

FY 2020
Follow-up Federal Annual Monitoring Evaluation (FAME) Report

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



Evaluation Period: October 1, 2019 – September 30, 2020

Initial Approval Date: January 4, 1974
Program Certification Date: August 25, 1981
Final Approval Date: April 18, 2000

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I. Executive Summary

The purpose of this report is to assess Nevada's Occupational Safety and Health program for Fiscal Year (FY) 2020, and its progress in resolving outstanding findings from the FY 2019 Comprehensive Federal Annual Monitoring Evaluation (FAME) report. The agency responsible for enforcing Nevada's regulations is the Nevada Occupational Safety and Health Administration (NVOSHA), under the Division of Industrial Relations (DIR).

Nevada OSHA's efforts at meeting its strategic goals for FY 2020 were significantly hampered by the COVID-19 public health emergency. NVOSHA was tasked as lead agency for the development and enforcement of statewide mandates and guidance for business operations by the Governor. The State Plan experienced a 358% increase in complaints and referrals compared to the previous year due to reports of COVID-19 hazards in the workplace. Temporary office closures, staffing reductions, a statewide hiring freeze for the latter half of the fiscal year, and changing operational priorities mandated by the state's pandemic response operations resulted in several of the agency's strategic goals not being met. However, despite these factors, NVOSHA conducted significant enforcement activities to address COVID-19 hazards.

NVOSHA made significant progress to address two findings and five observations noted in the FY 2019 Comprehensive FAME Report and no new findings or observations were identified in this report. Corrective actions were implemented for all findings and observations (with one observation modified for continued monitoring) and are now awaiting on-site verification, scheduled as part of the FY 2021 comprehensive FAME.

II. State Plan Background

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

The Division of Industrial Relations (DIR) is the designated agency for administering the OSHA-funded enforcement program under the Nevada Occupational Safety and Health Administration (NVOSHA). Ray Fierro was the State Plan designee and administrator of DIR until March 30, 2020, then Victoria Carreon was appointed as the interim administrator of DIR and State Plan designee. Ms. Carreon became the administrator on July 6, 2020. Jess Lankford was the Chief Administrative Officer (CAO) of NVOSHA. The consultation program was administered through Todd Schultz, CAO of the Nevada Safety Consultation and Training Section (SCATS). The program is headquartered in Las Vegas with an additional office located in Reno.

The COVID-19 public health emergency resulted in Governor Sisolak implementing budgetary restrictions as a response to the dramatic decrease in government revenue. One of the restrictions was a statewide hiring freeze which prevented NVOSHA from filling vacant positions for the last two quarters of the fiscal year.

The NV OSHA enforcement program has jurisdiction and provides services to nearly 1.5 million workers in the state except for federal workers, the United States Postal Service (USPS), Tribal lands, military installations, and other areas of exclusive federal jurisdiction.

The enforcement program is funded under Section 23(g) of the Occupational Safety and Health Act, which also covers consultation and training for state and local government agencies. The initial federal FY 2020 base award to fund the 23(g) program was \$1,486,600. The state matched the federal funds and contributed an additional \$6,176,282 of 100% state funds, bringing the total award to \$9,149,482. An amendment increased the federal share of the grant by \$116,100. The state matched the federal funds and contributed an additional \$95,775, bringing the total award to \$9,477,457. The final expenditures were \$8,141,201.17 and \$1,336,255.83 of 100% state funds were not spent at the end of the grant year.

The difference between close out and the planned budget in the grant application for the 100% state funds (state overmatch) was primarily due to vacancies during the grant year. The grant application requires the budgeting of all grant Full Time Equivalents (FTE's) at 100% of their budgeted salaries and fringe benefits. The 23(g) grant funded 84.5 FTE, of which 79.3 FTEs were filled as of July 1st, 2020. Included in this total were 29 safety compliance officers, 13 health compliance officers, and 4 whistleblower investigators. NVOSHA continued to experience high turnover, and reported a rate of 14% for compliance safety and health officers during FY 2020.

State and local government agency consultation was provided under the 23(g) grant and private sector consultation was provided under the 21(d) Cooperative Agreement. The private sector consultation performance results will be covered in the FY 2020 Regional Annual Consultation Evaluation Report (RACER).

New Issues

The nationwide outbreak of COVID-19 presented Nevada workplaces with significant challenges to worker health. In response to the pandemic, Governor Steve Sisolak issued a series of public health emergency declarations intended to limit disease transmission and protect the state's economy. These declarations resulted in a temporary closure of most state offices.

Early in the state's pandemic response plan, the Governor tasked NVOSHA as a lead agency for the development and enforcement of statewide mandates and guidance for business operations. The agency's field efforts, including employees from other departments of the DIR, focused on identification, observation, and where necessary, enforcement of Nevada Revised Statute 618.375(2), which mandated employers "*...adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render such employment and places of employment safe and comply with all orders issued by the Division.*" As the response plan evolved, NVOSHA updated its enforcement efforts to include a targeting mechanism based upon information provided by the state's COVID-19 Mitigation and Management Task Force. Between April 1st and September 30th, Nevada OSHA issued 183 citations related to COVID-19 hazards, with initial penalties totaling \$1,072,862.

Simultaneously, NVOSHA saw an unprecedented increase in complaints and referrals from numerous sources alleging COVID-19 hazards for employees. This resulted in a 358% increase in un-programmed activities from the previous year. The majority of these reports were addressed

through the inquiry process.

OSHA received one significant complaint about state program administration (CASPA) in FY 2020. The CASPA was related to the NVOSHA enforcement policies developed in response to the COVID-19 pandemic. The CASPA was closed with no findings or recommendations on January 4, 2021, and OSHA found that NVOSHA followed its policies and procedures.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. This was a follow-up year, and as such, OSHA did not perform an on-site case file review associated with a comprehensive FAME. This strategy allowed the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report were based on information obtained from a variety of monitoring sources, including:

- State Activity Mandated Measures Report (SAMM, Appendix D, dated 12/04/2020)
- State Information Report (SIR, dated 11/09/2020)
- Mandated Activities Report for Consultation (MARC, dated 11/19/2020)
- Web Integrated Management Information System (WebIMIS)
- State OSHA Annual Report (SOAR, Appendix E)
- NVOSHA Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan

B. Findings and Observations

The State Plan made progress to address the previous two findings and five observations from the FY 2019 Comprehensive FAME Report. Corrective actions for both findings and all observations were completed by the State Plan and verification will be a focus of OSHA's FY 2021 comprehensive FAME review. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2019 finding and recommendation in detail.

FINDINGS (STATUS OF PREVIOUS AND NEW ITEMS)

Continued Findings

Finding FY 2020-01 (FY 2019-01): In FY 2019, in 7 of 14 (50%) case files where citations were reclassified and/or the penalty amount was reduced, the justification for the change was not documented in the case files.

Status: NVOSHA held a meeting with District Managers and staff regarding information that must be included on Informal Conference Worksheets, including the requirement to provide a

justification for all changes made during an Informal Conference. On July 31, 2020 the NVOSHA Administrator forwarded adequate documentation to OSHA. The State Plan's corrective action is considered completed, awaiting verification. A case file review is necessary to gather the facts needed to evaluate the progress on this finding. This finding will be a focus of next year's on-site case file review during the FY 2021 Comprehensive FAME and remains opens.

Finding FY 2020-02 (FY 2019-02): In FY 2019, in 4 of 8 (50%) case files where penalty reductions of greater than 50% were offered, the Chief Administrative Officer (CAO) (or designee) approval was not documented in the case files.

Status: NVOSHA held a meeting with District Managers and staff to inform them that the CAO's/designee's approval for penalty reductions greater than 30% during an Informal Conference must be documented in the case file. The Informal Conference Worksheet was modified to include a section which will indicate if a reduction (greater than 30%) was approved by the CAO/designee. On July 31, 2020 the NVOSHA Administrator forwarded adequate documentation to OSHA. Therefore, the State Plan's corrective action is considered completed, awaiting verification. A case file review is necessary to gather the facts needed to evaluate the progress on this finding. This finding will be a focus of next year's on-site case file review during the FY 2021 Comprehensive FAME and remains open.

OBSERVATIONS

One observation below is tied to a SAMM measure. Each SAMM has an agreed upon further review level (FRL), which can be either a single number, or a range of numbers above and below the national average. Appendix D presents NVOSHA's FY 2020 SAMM Report and includes the FRLs for each measure.

Continued Observations

Observation FY 2020-OB-01 (FY 2019-OB-01): In FY 2020, the citation lapse time for safety inspections (SAMM 11) increased each year for the past four years.

Status: The further review level (FRL) for citation lapse time for safety and health inspections (SAMM 11) was +/- 20% of the three-year national average. For safety inspections, the three-year national average was 50.58 days, with an FRL range of 40.46 to 60.70 days. NVOSHA had a safety lapse time of 68.49, which was 7.79 days above the upper end of the FRL range. NVOSHA's enforcement efforts towards the COVID-19 pandemic resulted in a continued increase in the average safety lapse time. The primary factors attributing to the increase included the closure of employer's physical offices, the coordination of virtual inspections and employer/employee interviews, and an increased time required for NVOSHA managers to review casefiles due to changing COVID-19 guidelines. The State Plan's safety lapse time remains a cause for concern. Therefore, OSHA will continue to monitor this metric during FY 2021.

For health inspections, the three-year national average was 60.39 days, with an FRL range of 48.31 to 72.47 days. NVOSHA had a health inspection lapse time of 46.89 days, which was 1.42 days below the FRL range. This means that health inspections were completed more quickly than the national average. Therefore, the citation lapse time for health inspections is not a cause for

concern and will no longer be tracked as part of this observation.

Observation FY 2020-OB-02 (FY 2019-OB-02): In FY 2019, in 3 of 32 (9.4%) of inspections with citations, the abatement was marked as “Corrected During Inspection;” however, the CSHO did not observe the abatement during the on-site portion of the inspection.

Status: A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2021 comprehensive FAME. This observation will be continued.

Observation FY 2020-OB-03 (FY 2019-OB-03): In FY 2019, in 4 of 44 (9.1%) case files, worker involvement was not documented in the inspection narrative or the OSHA 1A (Inspection Report).

Status: A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2021 comprehensive FAME. This observation will be continued.

Observation FY 2020-OB-04 (FY 2019-OB-04): In FY 2019, in 22 of 42 (52%) of administratively closed investigation files there was no evidence of a supervisory review noted in the files.

Status: A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2021 comprehensive FAME. This observation will be continued.

Observation FY 2020-OB-05 (FY 2019-OB-05): In FY 2019, in 5 of 13 (38%) of settlement cases, procedural guidance was not followed.

Status: A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2021 comprehensive FAME. This observation will be continued.

C. State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon FRL, which can be either a single number or a range of numbers above and below the national average. SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2020 SAMM Report and includes the FRLs for each measure. The State Plan’s performance in the following SAMMs were noted to be outside the FRLs:

SAMM 1a – Average number of work days to initiate complaint inspections

Discussion of State Plan data and FRL: The FRL listed in SAMM Appendix D was 14 days. The SAMM report showed the average number of work days to initiate complaint inspections was 16.07 days, which was 2.07 days higher than the FRL.

Explanation: The emergency response actions resulting from the Governor’s emergency declarations, including closure of state offices, negatively impacted the State Plan’s performance on measure 1a. A compounding factor was the additional time required for NVOSHA to coordinate virtual opening conferences with employers in cases where the employer’s physical office was closed. OSHA will continue to monitor this measure during quarterly meetings.

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

Discussion of State Plan data and FRL: The FRL listed in SAMM Appendix D was +/-5% of the grant negotiated goal of 3.33%, with a range of 3.17% to 3.50%. The SAMM report showed the percentage of total inspections in state and local government workplaces was 1.12%.

Explanation: The emergency response action resulting from the Governor’s emergency declarations, including closure of state offices, negatively impacted the State Plan’s performance on SAMM 6. The majority of physical locations of state offices remained closed for most of the year. OSHA will continue to monitor this measure during quarterly meetings.

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

Discussion of State Plan data and FRL: The FRL listed in SAMM Appendix D was +/-5% of the grant negotiated goal of 840 safety inspections and 360 health inspections. Based on those parameters, the range of acceptable data not requiring further review was from 798 to 882 safety inspections and 342 to 378 health inspections. The SAMM report showed there were 370 safety inspections, which was 428 inspections below the lower end of the FRL range. NVOSHA conducted 435 health inspections, which was 57 inspections above the upper end of the FRL range.

Explanation: NVOSHA’s effort at meeting their safety inspection goal was significantly hampered by the COVID-19 public health emergency. Temporary office closures, staffing reductions, and changing operational priorities mandated by the state’s pandemic response operations, all contributed to fewer opportunities to conduct safety inspections within the agency’s strategic priorities. NVOSHA realigned their focus towards the COVID-19 response, which resulted in them surpassing their health inspection goal. NVOSHA is to be commended for their efforts in this area. OSHA will continue to monitor this measure during quarterly meetings.

SAMM 8 – Average current serious penalty in private sector – total (1 to greater than 250 workers)

Discussion of State Plan data and FRL: The FRL listed in SAMM Appendix D was +/-25% of the three-year national average of \$2,964.86. The range of acceptable data not requiring further review was from \$2,223.65 to \$3,706.08. The SAMM report showed the average current serious penalty in the private sector-overall to be \$3,723.39, which was \$17.31 above the upper end of the FRL range.

Explanation: NVOSHA’s implementation of Nevada Senate Bill 40, legislation paralleling the federal annual adjustment to penalties, resulted in an increase in average penalties during FY 2020. Individually, the SAMM measures for the different size categories of employers were within the

applicable FRL ranges. NVOSHA's performance in this measure is laudable and OSHA will continue to discuss this metric during quarterly meetings.

SAMM 9 – Percent in compliance (Health only)

Discussion of State Plan data and FRL: The FRL listed in SAMM Appendix D was +/-20% of the three-year national average of 37.15% for health inspections. The range of acceptable data not requiring further review was from 29.72% to 44.58%. The SAMM report showed the percent in compliance for health inspections to be 44.92%, which was 0.34% above the top of the FRL range.

Explanation: NVOSHA's enforcement efforts towards the COVID-19 pandemic resulted in an increase in the number of health inspections performed, as noted in the discussion of SAMM 7. The State Plan's early enforcement efforts focused on employer awareness and workplace assessment. With the absence of a vertical standard, fewer citations were issued in the early days of response efforts. NVOSHA was only 0.34% outside the FRL range; therefore, this was not a cause for concern. However, OSHA will continue to discuss this metric during quarterly meetings.

SAMM 13 – Percent of initial inspections with worker walk around representation or worker interview

Discussion of State Plan data and FRL: The FRL listed in SAMM Appendix D was fixed at 100% for all State Plans. The SAMM report showed that NVOSHA completed 99.5% with worker walk around representation or worker interviews.

Explanation: NVOSHA's enforcement efforts towards the COVID-19 pandemic, directed by the Governor, included early un-programmed observations of worksites determined to be essential. In such cases, a worksite walk around or interviews were not conducted. A number of these observations warranted enforcement activity pursuant to Nevada Revised Statutes (NRS), Chapter 618, Occupational Safety and Health, which resulted in citations being issued based upon observed noncompliance. OSHA's discussions with NVOSHA confirmed that this was an early pandemic response action and that current inspections now include worker involvement. OSHA will continue to discuss this metric during quarterly meetings.

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

Discussion of State Plan data and FRL: The FRL listed in SAMM Appendix D was fixed at 100% for all State Plans. The SAMM report showed the percent of 11(c) investigations completed within 90 days was 48%, which was 52% below the FRL.

Explanation: NVOSHA's efforts at meeting this measure were hampered by the COVID-19 public health emergency. First, temporary office closures, staffing reductions, and changing operational priorities due to the state's pandemic response contributed to the additional time needed for completion of 11(c) investigations. Secondly, there was a substantial increase in the total number of COVID-19 related 11(c) complaints that required screening. OSHA will continue monitor this metric during FY 2021.

SAMM 15 – Percent of 11(c) investigations that are meritorious

Discussion of State Plan data and FRL: The FRL for this measure was +/-20% of the three-year national average of 18% of 11(c) investigations. The range of acceptable data not requiring further review was from 14.40% to 21.60%. The SAMM report showed that NVOSHA's percent of meritorious 11(c) complaints was 33%.

Explanation: NVOSHA was 11.4% above the upper end of the FRL range, which means that they had more cases than the national average where they determined a complainant's allegation met the criteria of a merit case. The State Plan's performance on this measure was not a cause for concern.

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

Discussion of State Plan data and FRL: The FRL listed in SAMM Appendix D was fixed at 90 days for all State Plans. NVOSHA completed discrimination cases in an average of 107 days, which was 17 days above the FRL.

Explanation: NVOSHA's efforts at meeting this measure were significantly hampered by the COVID-19 public health emergency. Again, as stated above, temporary office closures, staffing reductions, and changing operational priorities mandated by the state's pandemic response operations, all contributed to the increase in the amount of time necessary to perform 11(c) investigations. In addition, there was a substantial increase in the number of 11(c) COVID-19 related complaints and referrals that required screening. NVOSHA was well below the national average for this metric of 262 days¹; therefore, this item was not a cause for concern.

SAMM 17 – Percent of enforcement presence

Discussion of State Plan data and FRL: The FRL was +/-25% of 1.09%, with a range of 0.82% to 1.36%. NVOSHA's enforcement presence was 1.56%, which was 0.20 above the upper end of the FRL.

Explanation: The percent of enforcement presence describes the number of safety and health inspections conducted compared to the number of employer establishments in the state. NVOSHA's high enforcement presence indicated that the State Plan is reaching more employers with enforcement activity than the national average.

1 - Report from Web Integrated Management Information System (WebIMIS) "FY 2020 EOY Activity Measures – Both F&S" run November 9, 2020.

Appendix A – New and Continued Findings and Recommendations

FY 2020 Nevada OSHA Follow-up FAME Report

FY 2020-#	Finding	Recommendation	FY 2019-# or FY 2019-OB-#
FY 2020-01	In FY 2019, in 7 of 14 (50%) case files where citations were reclassified and/or the penalty amount was reduced, the justification for the change was not documented in the case files.	NVOSHA should develop and implement procedures to ensure the justification for citation and/or penalty reduction is documented where required by the NOM. Corrective action complete, awaiting verification.	FY 2019-01
FY 2020-02	In FY 2019, in 4 of 8 (50%) case files where penalty reductions of greater than 50% were offered, the Chief Administrative Officer (or designee) approval was not documented in the case files.	NVOSHA should develop and implement procedures to ensure the Chief Administrative Officer (or designee) approval is documented where required by the NOM. Corrective action complete, awaiting verification.	FY 2019-02

Appendix B – Observations and Federal Monitoring Plans

FY 2020 NVOSHA Follow-up FAME Report

Observation # FY 2020-OB-#	Observation# FY 2019-OB-# or FY 2019-#	Observation	Federal Monitoring Plan	Current Status
FY 2020-OB-01	FY 2019-OB-01	In FY 2020, the citation lapse time for safety inspections (SAMM 11) increased each year for the past four years.	OSHA will monitor this issue and work with NVOSHA to identify potential sources of the increase and recommend improvement measures. <i>Note: Observation FY 2019-OB-01 included citation lapse time for health inspections. The reference was removed in FY 2020 because NV-OSHA performed better than the FRL range for that metric.</i>	Continued
FY 2020-OB-02	FY 2019-OB-02	In FY 2019, in 3 of 32 (9.4%) of inspections with citations, the abatement was marked as “Corrected During Inspection;” however, the CSHO did not observe the abatement during the on-site portion of the inspection.	OSHA will monitor NVOSHA’s progress and discuss at quarterly meetings to ensure staff has been appropriately trained towards the classification requirements of the NOM Ch.7.6.b.	Continued
FY 2020-OB-03	FY 2019-OB-03	In FY 2019, in 4 of 44 (9.1%) case files, worker involvement was not documented in the inspection narrative or the OSHA 1A (Inspection Report).	OSHA will monitor NVOSHA’s progress to ensure the revision to the NOM regarding worker involvement data entry is completed.	Continued
FY 2020-OB-04	FY 2019-OB-04	In FY 2019, in 22 of 42 (52%) of administratively closed investigation files there was no evidence of a supervisory review noted in the files.	OSHA will monitor quarterly that Nevada OSHA is conducting and documenting a supervisory review of the file.	Continued
FY 2020-OB-05	FY 2019-OB-05	In FY 2019, in 5 of 13 (38%) of settlement cases, procedural guidance was not followed.	OSHA will monitor quarterly that Nevada OSHA is ensuring documentation and procedural guidance are followed in settlement cases	Continued

Appendix C - Status of FY 2019 Findings and Recommendations

FY 2019 NVOSHA Follow-up FAME Report

FY 2019-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
FY 2019-01	In 7 of 14 (50%) case files where citations were reclassified and/or the penalty amount was reduced, the justification for the change was not documented in the case files.	NVOSHA should develop and implement procedures to ensure the justification for citation and/or penalty reduction is documented where required by the NOM.	A meeting will be held with District Managers and their designees regarding information that must be included on Informal Conference Worksheets, including the requirement to provide a justification for all changes made during an Informal Conference.	07/31/2020	Awaiting verification
FY 2019-02	In 4 of 8 (50%) case files where penalty reductions of greater than 50% were offered, the Chief Administrative Officer (or designee) approval was not documented in the case files.	NVOSHA should develop and implement procedures to ensure the Chief Administrative Officer (or designee) approval is documented where required by the NOM.	A meeting will be held with District Managers and their designees to inform them that the CAO's/designee's approval for penalty reductions greater than 30% during an Informal Conference must be documented in the case file. The Informal Conference Worksheet was modified to include a section which will indicate if a reduction (greater than 30%) was approved by the CAO/designee.	07/31/2020	Awaiting verification

Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report

FY 2020 Nevada OSHA Follow-up FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Nevada - NEVADA OSHA			FY 2020	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	16.07	14	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	4.85	N/A	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)	3.64	5	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	1.80	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.

Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report
 FY 2020 Nevada OSHA Follow-up FAME Report

U.S. Department of Labor				
5	Average number of violations per inspection with violations by violation type	SWRU: 1.44	+/- 20% of SWRU: 1.79	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.43 to 2.15 for SWRU. The range of acceptable data not requiring further review is from 0.76 to 1.14 for OTS.
		Other: 0.87	+/- 20% of Other: 0.95	
6	Percent of total inspections in state and local government workplaces	1.12%	+/- 5% of 3.33%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 3.17% to 3.50%.
7	Planned v. actual inspections – safety/health	S: 370	+/- 5% of S: 840	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 798 to 882 for safety and from 342 to 378 for health.
		H: 435	+/- 5% of H: 360	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$3,723.39	+/- 25% of \$2,964.86	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,223.65 to \$3,706.08.

Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report
 FY 2020 Nevada OSHA Follow-up FAME Report

U.S. Department of Labor				
	a. Average current serious penalty in private sector (1-25 workers)	\$2,190.00	+/- 25% of \$1,967.64	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,475.73 to \$2,459.55.
	b. Average current serious penalty in private sector (26-100 workers)	\$4,068.22	+/- 25% of \$3,513.45	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,635.09 to \$4,391.81.
	c. Average current serious penalty in private sector (101-250 workers)	\$4,900.66	+/- 25% of \$5,027.02	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,770.27 to \$6,283.78.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$7,223.61	+/- 25% of \$6,190.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,643.18 to \$7,738.64.
9	Percent in compliance	S: 36.83%	+/- 20% of S: 31.03%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 24.82% to 37.24% for safety and from 29.72% to 44.58% for health.
		H: 44.92%	+/- 20% of H: 37.15%	
10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.

Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report
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U.S. Department of Labor				
11	Average lapse time	S: 68.49	+/- 20% of S: 50.58	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 40.46 to 60.70 for safety and from 48.31 to 72.47 for health.
		H: 46.89	+/- 20% of H: 60.39	
12	Percent penalty retained	63.90%	+/- 15% of 67.51%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 57.38% to 77.64%.
13	Percent of initial inspections with worker walk around representation or worker interview	99.50%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	48%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	33%	+/- 20% of 18%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 14.40% to 21.60%.
16	Average number of calendar days to complete an 11(c) investigation	107	90	The further review level is fixed for all State Plans.

Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report
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U.S. Department of Labor				
17	Percent of enforcement presence	1.56%	+/- 25% of 1.09%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.82% to 1.36%.

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 9, 2020, as part of OSHA’s official end-of-year data run.

Appendix E – FY 2020 State OSHA Annual Report (SOAR)
FY 2020 Nevada OSHA Follow-up FAME Report

FY 2020 State OSHA Annual Report

STATE OF NEVADA

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

Occupational Safety & Health Administration



October 1, 2019 – September 30, 2020

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Submitted: December 15, 2020

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I. Executive Summary

Operating under an approved State Plan for 46 years, the Nevada Occupational Safety and Health Administration (NVOSHA) Program is a results-oriented program that strives to ensure that employers provide Nevada workers safe and healthful working conditions.

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

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

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

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

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

For FY20, NVOSHA's Annual Performance Plan goals were to:

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

Nevada OSHA's efforts at meeting its strategic goals for FFY 20 were significantly hampered by the COVID-19 public health emergency. Temporary office closures, staffing reductions and changing operational priorities mandated by the state's pandemic response operations all contributed to fewer opportunities to conduct inspections within the agency's strategic priorities. Significant reductions in statewide employment through the second half of the fiscal year also resulted in statistical anomalies related to injury rates that would not typically occur during periods of nominal employment levels.

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As a result of these unprecedented conditions, the agency’s strategic goals for FY20 were not achieved. The state’s DART rate for all industries saw no change, remaining at 1.9 (*Goal 1.1*). The agency previously adjusted its strategic plan to increase its goals for removal of workers from hazards to 22,000. After exceeding that goal in the two preceding years, the agency identified 12,085 employees as removed from exposure to workplace safety and health hazards following inspection in FY2020.

SCATS did not award a new VPP site but did complete one renewal (*Goal 2*) and the agency trained/evaluated 100% of its field CSHOs (*Goal 3*).

In FY2020, the agency conducted 821 inspections, 379 inspections below its projection of 1,200 inspections. 379 safety and 434 health inspections were in the private sector; three safety and five health inspections were in the state and local government sectors.

The following pages further illustrate how NVOSHA activities measured up against its goals for FY2020 and its five-year strategic plan.

II. Summary of Annual Performance Plan Results

Strategic Goal 1. Workplace Safety and Health. Reduce workplace fatalities, injuries, and illnesses within the state.
Performance Goal 1.1: Reduce worker injury and illness DART (Days Away, Restricted, or Transferred) rate by 1 percent.
Strategies: Focus inspections on construction and manufacturing, with emphasis on the most common causes of workplace fatalities (e.g., falls, electrocution, struck-by, caught-in/between objects). <ul style="list-style-type: none">• In Construction, primary targets for programmed inspections will be derived from Construction Dodge Reports. The inspection priority list will include construction projects that met the criteria set by Nevada Administrative Code 618.494.• In Manufacturing, Nevada OSHA will select establishments using its Inspection Targeting Plan. For 2020, NVOSHA’s inspections will focus on establishments that include the following industries:<ul style="list-style-type: none">○ Wood Product Manufacturing (NAICS 321xxx)○ Fabricated Metal Manufacturing (NAICS 332xxx)○ Plastics and Rubber Manufacturing (NAICS 326xxx)○ Food Manufacturing (NAICS 311xxx)• Inspect establishments that include the following industries under Local and Special Emphasis Programs:

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- Hotels (NAICS 721110)
- Casino-Hotels (NAICS 721120)
- General Auto Repair (NAICS 811111)
- Automotive Body, Paint, and Interior Repair and Maintenance (NAICS 811121)
- Linen Supply (NAICS 812331)
- Industrial Launderers (NAICS 812332)
- Shooting Ranges
- Scaffolding
- Needlesticks in the Medical/Dental office setting

Performance Indicator(s):

- Conduct 500 construction inspections, 200 manufacturing inspections, and 500 other inspections.
- Remove 22,000 employees from exposure to potential safety and health hazards.
- Decrease state DART rate by 1% in CY2016-CY2019.

FY2020 Results:

- NVOSHA conducted 363 inspections in construction, 123 inspections in manufacturing, and 335 inspections in other industries.
- NVOSHA removed 12,085 employees from exposure to potential safety and health hazards.
- Nevada DART rate for all industries was unchanged in CY2019 (1.9) compared to CY2018 (1.9).

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

Conclusion: NVOSHA did not achieve its goal of realizing ongoing reductions in the statewide DART rate, however based on previous years of overperforming expectations in this category, the program did achieve its overall strategic goal of a 1% reduction in DART rate over the course of the 5 year plan.

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

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

Strategies:

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

Performance Indicator(s):

- Number of inspections conducted.
- Number of employees removed from hazards.

FY2020 Results:

- NVOSHA conducted 821 inspections.
- NVOSHA removed 12,085 employees from exposure to potential safety and health hazards.

Source: OIS Reports (Inspection Summary and Violation Detail Reports).

Conclusion: NVOSHA did not achieve its goal of removing 22,000 employees from exposure to potential safety and health hazards during this reporting period.

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

Performance Goal 2: Award the Nevada Voluntary Protection Program (VPP) Star to one establishment.

Strategies:

- Meet with employers and employer groups to discuss the VPP process and encourage employers to participate in the Nevada VPP Star Program.
- Advertise the VPP program on the NVOSHA website.

Performance Indicators:

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

FY2020 Results:

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<ul style="list-style-type: none"> • Four new VPP applications were received/reviewed. • One VPP site audit was conducted as part of a VPP status renewal. • No new VPP Star sites were awarded. <p style="margin-left: 40px;">Source: VPP Log</p>
<p>Conclusion: NVOSHA did not meet its goal of awarding one VPP Star Site in FY2020.</p>
<p>Strategic Goal 3: Staff Professional Development. Enhance compliance officers’ knowledge, skills, and abilities through formal and informal training.</p>
<p>Performance Goal 3: Conduct field training and evaluate the performance of at least 80% of field compliance officers every year.</p>
<p>Strategies:</p> <ol style="list-style-type: none"> 1. Review the agency’s Master Training Task Guide and Training Directive(s) to identify requirements 2. Schedule and provide formal and informal training to compliance officers to meet requirements 3. Trainers or supervisors will schedule and conduct over-the-shoulder evaluations of compliance officers while conducting inspections/investigations in the field. Items such as case preparation, opening/closing conference, hazard recognition, interviewing skills, and case documentation will also be evaluated. 4. Trainers or supervisors will prepare evaluation report(s) for review; take corrective action(s), as appropriate.
<p>Performance Indicator:</p> <ul style="list-style-type: none"> • Percent of field compliance officers evaluated.
<p>FY2020 Results:</p> <ul style="list-style-type: none"> • Compliance supervisors/trainers trained/evaluated 35 of 35 CSHOs or 100% of the average number of field staff. <p style="margin-left: 40px;">Source: Training Tracking Logs and Field Evaluation Reports.</p>
<p>Conclusion: NVOSHA exceeded its goal of training /evaluating 80% of its staff.</p>

III. Progress toward Strategic Plan Accomplishments

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

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5-Year Performance Goal 1.1: Reduce worker injury and illness rate by five percent through FY2020.

At the conclusion of this five-year plan, a clear downward trend in the statewide DART rate is apparent. BLS Survey of Occupational Injuries and Illnesses Tables for CY2016 through CY19 show an overall reduction from 2.1 to 1.9. Compared to the strategic goal baseline of 2.1 (2017 DART rate), these numbers represent a 10% total decrease from the outset of the strategic planning period.

As part of its strategic plan, NVOSHA targeted workplaces in the manufacturing and construction industries. Of its 821 inspections in FY20, 123 were in manufacturing and 363 were in construction.

This year has presented significant challenges for the agency's training mission. To adapt to social distancing requirements and to provide a greater degree of flexibility in the timing and location of training programs, the agency is utilizing an electronic learning management system to provide initial and ongoing training to staff, in addition to expanded online offerings from the OSHA Training Institute, and ongoing field training efforts.

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

After significantly exceeding its FY2016 and FY2017 goal of removing 18,000 employees from potential workplace safety and health hazards (26,501 and 23,846 employees, respectively), Nevada raised its goal to 22,000 for FY2018 through FY2020. After slightly missing the revised goal in FY2018 (21,718), the agency exceeded the goal in FY2019 by removing 22,712 employees. The agency again missed the goal in FY2020 as a result of operational impacts from COVID-19, counting 12,085 employees removed in FY20. Overall, Nevada OSHA exceeded its five-year strategic goal of removing 90,000 employees from exposure well ahead of the targeted completion date for that goal, with a five year total of 106,862 workers removed from hazardous conditions.

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

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

No new VPP Star certifications were awarded during FY20. One renewal was completed for the Sherwin-Williams distribution center

Since taking over the administration of VPP in the latter part of FY17, SCATS has received eleven new VPP applications and conducted seven on-site audits (two new and five re-certifications). In addition to a ready pool of establishments already in SHARP (Safety and Health Recognition Program), SCATS actively reaches-out to potential candidates for VPP and

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anticipated multiple new participants in FY2020. The ability to complete VPP site audits essentially disappeared when the COVID-19 pandemic developed, as eligible and interested businesses either closed, reduced staffing, or changed operational methods to limit outside entities from accessing their facilities. The agency is hopeful that continued interest in VPP will result in new businesses entering the program when operating conditions permit.

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

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

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

IV. Mandated Activities

Nevada's penalty average (measure 8) increased in FY20 exceeding the averages for the state plans. Comparison to federal penalty averages shows a much closer average penalty amount than in prior years, which can be directly attributed to Nevada's adoption of the federal OSHA penalty amounts and adjustment process as described in Nevada Senate Bill 40 from the 2019 legislative session. Nevada expects average penalty amounts to remain comparable to the federal program's averages moving forward.

Nevada's numbers for Measure 9 of the SAMM (State Activity Mandated Measures) showed some change from FY19. The in-compliance rate (IC) for Health increased slightly, with Nevada 3% higher than the aggregate state plan average rate, and approximately 7% higher than the aggregated federal average. The in-compliance rate for safety inspections was 3.5% higher than the aggregated state plan average, and 10% higher than the federal average.

V. Special Measures of Effectiveness/Special Accomplishments

COVID-19 Pandemic Response Initiative. The nationwide outbreak of COVID-19 in March 2020 presented Nevada workplaces with monumental challenges to worker health. In response to the pandemic, Governor Steve Sisolak issued a series of public health emergency declarations intended to limit disease transmission and protect the state economy. These declarations resulted in a temporary closure of most state offices, which included staffing impacts for Nevada OSHA. As the state's pandemic response plan was formalized, Nevada OSHA was tasked as a lead agency for the development and enforcement of statewide mandates and guidance for business operations during the pandemic. The agency's efforts centered around identification of business establishments where recognized COVID-19 exposure hazards were present, and in responding to a dramatically increased volume of reports alleging COVID-19 hazards to employees at business establishments. Nevada OSHA remains at the forefront of the state's COVID-19 mitigation efforts and is expected to serve as the principal enforcement agency for violations of

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COVID-19 public health directives as the pandemic continues to present hazardous working conditions throughout the state.

VI. Adjustments or Other Issues

Enforcement Staff experience. Nevada’s CSHO retention in FY2020 decreased by 20 percent compared to the previous fiscal year. CSHO turnover rate in FY2020 was 14 percent. Early in the COVID-19 public health emergency, Governor Sisolak implemented budgetary restrictions to respond to an unprecedented and nearly instantaneous reduction in government revenue. One of the budgetary restrictions was a statewide hiring freeze, which prevented Nevada OSHA from filling vacant positions for the last two quarters of FY20.

COVID-19 Workload.

Unprogrammed Activities

As recognized elsewhere in this report, Nevada OSHA was tasked through gubernatorial order to serve as the state’s lead enforcement agency for COVID-19 hazards. The resulting volume of hazard allegations created an unprecedented workload for the agency in both of its district offices. During FY 19, Nevada OSHA logged 1,595 unprogrammed activities statewide. The agency fielded 7,307 unprogrammed activities during the same period in FY20, an increase of 358% year over year. Most of these hazard allegations have been addressed through correspondence as part of the inquiry process. In accordance with established response procedures, non-response to letters of inquiry, or allegations of significant COVID-19 hazards (particularly hazards identified by other government agencies) prompts the agency to conduct on-site inspection activities.

Compliance Assistance Observations

To provide compliance assistance to establishments suddenly faced with new public health mandates, Nevada OSHA, the Safety Consultation and Training Section, and other work groups in DIR initiated a process to conduct observations of business with the goal of providing guidance and clarification on the state’s COVID-19 emergency directives. The observation process began in April 2020 with OSHA compliance officers observing sites in the construction industry. At the time construction was one of the few industries deemed essential and permitted to operate amidst a broader emergency closure of most businesses in the state. In June 2020, the observation process expanded with the phased re-opening of businesses, eventually encompassing most industry sectors. In total, the combined DIR workforce logged more than 10,000 compliance assistance observations between April and October 2020.

Enforcement

Nevada’s emergency directives established specific mandates for business operations, intended to balance the state’s economic needs with the need to protect the state’s workforce and limit the spread of COVID-19 in business establishments. Beginning in April 2020, Nevada OSHA was tasked with providing industry-specific compliance guidance, and with enforcing the

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state’s compliance mandates. Beginning largely with construction industry operations, Nevada OSHA initiated enforcement activities at worksites where compliance officers observed violations of directives, including but not limited to mandates regarding social distancing, hygiene/sanitation conditions and face covering requirements. Between April 1 and September 30, Nevada OSHA issued 183 citations related to COVID-19 hazards, with initial penalties totaling \$1,072,862. The enforcement mechanism employed by the agency was citation of Nevada Revised Statute 618.375(2), which mandates employers “...adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render such employment and places of employment safe and comply with all orders issued by the Division.” The availability of this statute, for which there is no analogous federal version, provided Nevada OSHA the ability to establish a consistent enforcement model while supporting the state’s desire for flexibility in establishing compliance mandates based on changing conditions.

VII. State Internal Evaluation Program (SIEP) Report

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

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