# FY 2023 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report

**Department of Business & Industry**

**Division of Industrial Relations, Occupational Safety & Health Administration**

**(NVOSHA)**



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## Executive Summary

The primary purpose of this report is to assess the Nevada Occupational Safety and Health Administration (NVOSHA) program performance for Fiscal Year (FY) 2023. The criteria used to measure performance includes those mandated by the Occupational Safety and Health Administration (OSHA) and progress towards resolving outstanding FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) findings. NVOSHA’s achievement of the annual performance plan and five-year strategic goals is addressed in their FY 2023 State OSHA Annual Report (SOAR).

NVOSHA continued to have some challenges, due to lack of staffing. Efforts were also placed on training staff that possessed less than two years of experience. This contributed to the second consecutive year that NVOSHA fell short of meeting their total projected goal (safety and health); only 884 of 1,200 (73.66%) inspections were conducted in FY 2023. The enactment of Assembly Bills 522 and 268 includes increases in pay and retention incentives to state employees. This initiative is anticipated to improve NVOSHA’s ability to hire and retain personnel that will have a direct impact on enforcement activities.

In general, NVOSHA continued to have a stable program that placed emphasis on case file development. It was noted that since the last on-site review in FY 2021, NVOSHA transitioned unprogrammed activities (UPA) from paper to digital case files. While NVOSHA utilizes OSHA’s Information System (OIS) for data entry of all enforcement activities, it did not have access or the ability to store digital case files in OIS. As a result, NVOSHA resorted to an internal drive, which resulted in some documents and information not migrating from one database to the other. In addition, the percentage of in-compliance safety and health inspections improved but remains above the further review level. NVOSHA continues to monitor and improve their programmed inspection plan with a focus on the effectiveness of targeted-based Nevada company illness and injury rates. Standards and federal program changes were typically adopted identically and on time.

The State Plan made progress in closing one observation and completing four of the six findings from the FY 2022 Follow-up FAME. In FY 2023, two findings were continued and there was one new observation. Appendix A describes the new findings and recommendations. Appendix B describes observations and findings subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of previous findings with associated completed corrective actions.

## II. State Plan Background

### Background

The State of Nevada, under an agreement with 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 NVOSHA program. Victoria Carreon was the State Plan Designee and Administrator of DIR during this review period. William Gardner 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. Both the enforcement and consultation programs have jurisdiction and provide 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 initial federal base award to fund the FY 2023 23(g) program was $1,670,400. Nevada matched the federal funds and contributed an additional $6,788,447 in 100% state funds, bringing the total budget to $10,129,247. Nevada matched an amendment increase of $135,200 and reduced $225,605 in 100% state funds. Overall, the total federal and state funds slightly increased to $10,174,042. At the end of the grant, the total expenses were $8,852,102. Nevada spent all federal funds but did not spend $1,321,940 in 100% state funds, due to vacancies throughout the year and a reduction in related operating costs. A financial monitoring review was conducted in FY 2022. The next financial review will be conducted in FY 2024.

In addition to the 23(g) grant, Nevada received $246,046 in American Rescue Plan (ARP) federal funds for activities aimed at protecting workers during the COVID-19 pandemic and post pandemic recovery for the performance period of October 1, 2020, through September 30, 2023. Nevada matched the federal funds, bringing the total federal and state ARP funds to $492,092. All funds were spent, and this grant was closed in December 2022.

The grant provided funding for 77 full-time positions. In FY 2023, the staffing positions were 1 chief administrative officer, 2 district managers, 2 program coordinators, 9 supervisors (6 safety, 2 health, 1 training), 44 enforcement staff (29 safety, 11 health, 4 training), 1 chief whistleblower program investigator, 3 whistleblower program investigators, 1 management analyst, and 14 administrative assistants. At the end of FY 2023, an average of 38 (86%) of the 44 total enforcement positions were filled. Of the 38 enforcement positions, approximately 13 were on probationary status. As of November 2023, NVOSHA had filled all 44 enforcement positions.

State and local government agency consultation is provided, under the 23(g) grant, and private sector consultation is provided, under the 21(d) cooperative agreement. This report only covers consultation services provided to state and local government agencies. The private sector consultation program is evaluated separately in the FY 2023 Regional Annual Consultation Evaluation Report (RACER).

### New Issues

The Nevada Governor signed into law, Assembly Bill 522 (State Worker Pay Bill), which includes the first major pay boosts for state employees in years, including raises ranging from 10 percent to 13 percent in the upcoming fiscal year, and an additional 4 to 7 percent raise the following year. The bill also proposes an additional 7 percent raise in the 2025 fiscal year.

The Nevada Governor also signed into law, Assembly Bill 268, for payment of two $500 retention incentives.

The enactment of these bills is anticipated to improve NVOSHA’s ability to hire and retain personnel that will directly improve enforcement activities.

## III. Assessment of State Plan Progress and Performance

### Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2023 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. An 11-person OSHA team, which included 7 whistleblower protection investigators, was assembled to conduct a full case file and program review. The case file review was conducted on-site during the timeframe of November 13-17, 2023. A total of 85 safety and health case files, representing both offices, were selected for review. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period from October 1, 2022, to September 30, 2023. The total selected case files included:

* Nineteen (19) Fatality case files
* Twenty-six (26) Unprogrammed safety and health inspections
* Nineteen (19) Programmed safety and health files
* Eleven (11) Unprogrammed activity without an inspection
* Ten (10) Public sector inspections

A total of 337 retaliation investigations were closed during the review period (FY 2022-2023), including cases that were administratively closed and cases that were closed after a completed investigation. Using surveysystems.com with a 95% confidence level and a 10% confidence interval, 75 retaliation cases were randomly identified for review. OSHA added eight additional cases to account for any unanticipated issues given the transition to a new database system, during this cycle. OSHA then used the formula “=random( )” in Excel to randomize the case list and took the top 83 cases regardless of disposition type. The selected population included:

* Sixty (60) Administratively closed case files
* Sixteen (16) Dismissed case files
* Four (4) Settled case files
* Three (3) Withdrawn complaint case files

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

* State Activity Mandated Measures Report (SAMM, Appendix D dated 11/14/2023)
* State Information Report (SIR, dated 11/14/2023)
* Mandated Activities Report for Consultation (MARC, dated 11/14/2023)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan
* FY 2023 State Plan 23(g) Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Full case file review
* Web Integrated Management Information System (WebIMIS)
* OSHA Information System (OIS)
* Bureau of Labor Statistics (BLS) data
* State Plan Application (SPA) Portal

Each SAMM report 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. State Plan 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 2023 SAMM report and includes the FRL for each measure.

### Review of State Plan Performance

This section is an assessment of Nevada’s performance in meeting mandated activities and program elements. The assessment of Nevada’s progress in achieving their five- year strategic annual performance plan goals is addressed in their FY 2023 SOAR.

#### 1. Program Administration

* + 1. Training

The Mandatory Training Program for OSHA Compliance Personnel ((2014) TED 01-00- 019) was adopted and implemented. The Operations Support Unit (OSU) led the training activities and ensured required enforcement instruction occurred for every compliance safety and health officer (CSHO). In addition to the required training courses, the OSU staff ensured other internal issues and trends were conveyed to the district managers (DMs) to train their staff during day-to-day operations. This entailed a combination of the initial formal classroom training and on-the-job training with a senior CSHO to share field experience and knowledge. On-the-job evaluations were conducted, prior to the CSHO being released into the field.

Training consists of formal training classes held in-house and utilizing the same coursework as the OSHA Training Institute (OTI). OSU provided legal aspects training, accident/incident investigation training, and brought in third party vendors, such as drone training (Echo-Six) for staff working toward acquiring a remote pilot certificate from the Federal Aviation Administration, under Part 107. In addition to virtual OTI classes, such as, 1081 health hazard awareness for safety, 3400 hazard analysis in the chemical processing industry, and 2351 expanded health standards.

For whistleblower protection investigators, the Mandatory Training Program for OSHA Whistleblower Investigators ((2015) TED 01-00-020) was adopted and implemented. Initial formal classroom training consisted of four one-week courses, either completed in-house, or utilizing OTI 1420 Whistleblower Investigations Fundamentals, 1610 Interviewing Techniques for Whistleblower Investigators, 2710 Legal Concepts for Whistleblower Investigators, and 2720 Whistleblower Complaint Resolution.

* + 1. OSHA Information System

During this evaluation period, OIS reports were used to assess the effectiveness of the enforcement program. Program coordinators provided monthly reports to ensure accountability measures. Continuous self-audits are conducted from the outliers in OIS reports. The results were discussed in regularly scheduled quarterly meetings with the State Plan.

By the end of FY 2023, NVOSHA in partnership with OSHA, completed the conversion of whistleblower investigation data from WebIMIS to OIS. Currently both State Plan enforcement and whistleblower investigation data are now captured in OIS.

* + 1. State Internal Evaluation Program Report (SIEP)

The SIEP is managed by the program coordinators, and under the direct supervision of the CAO. NVOSHA primarily uses OIS reports to assess the effectiveness of the State Plan’s enforcement performance. The data retrieved from OIS provides indicators that help identify potential performance deficiencies, analyze trends, and formulate corrective action(s).

NVOSHA also conducts routine case file reviews as directed by the CAO. Reviewers use a checklist to evaluate inspection case files and record findings in a local database. The most recent review was conducted on October 1, 2023. This review consisted of safety and health inspections case file closed during the last six months of FY 2023. During that timeframe, NVOSHA identified a total of 593 inspections and randomly selected 119 case files (or 20%) for review. At the time of this report, the evaluation results were still pending.

* + 1. Staffing

There were 77 full-time (44 enforcement) and no part-time positions. In FY 2023, an average of 38 (86%) of the 44 total enforcement positions were filled. Lack of staffing was the primary contributing factor in the shortfall in meeting projected annual performance plan goals. Of the 38 enforcement positions, approximately 13 were on probationary status, which left an average of 25 of 44 (57%) total enforcement positions contributing to the overall production. As of November 2023, NVOSHA had filled all its 44 enforcement positions.

In 2023, the Nevada legislature approved Assembly Bill 522, State Worker Pay Bill, that provides for multiple pay alignment increases and length of service bonuses for the upcoming biennium. Assembly Bill 268 was also signed into law for payment of two $500 retention incentives. The enactment of these bills is anticipated to improve NVOSHA’s ability to hire and retain personnel that will have a direct impact on enforcement activities. Although great strides have been made, OSHA will continue to monitor staffing.

#### 2. Enforcement

The Nevada Operations Manual (NOM), NVOSHA’s version of the Field Operations Manual (FOM), provides staff with guidance on how to conduct field enforcement.

1. Complaints

In FY 2023, NVOSHA processed 3,080 unprogrammed activities (UPA). The average number of days to initiate a complaint inspection was 9.58 (SAMM 1a) which is below the negotiated rate of 14 days. The average number of days to initiate a complaint investigation was 5.01 (SAMM 2a) meeting the negotiated rate of 5 days.

It was noted since the last on-site review of UPAs without an inspection, NVOSHA had transitioned from paper to digital case files. While NVOSHA utilizes OIS for data entry of all enforcement activities, they did not have access or the ability to store digital case files in OIS. As a result, NVOSHA resorted to an internal drive which resulted in some documents and information not migrating from one database to the other. A review of 37 digital UPA initiated inspection case files and UPAs that did not result in an inspection were missing a copy of the sensitive form. The sensitive form is necessary for providing critical information, such as but not limited to, the contact information for the source, what prompted/initiated the complaint, date of submission, and/or whether the UPA needed to be referred, and/or assessed by a whistleblower investigator. This information was available in OIS but was not provided in the closed digital case file.

An explanation, and/or valid reason(s) as to why UPAs were not scheduled for inspection was not documented in 33 digital case files. UPAs which should have been scheduled for inspection because of qualifying emphasis programs, were not. Although extenuating circumstances explaining “why” an inspection was not initiated may have existed, failure to document the rationale behind the decision was not clearly defined or documented in the narrative in the applicable or digital case file diary sheet.

A review of 16 UPA health cases did not contain letters informing the complainants/source detailing the outcome/result(s) of the complaint related to sampling.

NVOSHA confirmed recording the information in OIS; however, the lack of information in the closed digital case file resulted in an observation. In accordance with the NOM Chapters 5 and 9, all pertinent case file related documents should be included in the case file for it to be considered complete.

**Observation FY 2023-OB-01:** UPA and Inspection case file letters, forms, and documents were missing, included, but not limited to: sensitive form/UPA summary, complaint response letters, valid reason for no inspection, and response letter for not sampling.

**Recommendation FY 2023-OB-01:** NVOSHA should ensure the information recorded in OIS is also included in the digital case file, prior to closing.

There were no denials of entry experienced (SAMM 4).

1. Fatalities

In FY 2023, a total of 19 fatality investigations were conducted and all were responded to within 1 day (SAMM 10). The FRL for this measure was 100%. Finding FY 2022-01 is completed.

A high priority is placed on communication with family members following a work-related fatality. Care must be taken to show sensitivity and tact, as the family and/or Next-of-Kin (NOK) adjust to their devasting loss. As the investigation into the death of an employee(s) begins, it is vital to keep the lines of communication open because the family is looking to NVOSHA to provide them with answers, as to how/why, their loved one was killed on the job. Known as the three-phase approach (initial contact, follow up communication throughout the investigation, and post communication) it is imperative that the family is encouraged to contact NVOSHA with any questions regarding the investigation.

The on-site review of the 19 fatality investigations completed by NVOSHA showed that a fatality checklist is used to ensure the appropriate documents are included in the case file. All the case files were well documented.

1. Targeting and Programmed Inspection

NVOSHA continues to monitor and improve their Programmed Inspection Plan with a focus on the effectiveness of targeted-based Nevada company illness and injury rates.

The percent of enforcement presence (SAMM 17) describes the number of safety and health inspections conducted, as compared to the number of employer establishments in the State. NVOSHA had an enforcement presence of 1.56%, which was higher than the FRL range of 0.70% to 1.17%. The high enforcement presence indicates that the State Plan is reaching more employers with enforcement activity than the three-year national average.

A total of 884 (SAMM 7) enforcement inspections were conducted during FY 2023. This fell short of the projected goal of 1,200 (73.66%) inspections for the second consecutive evaluation period. There were 590 safety inspections conducted. This number was below the grant negotiated total of 820 and below the FRL range of 798 to 882. There were 294 health inspections conducted. This was below the grant negotiated total of 340 and below the FRL range of 342 to 378. Nevada OSHA implemented work performance metrics for its enforcement staff. Currently, each CSHO, who is not on probationary status is anticipated to complete a minimum of 42 inspections during their 12-month evaluation period. At full staff, with 44 CSHOs performing inspections statewide, the overall expected production should yield approximately 1,800 inspections per year. However, NVOSHA continued to have some challenges, due to lack of staffing, and while making progress in filling vacant positions, 13 of 44 (30%) CSHOs were in a probationary training status and possessed less than two years of enforcement experience. This significantly hampered NVOSHA, as the agency was unable to achieve its projected goal of 1,200 inspections.

**Finding FY 2023-02 (FY 2022-02):** The total number of enforcement inspections, 884 (73.66%), was below the goal of 1,200 (SAMM 7).

**Recommendation FY 2023-02 (FY 2022-02):** NVOSHA should continue to train and mentor new enforcement staff and communicate the work performance metrics.

1. Citations and Penalties

The percentage of in-compliance safety inspections was 39.63% and 55.69% for health inspections; both were above the FRL range of 25.38% to 38.08% and 35.06% to 52.58% respectively (SAMM 9). NVOSHA implemented a new program inspection plan and continues to make improvements in this area, as FY 2022 in-compliance inspection rate for safety was 43.91% and 57.14% for health and in FY 2021 the percentage of in-compliance inspections were 46.84% for safety and 61.54% for health inspections.

**Finding FY 2023-01 (FY 2022-03):** The percentage of in-compliance inspections for both safety 39.63% and health 55.69% inspections was above the FRL of 25.38% to 38.08% and 35.06% to 52.58% respectively (SAMM 9).

**Recommendation FY 2023-01 (FY 2022-03):** NVOSHA management staff should monitor and assess case files to determine why the in-compliance rate is outside the FRL.

The average number of serious, willful, repeat, or unclassified (SWRU) violations was 1.70 per inspection, within the FRL range of 1.40 to 2.10 (SAMM 5a). The average number of violations classified as other-than-serious (OTS) was 1.21 and was slightly above the FRL range of 0.71 to 1.07 (SAMM 5b). OSHA will continue to monitor this measurement.

Generally, case files reviewed during the on-site evaluation were well organized and the documentation adequately supported the violations cited. Table 1 shows the average current penalty per serious violation based on the number of workers controlled by an establishment (SAMM 8).

**Table 1**

**Average Current Serious Penalty in Private Sector (SAMM 8)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Number of Workers** | **NVOSHA FY 2023** | **3-Year National Average** | **FRL** |
| 1-250+ | $4,472.70  | $3,625.21 | $2,718.91 to $4,531.51 |
| 1-25 | $2,575.00 | $2,348.03 | $1,761.02 to $2,935.04 |
| 26-100 | $5,355.41 | $4,167.28 | $3,125.46 to $5,209.10 |
| 101-250 | $6,185.99 | $6,052.04 | $4,539.03 to $7,565.05 |
| 250+ | $7,176.71 | $7,331.41 | $5,498.56 to $9,164.26 |

The average current penalty per serious violation in the private sector (1 to greater than 250 workers) was $4,472.70 and within the FRL of $2,718.91 to $4,531.51. With the subcategories based upon employer size, NVOSHA penalties were within or exceeded the FRL of the three-year national average. This, along with the case files reviewed, supports the position that NVOSHA is developing inspection files that support penalty retention.

1. Abatement

During the case file review, the abatement periods, overall timeliness, and classification were generally identified as appropriate. Of the 36 enforcement case files reviewed with citations issued, all files contained corrective action documentation to show that the employer corrected the hazards. Abatement periods were set in accordance with the NOM guidance.

1. Worker and Union Involvement

The NOM provides adequate policies and procedures addressing worker involvement, during the inspection process. OIS data indicated that the percent of initial inspections with worker walk-around representation, or worker interviews was 99.89%, with one outlier out of 884 total inspections conducted (SAMM 13). During the case file review, all 74 files had the appropriate documentation of employee interviews and union involvement. Findings FY 2022-04 and FY 2022-05 are completed.

#### 3. Review Procedures

1. Informal Conferences

Informal settlement provisions provided employers the right of review, as well as workers or their representatives the opportunity to participate in the proceedings. The penalty retention rate was 66.04% (SAMM 12) of the assessed penalties, which is within the FRL range of 61.06% to 82.62%. Informal conference procedures in the NOM were comparable to OSHA’s. The case files reviewed contained an informal conference worksheet that was utilized to ensure proper documentation of the main issues, potential courses of action, proposed settlement offers, justification for reclassification, and CAO approval, where the penalty reduction exceeded 50%.

1. Formal Review of Citations

There are five members of the Occupational Safety and Health Review Board appointed by the Governor – two members from management, two members from labor, and a representative of the general public. Hearings are open to the general public and Review Board decisions are available upon request.

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

The Review Board provides administrative review of appeals for contested citations. There is an additional provision that gives the employer the opportunity to have the case reviewed by the CAO (or designee), prior to a review board hearing. Affected workers are entitled to participate in hearings before the Review Board. Decisions of the Review Board may be appealed to the appropriate State District Court. Appeals from the Nevada District Courts go up to the State Supreme Court. However, there was a six month pause because of board member vacancies and the inability to have a quorum to conduct its business. At the end of FY 2023, this resulted in 67 cases in litigation (compared to 47 cases in FY 2021), 12 scheduled hearings, no significant cases, and 4 COVID-19 related cases.

As a result, the average lapse time from receipt of a contest to a first level decision was 423.82 workdays (SIR 8), which is substantially greater than OSHA’s lapse time of 158.39 workdays and the national average of 178.85 workdays. Private sector violations were vacated 31.14% (SIR 5b), which was higher than the national rate of 15.30%. OSHA will continue to monitor this measure.

NVOSHA made significant progress in the reclassification rate for private sector violations from 45.10% in FY 2022 to a lower rate of 16.52% (SIR 6b), this is closer to the 18.28% for OSHA and 12.40% for the national average. Penalties retained improved and is slightly lower at 61.18% (SIR 7b), compared with 67.06% for OSHA, and 66.14% for the national average. Observation FY 2022-OB-01 is closed.

#### 4. 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 occupational safety and health standards, which the Secretary of Labor promulgates, modifies, or revokes, and any amendments, unless the State Plan opts to provide an alternative standard that allows for equal protection.

Standards and federal program changes were typically adopted identically and on time, except those requiring approval by the Nevada Legislature. The Legislature only meets biennially; this does not always allow for timely adoption of standards.

The table below represents NVOSHA’s response to federal standards.

The Emergency Temporary Standard for COVID-19 Vaccination and Testing was withdrawn and not adopted by NVOSHA.

**Table 2**

**Status of FY 2022 and FY 2023 Federal Standards Where Adoption Was Required**

(May include any delinquent standards from earlier fiscal years)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard29 CFR 1910, 15, 17, 18, 26, 28(11/5/2021) | 11/20/2021 | N/A | N/A | N/A | 12/5/2021 | N/A |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard29 CFR 1910(11/5/2021) | 1/7/2022 | 1/7/2022 | Yes | Yes | 1/24/2022 | 1/24/2022 |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act - Annual Adjustment for 2022 29 CFR Part 1903(1/15/2022) | 3/15/2022 | 3/14/2022 | Yes | Yes | 7/15/2022 | 3/14/2022 |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)(2/14/2022) | 4/14/2022 | 2/15/2022 | Yes | Yes | 8/14/2022 | 2/14/2022 |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act - Annual Adjustment for 202329 CFR Part 1903(1/15/2023) | 3/15/2023 | 1/19/2023 | Yes | Yes | 7/15/2023 | 1/19/2023 |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses29 CFR Part 1904(7/21/2023) | 9/21/2023 | 9/21/2023 | Yes | Yes | 1/24/2024 | 1/24/2024 |

1. Federal Program Change (FPC) Adoption

Generally, federal program changes were adopted identically and on time. Table 3 through Table 5 represents NVOSHA’s response to federal program changes.

**Table 3**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Required**

(May include any delinquent standards from earlier fiscal years)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **FPC** **Directive/Subject**  | **Response Due Date** | **State Plan****Response Date** | **Intent****to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan****Adoption Date** |
| Revised Combustible Dust National Emphasis Program CPL 03-00-008(1/30/2023) | 3/31/2023 | 3/31/2023 | Yes | Yes | 7/30/2023 | 3/31/2023 |
| National Emphasis Program on Warehousing and Distribution Center OperationsCPL 03-00-026(7/13/2023) | 9/11/2023 | 9/11/2023 | Yes | No | 1/9/2024 | 9/11/2023 |

**Table 4**

**Status of FY 2022 and FY 2023 Federal Program Change (FPCs) Where Equivalency Was Required**

**(May include any delinquent FPCs from earlier fiscal years)**

| **FPC****Directive/Subject** | **Response Due Date** | **State Plan****Response Date** | **Intent****to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan****Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Compliance Directive for Cranes and Derricks in Construction StandardCPL 02-01-063(2/11/2022) | 7/3/2022 | 7/1/2022 | Yes | Yes | 11/3/2022 | 7/3/2022 |
| OSHA Whistleblower Investigations ManualCPL 02-03-011(4/29/2022) | 10/11/2022 | 10/11/2022 | Yes | No | 2/11/2023 | 02/10/2023 |
| Severe Violator Enforcement Program (SVEP)CPL 02-00-169 (9/15/2022) | 11/15/2022 | 10/3/2022 | Yes | Yes | 3/15/2023 | 10/3/2022 |
| Site-Specific Targeting (SST)CPL 02-01-064(2/7/2023) | 4/8/2023 | 3/31/2023 | Yes | No | 8/6/2023 | 3/29/2023 |
| National Emphasis Program – FallsCPL 03-00-025(5/1/2023) | 6/30/2023 | 7/13/2023 | Yes | No | 10/28/2023 | 6/30/2023 |
| Consultation Policies and Procedures Manual CSP 02-00-005(9/29/2023)  | 11/28/2023 | 11/27/2023 | Yes | No | 3/27/2024 | 11/27/2023 |

**Table 5**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Encouraged**

(May include any delinquent FPCs from earlier fiscal years)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FPC** **Directive/Subject** | **Response Due Date** | **State Plan Response****Date** | **Intent to Adopt** | **Adopt Identical** | **State Plan Adoption****Date** |
| OSHA’s Use of Small Unmanned Aircraft SystemsCPL 02-01-169(12/22/2021) | 2/22/2022 | 4/29/2022 | No | No | Not Applicable |
| National Emphasis Program - Outdoor and Indoor Heat-Related Hazards CPL 03-00-024(4/8/2022) | 6/8/2022 | 5/10/2022 | Yes | No | 5/4/2022 |

**Table 6**

**FY 2022 and FY 2023 State-Initiated Changes**

|  |  |  |
| --- | --- | --- |
| **State-Initiated Change** | **Adoption Date** | **Effective Date** |
| Nevada Operations Manual (NOM) Revision August 2022 | 9/2/2022 | 9/2/2022 |

#### 5. Variances

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

#### 6. State and Local Government Worker Program

The process for conducting inspections in state and local government agencies is the same as the private sector, including the issuance of penalties. Public Administration is comprised of approximately five percent of the State’s employment. In FY 2022 NVOSHA exceeded the established goal and adjusted the estimated number of public sector inspections in their FY 2023 grant to 20 safety and 20 health for a total of 40 inspections. For FY 2023, a total of 18 of 884 or 2.04% of inspections were conducted in state and local government workplaces (SAMM 6), which was an increase from prior years. The number of inspections in state and local government agencies was below the newly adjusted negotiated estimated goal of the FRL range of 3.17% to 3.50%. OSHA will continue to monitor this measure.

#### 7. Whistleblower Program

Claims of workplace retaliation for reporting occupational safety and health issues are investigated by the Nevada Occupational Safety and Health Whistleblower Investigations Unit. There were four whistleblower protection investigators assigned to the unit. These investigators attended the required OSHA-specific whistleblower training.

During the case file review, it is apparent that NVOSHA has made substantial progress in formalizing its case file documentation structure and adhering to documentation requirements for each type of case disposition. Additionally, the case file review confirmed that NVOSHA records supervisory review in the Case Activity Log, including for cases administratively closed. Finding FY2022-06 was completed.

OSHA conducted six federal reviews of NVOSHA dual-filed complaints. OSHA was able to defer to the state’s determination in all six of these federal reviews.

OSHA expects continued program improvement with the promulgation of NVOSHA’s Whistleblower Investigations Manual (WIM).

#### 8. Complaint About State Program Administration (CASPA)

There were no CASPAs filed during this period.

#### 9. Voluntary Compliance Program

The Nevada Voluntary Protection Program (VPP) promotes effective worksite-based safety and health. In VPP, management, labor, and SCATS establish cooperative relationships at workplaces that have implemented a comprehensive safety and health management system. Approval into VPP is OSHA’s official recognition of the outstanding efforts of employers and employees.

In FY 2023, a new VPP Star was awarded to US Ecology, bringing the total Star sites in Nevada to 11. NVOSHA is hopeful that continued interest in VPP will result in new businesses entering the program, as they continue to participate in outreach events. In addition, there are two new VPP applications being reviewed with expectations that at least one will result in a VPP Star award in FY 2024.

#### 10. State And Local Government 23(g) On-site Consultation Program

This section covers consultation services provided solely to state and local government employers that are funded under Section 23(g) of the OSH Act.  Consultation services to state and local government employers are provided through SCATS.  The private sector consultation program is funded under Section 21(d) of the OSH Act and evaluated separately in the FY 2023 Regional Annual Consultation Evaluation Report (RACER).

In FY 2023, 26 initial consultation visits were conducted in state and local government workplaces.  Of the 26 visits conducted, all 26 (100%) were in high hazard establishments, exceeding the goal of 90% (MARC 1).  Twenty-two (84.6%) visits were conducted at smaller businesses with fewer than 250 employees, and 23 (88.5%) were in smaller businesses with fewer than 500 employees (MARC 2A and 2B).  In all consultation visits, the consultant conferred with employees 100% of the time (MARC 3).

During this evaluation period, 97 serious hazards were identified, and all (100%) were corrected in a timely manner.  A total of nine serious hazards were corrected on-site, 68 within the original time, and 20 within the extension timeframe (MARC 4A and 4B).  No serious hazards were referred to enforcement (MARC 4C).  Of these 97, 77 (79.4%) were corrected within the original timeframe or on-site, exceeding the goal of 65% (MARC 4D).  There were no uncorrected serious hazards with correction dates 90 days past due (MARC 5).

An on-site review was conducted of the state and local government consultation program on January 9-13, 2023.  The purpose of the visit was to assess the quality of the program’s services and its internal quality assurance program in accordance with Consultation Policies and Procedures Manual (CSP 02-00-004) and 29 Code of Federal Regulations (CFR) Part 1908 – Consultation Agreements.

In the five visit files reviewed, improvements were noted in the use of Form 33, since the FY 2021 on-site review.  Overall, program requirements were met.

## Appendix A – New and Continued Findings and Recommendations

FY 2023 Nevada Occupational Safety and Health Comprehensive FAME Report

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or** **FY 2022-OB-#** |
| --- | --- | --- | --- |
| FY 2023-01 | The percentage of in-compliance inspections for both safety 39.63% and health 55.69% inspections was above the FRL of 25.38% to 38.08% and 35.06% to 52.58% respectively (SAMM 9). | NVOSHA management staff should monitor and assess case files to determine why the in-compliance rate is outside the FRL. | FY 2022-03FY 2021-04 |
| FY 2023-02 | The total number of enforcement inspections, 884 (73.66%), was below the goal of 1,200 (SAMM 7). | NVOSHA should implement work performance metrics for enforcement staff and supervisors. | FY 2022-02FY 2021-03 |

## Appendix B – Observations Subject to Continued Monitoring

FY 2023 Nevada Occupational Safety and Health Comprehensive FAME Report

| **Observation #****FY 2023-OB-#** | **Observation#****FY 2022-OB-# or FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 | Not Applicable | UPA and Inspection case file letters, forms, and documents were missing, included, but not limited to, sensitive form/UPA summary, complaint response letters, valid reason for no inspection, and response letter for not sampling. | NVOSHA should ensure the information recorded in OIS is also included in the digital case file prior to closing.  | New |
| Not Applicable | FY 2022-OB -01 | The reclassification rate of private sector violations was higher at 45.10% than the national average of 12.17%. | OSHA will monitor NVOSHA’s progress towards this measure at quarterly meetings | Closed |

## Appendix C - Status of FY 2022 Findings and Recommendations

FY 2023 Nevada Occupational Safety and Health Comprehensive FAME Report

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status** **(and Date if Item is** **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
| FY 2022-01  | In FY 2021, the number of fatality investigations, 1 of 6 (16%), was not opened within one day.  | NVOSHA should ensure all fatality investigations are initiated within one day.  | A meeting was held with District Managers and Supervisors regarding this FAME finding and the negotiated goal of opening fatality investigations within one day. NV OSHA’s OSU created a training module pertaining to the findings included in the FAME. Upon notification of reported fatality via the 8-hour memorandum, the administrative staff will follow up with district office(s) to ensure that an investigation is scheduled to be open within a day, if warranted. If a physical inspection is determined to be infeasible within 24 hours, an investigation shall be initiated to the fullest extent possible via other means such as by telephone and/or email and shall be documented on the case file diary. Increased accountability efforts are being taken at all levels, consisting of more frequent meetings between District Managers and their Supervisors, as well as individual corrective action plans for CSHOs. | 11/17/2023 | Completed |
| FY 2022-02 | The total number of enforcement inspections, 810 (67.5%) was below the goal of 1,200 (SAMM 7). | NVOSHA should implement corrective action to meet inspection goals. | A meeting was held with District Managers and Supervisors regarding this FAME finding and the negotiated goal of conducting 1,200 inspections annually. NV OSHA’s OSU created a training module pertaining to the findings included in the FAME. Work Performance Standards for CSHOs and Supervisors have been revised in regard to inspection goals. District Managers have implemented a rule which requires CSHOs and Supervisors to seek permission for inspections that are anticipated to take longer than 60 days to complete. On 6/29/23, an OIS report was run to project our total number of inspections we expect to conduct during FY23. While we do not anticipate meeting or exceeding the negotiated goal of 1,200 inspections, our short-term goal is to exceed our FY22 totals. We determined that this can be achieved by having each CSHO complete 4 inspections per month during the fourth quarter. In turn, District Managers had meetings with their supervisors to provide a plan as to how each CSHO would complete a minimum of four inspections per month, in order to at least exceed the total number of inspections that were conducted in FY22.Increased accountability efforts are being taken at all levels, consisting of more frequent meetings between District Managers and their Supervisors, as well as individual corrective action plans for CSHOs. | Not completed | Open11/17/2023 |
| FY 2022-03 | The percentage of in-compliance inspections for both safety (46.8%) and health (61.5%) inspections exceeded the FRL of 37.98% and 48.77% respectively. | NVOSHA should determine the cause of the high in-compliance rates and implement corrective action. | A meeting was held with District Managers and Supervisors regarding this FAME finding. NV OSHA’s OSU created a training module pertaining to the findings included in the FAME. NV OSHA implemented a new programmed inspection plan (i.e. Inspection Targeting Plan) based on available BLS data to assure that CSHOs are inspecting industries with high injury and illnesses rates within Nevada. A workshop was also held on to review and discuss the new programmed inspection plan. NV OSHA conducted a needs analysis survey with all enforcement staff. The survey provided a platform for each employee to self-identify their knowledge level on particular topics. Training classes have been provided or scheduled for topics which they feel would help develop their hazard recognition skills and provide a better understanding of the associated standards. NV OSHA will continue to assess the needs of enforcement staff with respect to hazard recognition skills. This will be done by providing our staff with knowledge assessments, to identify areas where hazard recognition is deficient. Upon determining these areas, the training supervisor can determine what relevant training is required. As of 6/16/2023, NV OSHA staff have received training regarding the following topics: Accident/Incident Investigation, Evaluation of Safety and Health Management Systems, Safety and Health in the Chemical Processing Industries, Introduction to Safety Standards for Safety Officers, Electrical, Machine Guarding, OSHA Standards for General Industry, Ammonia Refrigeration Systems, Technology, and Safety, EPA Lead, AHERA Building Inspector Refresher, Expanded Health Standards, Advanced Industrial Ventilation, Fall Protection, Cranes in Construction, and Principles of Industrial Ventilation. NV OSHA will utilize field evaluations (i.e. assisted visits) documentation in determining what hazards, if any, were overlooked during the walk around, determine trends, and seek training to educate enforcement staff. Increased accountability efforts are being taken at all levels, consisting of more frequent meetings between District Managers and their Supervisors, as well as individual corrective action plans for CSHOs. | Not Completed | Open11/17/2023 |
| FY 2022-04   | In FY 2021, in 7 of 87 (8%) inspections, documentation of employee interviews was not included in the case file.   | NVOSHA should ensure employee interviews are documented in accordance with the NOM.  | A meeting was held with District Managers and Supervisors regarding this FAME finding and the importance of assuring that all employee interviews are documented and included in the case files. Staff were notified in team meetings held that same day. NV OSHA’s OSU created a training module pertaining to the findings included in the FAME.  Upon communication to supervisors, we will ensure that during their review of a case file, supervisors are ensuring employee interviews have been documented in the file and completing a checklist to indicate such.   NV OSHA will utilize our State Internal Evaluation Program (SIEP) to determine whether employee interviews are being documented in our case files. If the SIEP yields deficiencies consistent with this finding, this will be communicated to the supervisor(s) and district manager(s). Increased accountability efforts are being taken from at all levels, consisting of more frequent meetings between District Managers and their Supervisors, as well as individual corrective action plans for CSHOs.  | 11/17/2023 | Completed |
| FY 2022-05 | In FY 2021, in 6 of 8 (75%) case files with union involvement, the union participation or declination at the opening and closing conference was not documented.  In five of eight (62.5%) of these cases, union participation in the walkaround portion of the inspection was not documented in the case file.  | NVOSHA should ensure union representatives are provided the opportunity to participate - or document the declination - in the opening conference, walkaround portion of the inspection, and closing conference.  | A meeting was held with District Managers and Supervisors regarding this FAME finding and to assure that the involvement of, or lack thereof, union representation has been afforded and is documented in the case file.  NV OSHA’s OSU created a training module pertaining to the findings included in the FAME.  Upon communication to supervisors, we will ensure that during their review of a casefile, supervisors are ensuring employee interviews have been documented in the file and completing a checklist to indicate such.  NV OSHA’s OSU will provide training as necessary to ensure CSHOs and supervisors are familiar with the fields within OIS where this information is required to be entered. Increased accountability efforts are being taken at all levels, consisting of more frequent meetings between District Managers and their Supervisors, as well as individual corrective action plans for CSHOs.  NV OSHA implemented the requirement for supervisory review of all whistleblower case files to be documented in the Complaint Call Log.   | 11/17/2023 | Completed |
| FY 2022-06 | In FY 2021 in 35 of 50 (70%) administratively closed investigation files, there was no evidence of a supervisory review.  | NVOSHA should ensure a supervisory review is documented in the file.   | NV OSHA implemented the requirement for supervisory review of all whistleblower case files to be documented in the Complaint Call Log.  | 11/29/2023  | Completed |

## Appendix D – FY 2023 State Activity Mandated Measures (SAMM) Report

FY 2023 Nevada Occupational Safety and Health Comprehensive FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 9.58 | 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) | 3.24 | 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) | 5.01 | 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) | 2.64 | 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. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 1.70 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU.  |
| 5b | Average number of violations per inspection with violations by violation type (other) | 1.21 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 2.04% | +/- 5% of3.33% | 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%. |
| 7a | Planned v. actual inspections (safety) | 590 | +/- 5% of 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. |
| 7b | Planned v. actual inspections (health) | 294 | +/- 5% of 360 | 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 342 to 378 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $4,472.70 | +/- 25% of $3,625.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. |
| 8a | Average current serious penalty in private sector (1-25 workers) | $2,575.00 | +/- 25% of $2,348.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. |
| 8b | Average current serious penalty in private sector (26-100 workers**)** | $5,355.41 | +/- 25% of $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. |
| 8c | Average current serious penalty in private sector(101-250 workers) | $6,185.99 | +/- 25% of $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. |
| 8d | Average current serious penalty in private sector(greater than 250 workers) | $7,176.71 | +/- 25% of $7,331.41 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| 9a | Percent in compliance (safety) | 39.63% | +/- 20% of31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in compliance (health) | 55.69% | +/- 20% of43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 100% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 76.97 | +/- 20% of 55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 75.51 | +/- 20% of 69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | 66.04% | +/- 15% of71.84% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 99.89% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS.  |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | 1.56% | +/- 25% of0.93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%. |

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 on November 14, 2023, as part of OSHA’s official end-of-year data run.