

STEVE SISOLAK  
*Governor*

TERRY REYNOLDS  
*Director*

STATE OF NEVADA



VICTORIA CARREÓN  
*Administrator*

PERRY FAIGIN  
*Deputy Administrator*

WILLIAM GARDNER  
*Chief Administrative Officer*

**DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INDUSTRIAL RELATIONS  
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION**

August 18, 2022  
Mr. James Wulff  
Regional Administrator, OSHA  
90 – 7<sup>th</sup> Street, Suite 18100  
San Francisco, CA. 94103

**RE: Nevada OSHA Response to FAME Report**

Dear Mr. Wulff,

The Nevada Occupational Safety and Health Administration (Nevada OSHA) would like to thank you for the opportunity to provide a formal response to OSHA's FY 2021 Federal Annual Monitoring and Evaluation (FAME) report. Nevada OSHA continues to work with regional and state OSHA representation to develop a proactive and mutually beneficial relationship between the two agencies. With the support of regional and state representation of OSHA the Nevada State Plan Program has worked on addressing the identified findings from the FY 2021 FAME evaluation. Please see Nevada OSHA's formal response to the findings and observations below.

**FINDINGS FY 2021**

**B.2.a: Complaints**

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

**Recommendation FY 2021-01:** Nevada OSHA should determine the cause to ensure complaint inspections are initiated timely.

**State Response:**

This measure was not met due to the high number of Unprogrammed Activities (UPAs) in FY 2021 due to the COVID-19 pandemic. During FY 2021, Nevada OSHA processed 6,140 UPAs. In the three years prior to the COVID-19 pandemic, Nevada OSHA processed an average of 1,650 UPAs per year. The average number of non-probationary CSHOs was 25. Being that there are approximately 260 workdays in a year, CSHOs were tasked with processing an average of 24 UPAs per day, which can each take approximately 30-45 minutes to input the data, draft an inquiry letter, go through review and revision, and ensure the inquiry is sent the employer.

A report ran for FY 2022 shows Nevada OSHA's current average time to initiate a complaint inspection (SAMM 1A) to be 8.19 workdays, which falls below the negotiated goal of 14 workdays, while the national average is currently 26.65 days. This further indicates a correlation between the uncharacteristically high volume of COVID-19 complaints that were required to be

RENO  
4600 Kietzke Lane,  
Building F-153  
Reno, NV 89502  
(775) 688-3700

LAS VEGAS  
3360 West Sahara Avenue  
Suite 200  
Las Vegas, NV 89102  
(702) 486-9020

processed and the inability to initiate inspections within 14 workdays. This also validates that the situation referenced in the finding was a one-time occurrence brought up by the pandemic. Historically, Nevada OSHA has been significantly well below this rate as follows:

- 2015: 5.92 days
- 2016: 7.48 days
- 2017: 5.74 days
- 2018: 4.84 days
- 2019: 7.68 days

#### **B.2.b: Fatalities**

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

**Recommendation FY 2021-02:** Nevada OSHA should ensure all fatality investigations are initiated within one day.

#### **State Response:**

This finding pertains to a single investigation that was identified as not being initiated within one day. The background of this investigation is as follows:

On 6/24/2021, an employer sent a notification of a fatality to the Nevada OSHA email inbox which occurred on that same day. This was the incorrect means to report a fatality, and due to the volume of other COVID-19-related intake being received in that inbox, the notice was not noted promptly. It was located on 7/9/2021 by a CSHO doing cleanup of the inbox and was subsequently assigned that day. Given that it was a Friday, and timeliness was already a factor, the CSHO was asked to open the investigation the next Monday morning.

A report ran for FY 2022 shows Nevada OSHA conducted 10 fatality investigations, in which all 10 (100%) investigations were initiated within one workday, while the national average is currently at 93.21%. We will continue to monitor our performance regarding SAMM 10. Historically, Nevada OSHA has promptly initiated all fatality investigations within one day as follows:

- 2015: 100%
- 2016: 100%
- 2017: 100%
- 2018: 100%
- 2019: 100%
- 2020: 100%

#### **B.2.c: Targeting and Programmed Inspection**

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

**Recommendation FY 2021-03:** Nevada OSHA should determine the cause of the shortfall and implement corrective action to meet inspection goals.

#### **State Response:**

Nevada OSHA had identified procedural issues regarding the status (i.e., draft/final) of open inspections in OIS. In working with members of the OIS development team, it was determined

that all inspections in draft status were not accounted for in the SAMM report that served as the basis in which the SAMM 7 measure is evaluated. Upon determining the solution to the issue, Nevada OSHA immediately took corrective action by notifying enforcement staff of the necessity to set the inspection status of any open inspection to final, regardless of how far along they were in the inspection itself. On March 14, 2022, Nevada OSHA ran a Scan Summary report for FY 2021, in which the report indicated that 976 inspections had been conducted in that timeframe, 166 more inspections than the SAMM subject to the FAME review credited Nevada OSHA for. Nevada OSHA will continue to monitor the status of open inspections to ensure that they are set to final as soon as possible, so performance measure reports such as the SAMM are yielding the most accurate information possible.

As a result of Nevada OSHA's role in the enforcement of the Governor's Directives relating to COVID-19, Nevada OSHA experienced a high volume of UPA intake associated with alleged violations of the Governor's Directives. During the pandemic, Nevada OSHA saw a significant increase in the amount of UPAs received. Nevada OSHA responded to 6,137 UPAs in FY 2021 and 7,308 in FY 2020; both in comparison to 1,595 UPAs received during FY 2019 prior to the pandemic. These UPAs required CSHOs to focus their efforts towards performing Letter of Inquiry work (i.e. investigations), which took time away from conducting field inspections. Nevada OSHA anticipates performing more field work in FY 2022, as we saw a substantial decrease in the amount of UPA intake associated with COVID during the last few months of FY 2021.

In addition, the shortfall of our annual goal is partially attributable to our shortage in staff. When fully staffed, Nevada OSHA consists of 41 CSHOs, who are expected to conduct 55 to 65 inspections per year. During FY2021, Nevada OSHA retained an average of 36 CSHOs, who conducted a total of 976 inspections. An additional 5 CSHOs, expected to perform 55 to 65 inspections per year, would have added an additional 325 inspections to the total, which would have exceeded our annual goal of 1,200 inspections. During FY 2021, Nevada OSHA's Safety Specialists and Industrial Hygienists IIs were required to pick up the tasks/assignments that would have otherwise gone to a CSHO who has yet to become a specialist (i.e., Operational impacts due to COVID-19). In FY 2022, we anticipate a number of probationary CSHOs contributing to our overall inspection productivity, in addition to staff members of our Operations Support Unit (OSU) conducting inspections as well; all of which we anticipate resulting in an increase in the number of inspections.

#### **B.2.d: Citations and Penalties**

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

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

#### **State Response:**

Nevada OSHA's role in the enforcement of the Governor's Directives relating to COVID-19 had a substantial impact with respect to our in-compliance rates, particularly regarding health inspections conducted during FY 2021. A SAMM report was ran on March 14, 2022, to analyze the impact that our response to COVID-19 related allegations had on our in-compliance rates in FY 2021. The analysis yielded the following results:

### FY2021 Inspections

Type of Inspection	Number of Health Inspections	Health Inspection In-Compliance Rate	Number of Safety Inspections	Safety Inspection In-Compliance Rate
COVID-19 Inspections	336	74%	Not Applicable	Not Applicable
Other Inspections	176	45%	464	48%

This data shows the impact that COVID-19 had with respect to our in-compliance rates regarding safety and health inspections. COVID-19 did not appear to have any impact with respect to our in-compliance rates in safety inspections. However, with a 45% in-compliance rate in non- COVID-19 health inspections, the rate would have fallen within the acceptable range of in-compliance rates between 35.6% - 53.4%.

In FY 2022, we anticipate a downward trend and regression to the norm of in-compliance rates associated with health-related inspections, as our data indicates a substantial reduction in our enforcement efforts associated with COVID-19 related allegations. Regarding our 46.84% in-compliance rate associated with safety-related inspections, we also anticipate regression to the norm, as we believe the implementation of our new training program will provide the hazard recognition training to our CSHOs, vital in reducing those rates.

On August 17, 2022, a SAMM report was run, which indicated our in-compliance rates for Safety and Health inspections were 42.15% and 57.89%, respectively for FY 2022, in comparison to 46.87% and 59.66% for safety and health, respectively, during FY 2021.

#### B.2.f: Worker and Union Involvement

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

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

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

#### State Response:

Regarding the 7 cases identified in the FAME, NV OSHA acknowledges that either no employees were interviewed, or the casefile indicated interviews were conducted, but there was no evidence in the casefile to support that claim. This problem has been addressed by communicating the issue with our enforcement staff following a review of the FAME findings with management on 3/23/2022 to ensure that staff are being held accountable in ensuring that a casefile will not move forward for processing if it is absent of employee interviews, or the documentation thereof. Staff were informed of this issue in team meetings held that same day.

**Finding FY 2021-06:** In six of eight (75%) case files with union involvement, the union participation or declination at the opening and closing conference was not documented. In 5 of 8 of these cases, union participation in the walk-around portion of the inspection was not documented in the casefile.

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

**State Response:**

Nevada OSHA believes this is exclusively a documentation issue and not an issue with ensuring union representatives are provided an opportunity to participate. Nevada OSHA has made it a goal to continue to grow the agency's relationship with unions to include pursuing partnership opportunities. Nevada OSHA is committed to providing union representatives an opportunity to participate in inspections and will make ongoing efforts to better document the involvement, or declination of involvement, for union representatives during enforcement activities through staff training. This information will be communicated to management on 8/29/2022 and line staff will be trained on the subject by 9/19/2022.

**B.7: Whistleblower Program**

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

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

**State Response:** All administratively closed complaints are reviewed by the supervisor, but it is not always documented. Investigators inform all Complainants verbally, at a minimum, that their complaint is being administratively closed. A new policy was implemented with an effective date of 3/23/2022, where the supervisor will ensure the supervisory review is documented, and the investigator will ensure they document that the Complainant was notified that their complaint is being administratively closed.

**OBSERVATIONS FY2021**

**B.2.a: Complaints**

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

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

**State Response:**

As a result of Nevada OSHA's role in the enforcement of the Governor's Directives related to COVID-19, Nevada OSHA experienced a high volume of UPA intake associated with alleged violations of the Governor's Directives. During the pandemic, Nevada OSHA saw a significant increase in the amount of UPAs received. Nevada OSHA responded to 6,140 UPAs in FY 2021 and 7,308 in FY 2020; both in comparison to 1,595 UPAs, pre-pandemic, during FY 2019. The high volume of COVID-19 related UPAs had an adverse impact in our ability to initiate a complaint investigation within the negotiated goal of five days. In addition, Nevada OSHA cannot overlook the limitations placed on our ability to process UPAs in timely manner as a result of staffing shortages during FY 2021.

In contrast, Nevada OSHA experienced a significant decrease in the volume of COVID-19 related UPAs processed from the beginning of FY 2021 into quarter 1 of FY 2022. Over the course of the last 5 FY quarters, Nevada OSHA has seen a consistent decrease from 574, 358, 84, 256 (due to possible surge), and 195.

A report ran for FY 2022 shows Nevada OSHA's current average time to initiate a complaint investigation (SAMM 2A) to be 3.90 days, which is below the negotiated goal of five days. This further indicates a correlation between the uncharacteristically high volume of COVID-19 UPAs that were required to be processed and the inability to initiate inspection within 14 workdays. This also demonstrates and that the situation referenced in the finding was a one-time occurrence brought up by the pandemic.

We will continue to monitor our performance regarding (SAMM 2A). However, as a result of the decline of COVID-19 related UPAs, and Nevada OSHA's position to focus our enforcement efforts on programmed inspections, we believe that we will continue to fall within the negotiated goal of 5 average working days to initiate a complaint investigation.

### **B.3.b: Formal Review of Citations**

**Observation FY 2021-OB-02:** The reclassification rate of private sector violations was higher at 45.10% (SIR 6B) than the national average of 12.17%.

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

#### **State Response:**

We will continue to monitor our performance regarding the SIR 6B measure. In FY 2022, NV OSHA has already seen a substantial decrease in classification rates, On August 17, 2022, a SIR report was run, which indicated a reduction from 45.10% to 25.93%.

### **B.6: State and Local Government Worker Program**

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

**Federal Monitoring Plan FY 2021-OB-03:** OSHA will monitor Nevada OSHA's progress towards this measure at quarterly meetings.

#### **State Response:**

Nevada OSHA is currently evaluating how best to approach this. From Nevada OSHA's perspective, public sector entities have historically had few compliance issues when inspected. Nevada OSHA intends on creating a targeting list for public sector employers following a review of specific high-hazard industries within the public sector.

On August 17, 2022 a report was run for FY 2022, which indicates that Nevada OSHA has conducted 16 inspections at state (4) and local government (12) entities, which already exceeds the goal of 15 for FY 2022.

## **CONCLUSION**

The Nevada Occupational Safety and Health Administration (Nevada OSHA) would like to again thank our Federal OSHA partners for the opportunity to provide a formal response to OSHA's FY 2021 Federal Annual Monitoring and Evaluation (FAME) report. As demonstrated by the above responses and Nevada OSHA's corrective action plan, we fully commit to improving the Nevada State Plan program with the support of regional representation from OSHA. Additionally, Nevada OSHA reaffirms its intent to work with regional and state OSHA representation to develop a proactive and mutually beneficial relationship between the two agencies with the end goal of protecting workers in the State of Nevada more efficiently and effectively. Additionally, Nevada OSHA management has committed to discussing FAME findings with line staff to include quarterly progress towards meeting established goals. If you should have any questions, feel free to contact me at 702-486-9020.

Sincerely,

A handwritten signature in cursive script that reads "William A. Gardner Jr.".

William Gardner  
Chief Administrative Officer  
Nevada Occupational Safety and Health Administration

cc: Victoria Carreón, Administrator