsite inspections at least four times a year. This was implemented during 6/2/15 management staff meeting.	3/25.2016	Completed 3/25/16
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 violations are classified in accordance with the NOM, Chapter 4, Section II.	Supervisors received training on case file reviews. Supervisors will accompany and evaluate CSHOs during onsite inspections at least four times a year. This was implemented during 6/2/15 management staff meeting.	3/25/2016	Completed 3/25/2016
2014-06	There were case files that do not include the abatement certification information, received from the employer.	NVOSHA must ensure abatement certification documents, received from the employer, are included in the case file.	Informational memo from CAO will be sent to staff and topic discussed with management during monthly meeting.	3/25/2016	Converted to observation 3/25/2016
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 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	State submitted revisions to the following federal program changes by 10/15/15. CPL 02-00-148, 2009, Federal Operations Manual. The Nevada Operations Manual Revisions (NOM) was submitted November of 2010. This item is closed. CPL 02-01-052, 2011, Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents. The state adopted this FPC	3/25/2016	Converted to two observations 3/25/2016

Appendix C – Status of FY 2014 Findings and Recommendations
 FY 2015 NV OSHA Comprehensive FAME Report

		<p>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. In FY 2014, the State Plan did not submit the four delinquent plan changes.</p>	<p>identical on 03/08/12 and corrected its previously submitted email response. This item is closed.</p> <p>CPL 02-03-003, 2011, Whistleblower Investigations Manual (Nevada Whistleblower Manual Revisions). On 4/21/15 OSHA superseded this directive. The state was directed to ensure within 6 months their WB manual is equivalent. This item is closed.</p> <p>CPL 02-00-153, 2012, Communicating OSHA Fatality Inspection Procedures to a Victim's Family. The state revised the NOM to include this directive effective 2/1/13. This item is closed.</p> <p>29 CFR 1926, 2010, Cranes & Derricks in Construction (side by side comparison). State adopted identical with an effective date of 11/8/2010. This item is closed.</p>		
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),	Develop procedures to ensure all safety and health enforcement files document worker statements in the case file and insert in the draft manual.	Procedures will be included in the NV OSHA WB manual. 11c unit is completing thorough intake interviews which allows for a more detail oriented investigative process. 11c unit increased staffing by adding one investigator to allow more time for case development.	3/25/2016	Open 3/25/2016

Appendix C – Status of FY 2014 Findings and Recommendations

FY 2015 NV OSHA Comprehensive FAME Report

	3(VI)(E)(10), 3(VI)(H)(5), and 3(VI)(L)(1).		Completed and verified 3/22/15 for WB. All CSHO's and supervisors will be reminded that employee interviews must be properly documented in case files. Email was sent 11/6/15. This item is completed and awaiting verification.		
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.	All case files will be reviewed by the WB Chief Investigator to ensure completeness. Exhibits will be cited to support conclusions in both merit and non-merit cases.	03/25/16	Completed 03/25/2016
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 is within the case file.	The WB Chief Investigator and staff will ensure that case files include documentation showing how damages were determined (e.g., calculation for back-pay/overtime wages, and other work benefits).	03/25/2015	Changed to an Observation 03/25/2016

Appendix D – FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 NVOSHA Comprehensive FAME Report

OSHA is in the final stages of moving operations from NCR, a legacy data system, to OIS, a modern data system. During FY 2015, OSHA case files and most State Plan case files were captured on OIS. However, some State Plan case files continued to be processed through NCR. 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. In addition, SAMMs 5, 8, 9, 11, 12, 15, and 17 have further review levels that should rely on a three-year national average. However, due to the transition to OIS, the further review levels for these SAMMs in this year’s report will rely on a one-year national rate pulled only from OIS data. Future SAMM year-end reports for FY 2016 and FY 2017 should rely on a two-year national average and three-year national average, respectively. All of the State Plan and federal whistleblower data is captured directly in OSHA’s WebIMIS System. See the Notes column below for further explanation on the calculation of each SAMM. All of the Nevada State Plan’s enforcement data was captured in OIS during FY 2015. The Nevada State Plan opened 1,593 enforcement inspections, and they were all captured in OIS.

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Nevada - NVOSHA			FY 2015	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	6.04	14	State Plan data is pulled from OIS. Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	4.15	N/A	State Plan data is pulled only from OIS. This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	3.76	5	State Plan data is pulled from OIS. Further review level is negotiated by OSHA and the State Plan.

Appendix D – FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 NVOSHA Comprehensive FAME Report

2b	Average number of work days to initiate complaint investigations (federal formula)	.86	N/A	State Plan data is pulled only from OIS. This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 1.25	+/-20% of SWRU: 1.92	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
		Other: 1.19	+/-20% of Other: .87	
6	Percent of total inspections in state and local government workplaces	2.45%	+/-5% of 4.55%	State Plan data is pulled from OIS. Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
7	Planned vs actual inspections – safety/health	S: 1,161	+/-5% of S: 810	State Plan data is pulled from OIS. Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 432	+/-5% of H: 290	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,081.00	+/-25% of \$2,002.86	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.

Appendix D – FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 NVOSHA Comprehensive FAME Report

	a. Average current serious penalty in private sector (1-25 workers)	\$727.50	+/-25% of \$1,402.49	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,178.16	+/-25% of \$2,263.31	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	c. Average current serious penalty in private sector (101-250 workers)	\$1,729.88	+/-25% of \$3,108.46	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$3,186.96	+/-25% of \$3,796.75	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
9	Percent in compliance	S: 57.92%	+/-20% of S: 28.47%	State Plan data is pulled from OIS.
		H: 56.00%	+/-20% of H: 33.58%	Further review level is based on a one-year national rate, pulled only from OIS.
10	Percent of work-related fatalities responded to in one workday	100%	100%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
11	Average lapse time	S: 40.71	+/-20% of S: 42.78	State Plan data is pulled from OIS.
		H: 45.90	+/-20% of H: 53.48	Further review level is based on a one-year national rate, pulled only from OIS.
12	Percent penalty retained	56.42%	+/-15% of 67.96%	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.

Appendix D – FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 NVOSHA Comprehensive FAME Report

13	Percent of initial inspections with worker walk around representation or worker interview	96.61%	100%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	43%	100%	State Plan data is pulled from WebIMIS. Further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	35%	+/-20% of 24%	State Plan data is pulled from WebIMIS. Further review level is based on a three-year national average, pulled from WebIMIS.
16	Average number of calendar days to complete an 11(c) investigation	246	90	State Plan data is pulled from WebIMIS. Further review level is fixed for all State Plans.
17	Percent of enforcement presence	3.52%	+/-25% of 1.35%	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.