

**Comprehensive FY 2013  
Federal Annual Monitoring and Evaluation (FAME) Report**

**Utah Occupational Safety and Health Division (Utah OSHA)**



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## **I. Executive Summary**

### **A. Summary of the Report**

This report assesses the activities of the Utah Occupational Safety and Health Division (Utah OSHA) for Fiscal Year (FY) 2013. During FY 2013, Utah OSHA conducted 1050 inspections, 13 discrimination investigations, and 58 public sector consultation visits.

Utah OSHA underwent significant management changes in FY 2013. Louis Silva, the Division Director left Utah OSHA in early July 2013 and the position was filled by an Acting Director during the recruiting process which extended through the end of the fiscal year. Additionally, the Compliance Safety and Health Manager position was vacant from January 2013 through November 2013. While there are a number of findings in this audit, it is important to note that Utah OSHA, under the leadership of the new Program Director and State Designee, had identified all of the issues leading to the findings prior to the audit and were addressing these issues at the time of the audit.

Significant changes are underway at Utah OSHA. Scott McKenzie, the Program Director, who was hired in the first quarter of FY 2014, under the direction of Sherrie Hayashi, State Designee, is effectively rebuilding the Utah OSHA Program. The new Program Director has restructured the office, and is committed to ensuring that compliance officers are supported, trained and equipped to do their jobs in a highly effective manner.

There is a new spirit of cooperation between Utah OSHA and OSHA which will undoubtedly lead to improvement within Utah OSHA, helping to make Utah OSHA a leader among State Plan states.

### **B. State Plan Introduction**

Utah OSHA is housed within Utah's Labor Commission. The State Designee is Labor Commissioner Sherrie Hayashi. Scott McKenzie serves as the Utah OSHA Program Director. The Utah OSHA program consists of enforcement, discrimination, cooperative programs and private and public sector consultation. Public sector consultation, the Voluntary Protection Program and partnerships are administered by the enforcement division and funded under the 23(g) grant. Consultation in the private sector is funded through the 21(d) cooperative agreement. Utah OSHA operates on a traditional five-day workweek from a centrally located office in Salt Lake City. Utah OSHA closely mirrors the federal program with some differences that allow for accommodation of unique state demands and issues.

Utah OSHA currently employs 28 full-time positions in the Compliance Section, which includes 13 safety and 7 health compliance officers. The Utah FY 2013 final grant amount including both the overmatch and return of funds was \$3,014,186. Utah OSHA jurisdiction includes private employers having one or more workers and all state and local government agencies, including public education. During FY 2013, Utah OSHA had jurisdiction over approximately 1,204,505 workers, with 15% of them in the public sector. Utah OSHA has jurisdiction over the public sector, but penalties are statutorily prohibited.

Federal enforcement jurisdiction remains over maritime employment in the private sector; employment on Hill Air Force Base; Tooele Army Depot, which includes the Tooele Chemical Demilitarization Facility; and the Department of Energy's Naval Petroleum and Oil Shale Reserve to the extent it remains a Department of Energy facility. Federal jurisdiction remains in effect with regard to the federal government and the United States Postal Service.

### **C. Data and Methodology**

The findings and recommendations in this report are based on the January 2014 enforcement on-site review and the following data sources:

- 2013 State Operations Annual Report (SOAR)
- State Plan Grant Application (2013)
- State Activity Mandated Measures Report (SAMM)
- State Information Report (SIR)
- Mandated Activities Report for Consultation (MARC)
- Minutes from quarterly meetings

The on-site review was conducted the week of February 10, 2014 by seven Region VIII representatives. The on-site review focused on a review of the enforcement case files, a review of the discrimination program, a review of the complaint process and a special study focused on targeting. The discrimination review took place from February 10th through 13th, including a review of investigative case files, policies and procedures and investigation results.

Enforcement case files were selected using the Fiscal Year 2013 Federal Annual Monitoring and Evaluation (FAME) Guidance *Suggested Procedures for Performing Random Sampling*. The population of case files evaluated was that of inspections closed in FY 2013. Ninety inspection files were selected and eighty-seven were located. Three of the requested files could not be located. Seventy-three of these files were safety, fourteen were health. Five fatality files were selected.

Additionally, twenty inquiries (phone-and-fax investigations) were reviewed. Interviews of management and staff were conducted.

### **D. Findings and Recommendations**

There are eleven findings in this report and eleven observations. The findings address a variety of deficiencies in the program, including the lack of appropriate documentation in the case files, an improperly implemented discrimination program, as well as a very high in-compliance rate for both programmed and unprogrammed safety and health inspections.

A theme within the findings is that the overall management of the program has been ineffective and inconsistent. There is not a single source Field Operating Manual to help compliance officers develop effective and legally sufficient cases. There are no mechanisms in place that ensure discrimination investigations are appropriately screened and conducted.

There is limited guidance on the development of partnerships or Voluntary Protection Programs (VPP). Beginning in FY 2011, in the interest of efficiency, management allowed the elimination of certain key components of inspections. This included items such as review of the 300 logs, narratives, and management oversight. This, in turn, created a significant problem in ensuring appropriate case file documentation. Compliance officers, in recent years, have received limited training in legal sufficiency and hazard recognition. Appendix A contains the findings and recommendations.

With regard to the observations, a consistent theme is lack of appropriate documentation and inconsistencies within the inspection process. Examples of this are improper grouping of violations and inadequate documentation. See Appendix B for a listing of observations.

There were no outstanding findings from FY 2012.

## **II. Major New Issues**

Utah OSHA experienced significant changes starting in FY 2013 through the second quarter of FY 2014. Louis Silva, Utah OSHA Division Director, left Utah OSHA in early July, leaving the position vacant through the end of the fiscal year. In the first quarter of FY 2014, Scott McKenzie became the Utah OSHA Division Director. Under the direction of Sherrie Hayashi, Scott McKenzie conducted a thorough review of the Utah OSHA Program, and instituted numerous changes to improve Utah OSHA's performance and transparency.

In the first quarter of FY 2013, Utah OSHA issued a significant case to US Magnesium, with a total penalty of \$1,470,000. This inspection was initiated on May 23, 2012 under the Chemical National Emphasis Program and resulted in 20 willful and 14 serious violations.

In the second quarter of FY 2014, the Supreme Court in Utah repudiated the multi-employer worksite doctrine for Utah based upon two factors. The first factor is that the Court read that, Utah Code Section 34A-6-201(1), addresses only workers of employers. This section of the Utah Code is similar to Section 5(a)(1) of the OSH Act of 1970, and could be considered Utah's "general duty clause". The second factor is that 29 CFR 1926.15, *Rules of Construction*, where the responsibility for prime contractors with regard to subcontractors is defined, was never specifically adopted in Utah.

Utah OSHA developed their own software program in lieu of the NCR and OIS. The software program is called SafeBase. In the third quarter of FY 2013, SafeBase was released for the compliance officers to use. SafeBase did not connect with IMIS, and therefore Utah OSHA was unable to provide inspection data to OSHA using SafeBase. A connection between SafeBase and IMIS was explored, but not implemented. For several months, compliance officers performed dual entry between SafeBase and the NCR for inspections. Numerous deficiencies in the application of SafeBase were encountered by Utah OSHA staff and management. Finally, in the second quarter of FY 2014, the decision was made to implement OIS rather than to use and modify SafeBase.

## **III. Assessment of State Plan Performance**

## 1. ENFORCEMENT

According to the Enforcement Activity Report, Utah OSHA conducted a total of 1,050 inspections in FY 2013. This represents 145% of their projected number of inspections for FY 2013, which was 723.

### a) Complaints

Utah OSHA conducted 59 formal complaint inspections in FY 2013 and 365 referral inspections. As in past years, Utah OSHA only takes complaints from current workers who are willing to sign a complaint form. If a worker or worker representative will not sign a complaint, the information is treated as a referral. In FY 2013, the average number of days to initiate a complaint inspection was 6.76. In FY 2012, the average number of days was 4.75. The negotiated number for Utah is 5 days. The third quarter of FY 2013 had a particularly long average number of days, 24, and this is likely associated with the implementation of a new data system, SafeBase. All complaints and referrals alleging imminent danger were responded to within one workday.

With regard to phone and fax investigations, Utah OSHA conducted 45 in FY 2013. Approximately 20 phone and fax files were reviewed as part of the on-site audit.

### Findings and Recommendations

OB - 1 In some cases when referrals were received from the public or from workers who would not sign complaints, there was no contact information for that person documented in the files. Utah OSHA should attempt to obtain contact information for all complainants and people who make referrals.

OB - 2 Processes, such as requiring a worker to print a complaint form, sign it and mail it in may hinder the formal complaint process. Utah OSHA should streamline the process so that workers can more easily file complaints. Of particular note would be workers and the public who may not have access to computers and printers.

### b) Fatalities

Utah OSHA conducted 12 fatality inspections in FY 2013. Six of the fatalities occurred in construction, three of the fatalities occurred in the oil and gas industry, and four fatalities occurred in general industry. One of the fatalities occurred in the public sector where an avalanche forecaster was struck and killed by an avalanche. The most frequent cause of the fatal accidents was struck-by (5), followed by falls (3). The other fatalities were due to caught-in (1), vehicle run-over (1), explosion (1) and avalanche (1).

Of the 87 files that were reviewed, five were fatalities. All five were inspected the day that the fatality was reported. Of the five cases, the appropriate next-of-kin letters were only sent in three cases. Interviews with staff indicated that family members had to request the findings of a fatality through Utah's GRAMA process.

## Findings and Recommendations

OB - 3 Next-of-kin letters were not written or sent in two of the fatality cases, and family members had to request inspection findings after the completion of the inspection.

### c) Targeting and Programmed Inspections

In the State of Utah 23(g) Grant Application for FY 2013, the areas of concentration for Utah OSHA were to be oil field activity, residential construction, grain & oil seed milling, industrial machine guarding, lock-out/tag-out (LOTO) and public sector. Within the SOAR, initiatives addressing the public sector, oil and gas exploration, machine guarding and LOTO, and chemical process safety management were identified. Through interviews, it appeared that the initiatives took the place of local emphasis programs.

Fifty-four percent of inspections coded as 'programmed' *and* 'safety' inspections had serious, willful or repeat violations; and fifty-seven percent of inspections coded as 'programmed' *and* 'health' had serious, willful or repeat violations. These programmed inspections would include primarily the chemical NEP, residential construction, and the machine guarding and LOTO initiatives.

According to the SOAR, the emphasis programs in place in FY 2013 were initiatives addressing the public sector, oil and gas exploration, machine guarding and LOTO, and chemical process safety management. Additionally, a residential emphasis program was in place in FY 2013. Utah OSHA did not adopt CPL-04-00-001 - Procedures for Approval of Local Emphasis Programs. The document listed above, ENF - 006, UOSH Compliance Inspection Emphasis Procedures, provides some guidance in the development of initiatives, but only says that Utah employers with total incident rates over the state and national average for their industrial classification will be targeted.

Worker's compensation data and BLS data is available to Utah OSHA to develop emphasis programs. Additionally, employers are required to report all serious workplace injuries to Utah OSHA for investigation. These sources of information can help Utah OSHA identify higher risk industries within their state to more effectively target their emphasis programs.

In FY 2013, no new targeting programs were developed. When targeting programs were developed in the past, there was no legal review of the programs and public input was typically not sought. Generally, the director was involved in developing targeting programs. There were no specific inspection goals developed. Team leaders would assign inspections to compliance officers, or direct compliance officers to work in certain area looking for hazards related to construction or oil and gas.

In FY 2013, outreach to high hazard employers in both construction and general industry was conducted on "Safety Awareness Day" where all compliance officers and consultants visited 460 employers with information on safety in their workplaces. No citations were issued.

Inspection records are retained for three years on site, and archived for an additional seven years and inspections are conducted focusing on the area of emphasis.

In FY 2013, the effectiveness of Utah OSHA's targeting programs and LEPs was not formally evaluated. Programs were continued from previous years.

### Findings and Recommendations

Finding 13 - 01 There is no process in place to determine whether targeting programs are effective. Utah OSHA should evaluate, on an annual or more frequent basis, the effectiveness of their targeting programs.

#### d) Citations and Penalties

According to the SAMM, the percentage of inspections without citations in FY 2013 for safety was 43.47% and for health was 41.90%. These numbers can be compared to the national average, 29.1% for safety and 34.1% for health. This comparison is from FY 2011, which includes data from the State Plans and OSHA. With regard to trends throughout FY 2013 within Utah, the fourth quarter had 59.49% of all safety inspections with no violations.

The average number of violations per inspection with violations was 1.74 for serious, willful or repeat, and 0.28 for other-than-serious. These average numbers can be compared to the national data for FY 2011 which showed 2.04 for serious, willful or repeat, and 0.88 for other-than-serious.

A review of the enforcement report shows that 457 of the 1050 inspection conducted had no violations. Of the 593 inspections where citations were issued, 90.4% had serious violations, 5.1% had repeat violations, and less than 1% had willful violations. No unclassified or failure-to-abate citations were issued. Of the 1,087 violations cited, 80.3% of the violations were serious, 1.8% were willful, 3.4% were repeat and 14.4% were other-than-serious.

The average initial serious penalty in FY 2013 was \$1,826.65, according to the SAMM. According to the enforcement report, the average current serious penalty for FY 2013 was \$1,030.30. This difference represents penalty reductions given at the informal conference. For employers with 25 or fewer workers, the average current serious penalty for FY 2013 was \$891.22. For employers with 26 - 100 workers, the average current serious penalty for FY 2013 was \$1,260.91. For employers with 101-250 workers, the average current serious penalty for FY 2013 was \$1,872.87. Finally, for employers with more than 250 workers, the average current serious penalty for FY 2013 was \$3,065.33.

Additionally, Penalty Reduction Agreements (PRA) are sent with citations to employers who have 250 or fewer workers, who have not been offered a penalty reduction within the past three years, and who have not received a willful or repeat violation. The PRA allows for a 50% reduction in the penalties with abatement of the hazard, but no reclassification of violations.

According to SAMM #24, Utah OSHA retains 62.42% of the penalty, which is slightly less than the 66% federal average.

A review of the inspection files showed inconsistent grouping of violations. For example, one compliance officer may group all machine guarding violations into one serious citation, but others cite different violations separately. Additionally, when violations of the LOTO standard were found, only the program was cited, rather than citing the specific elements of the program.

### Findings and Recommendations

Finding 13 – 02 The number of inspections where no violations were found is high. Utah OSHA should provide additional training for compliance officers in the recognition of violations and in the documentation of violations.

Finding 13 – 03 During the audit, interviews indicated that compliance officers were instructed that no violations should be issued as willful. Utah OSHA should instruct compliance officers on the identification and development of willful violations, and cite willful violations as willful. This practice has been discontinued in FY 2014 by the new management team.

OB - 4 A review of the inspection files showed inconsistent grouping of violations. For example, a machine shop has a variety of different guarding violations on different machines grouped into one serious violation.

OB - 5 Violations of the LOTO standard were not in accordance with the LOTO directive. In several cases, where LOTO violations were issued, only the program was cited, rather than its elements. This can result in inadequate abatement.

OB - 6 Few inspections addressed personal protective equipment such as safety glasses.

OB - 7 Few inspections, even at employers with typically high noise levels such as machine shops, addressed health hazards or noise, either through sampling or through referrals to an industrial hygienist.

#### e) Abatement

Beginning in FY 2011 and throughout FY 2013, Utah OSHA determined that a 30-day period for abatement would be standard for all citations. Only 40 of the 87 records reviewed (46%) contained adequate abatement information. In one file, abatement was requested, but not received. In some cases, files were marked *Corrected During Inspection* but no evidence of that was included in the files. In one case, abatement was not received for a serious hazard that resulted in a fatality because the citation was deleted, but the hazard remained. Of the 87 files reviewed, two were follow-up inspections. The NCR Inspection Report shows that fourteen follow-up inspections were conducted in FY 2013.

## Findings and Recommendations

Finding 13 - 04 By policy, Utah OSHA provides a 30-day abatement period. Utah OSHA should ensure that the abatement period is the shortest interval in which the employer can reasonably be expected to correct the violation.

Finding 13 - 05 Abatement policies were not consistently applied. Utah OSHA should ensure that employers provide appropriate abatement verification.

### f) Worker and Union Involvement

Of the 87 files reviewed, six establishments had workers represented by a union, but union participation in the inspection process occurred in only three of these establishments. One of the reviewed files indicated that workers were not represented by a union, but they were represented by the Painters and Tapers Local #77.

Worker interviews were appropriately documented in only 52 of the 87 files reviewed. In some cases, such as fatalities, worker interviews were recorded. Interviews with compliance officers indicate that field notes are generally not included in the file.

## Findings and Recommendations

OB - 8 Not all field notes and worker interview statements were placed in the files.

OB - 9 In three cases, unions were not represented in inspections, nor were copies of the citations sent to the unions. Utah OSHA should ensure that worker representatives, e.g., unions, are provided the opportunity to accompany the compliance officer during the inspection, and that citations are mailed to the union.

## **2. REVIEW PROCEDURES**

### a) Informal Conferences

Of the 87 files reviewed, informal conferences were conducted for 19. Of the 19 informal conferences, only 12 included the reason the citation modifications were made. In one case, a penalty was reduced by 75%, but there was no documentation as to why the penalty was reduced. In a fatality case, citations were deleted and the case was closed. In another case, an employer did not attend an informal conference, but rather sent in half of the penalty that was due, and the inspection was closed.

### b) Formal Review of Citations

Contested cases in Utah are assigned to an Administrative Law Judge (ALJ) for a hearing. Appealed decisions of the ALJ automatically move forward to the Labor Commissioner, unless the appeal is required to be heard before the Labor Commission Appeal Board. This board is composed of three members; one employer, one worker and one other member.

Each board member is selected by the Governor and serves a six year term. No more than two members can be of the same political affiliation. Decisions by the Board are majority decisions. Appealed decisions of either the Board or the Commissioner are heard in the Utah Court of Appeals.

### Findings and Recommendations

Finding 13 - 06 Utah OSHA does not consistently document modifications that were made in the informal and formal conferences. Utah OSHA should document why modifications are made and be consistent about the modifications that were made during the informal.

## **3. STANDARDS AND FEDERAL PROGRAM CHANGES (FPC) ADOPTION**

### a) Standards Adoption

Utah's policy as described in ADM -007 *Adopting Final Rules and OSHA Directives (January 1, 2003)* - has been that whenever a new standard or "final rule" is promulgated by OSHA, the State of Utah incorporates this by reference. Utah OSHA has six months to incorporate these final rules by reference. In order to incorporate a rule, Utah OSHA notifies the Labor Commission Office of the General Counsel of the needed rule adoption. The General Counsel staff will then initiate the change process. At this point, an open meeting is scheduled and the rule is presented. The rule is then forwarded to the Utah Administrative Rules Division for publication in the bi-weekly "Utah State Bulletin" and public comment is requested. Public comments are forwarded to Utah OSHA. Thirty days after the rule is published in the "Utah State Bulletin", the rule becomes effective. The reference to the Federal Register where the rule was initially published then appears in the Utah Administrative Code R614-1-4 (Incorporation of Federal Standards).

Although the process for standards adoption is well laid out, not all rules went through this process. For instance:

Standard, 1910,15,17,18&26 Updating OSHA Standards Based on National Consensus Standards; Head Protection.

Standard, 1926 - Direct Final Rule - Cranes and Derricks in Construction: Underground Construction and Demolition.

Standard, 1910,1910.102,1911 Revising Standard Referenced in the Acetylene Standard.

### Findings and Recommendations

Finding 13 - 07 Utah OSHA did not properly adopt rule changes through their formal rule change process in FY 2013. Utah OSHA should ensure that all rule changes are adopted and implemented.

b) OSHA/State Plan Initiated Changes

The following represent federal program initiated changes during FY 2013 and the State's corresponding action:

CPL 02-01-054 Inspection and Citation Guidance for Roadway and Highway Construction Workzones - The State Plan adopted this CPL except all references to federal FOM read 'Utah FOM.'

CPL 02-13-01 Site Specific Targeting 2012 - The State Plan did not adopt the change, but developed its own emphasis program.

CPL 03-00-017 National Emphasis Program Occupational Exposure to Isocyanates - The State Plan adopted this CPL with anticipated adoption date of 1/20/2014.

CPL 02-00-155 Federal Program Change Memo for OSHA Instruction CPL 02-00-155 - Construction Targeting - The State Plan did not adopt this, and will develop their own program.

CPL Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification - The State Plan did not adopt this as there is no maritime activity in Utah.

Utah OSHA had indicated in FY 2012 that they had adopted the Nursing and Residential Care Facilities Emphasis Program CPL-03-00-016, which is an enforcement program that required adoption. Although Utah OSHA indicated that they adopted this enforcement directive, instead, they asked Consultation to conduct a non-enforcement emphasis in this industry. Consultation conducted outreach visits to nursing and residential care facilities and offered their services throughout FY 2013. The Nursing and Residential Care Facilities Emphasis Program required that inspections be conducted in FY 2012 and FY 2013.

Findings and Recommendations

OB - 10 Utah OSHA did not implement the enforcement requirement within the Nursing and Residential Care Facilities directive.

**4. VARIANCES**

Utah currently has one permanent variance with the chimney construction company, Alberici Mid-Atlantic LLC, which was granted on August 2, 2008.

**5. PUBLIC EMPLOYEE PROGRAM**

According to the Utah 2013 grant application, approximately fifteen percent of workers in Utah work in the public sector. According to the SOAR, 90 inspections, 58 consultation visits and 82 interventions were all conducted in the public sector. Utah OSHA does not assess monetary penalties in the public sector.

During FY 2013, five Sandy City Fire Stations were accepted into the Safety and Health Achievement Recognition Program (SHARP). There are currently seven public sector SHARP entities.

## 6. DISCRIMINATION PROGRAM

The audit involved a review of 27 administratively closed and 13 investigative case files from FY 2013.

The following table is a summary of discrimination complaints during FY 2013:

<b>Disposition</b>	<b>Totals</b>
Total cases from FY 2013	13
Cases completed in FY 2013	13
Cases completed timely	85%
Overage cases	2
~ Withdrawn	0
~ Dismissed	10
~ Merit	3
~ Settled	0
~ Settled other	0
~ Litigated	3
Administratively Closed	27
Investigator on Staff (collateral duty)	5

Utah OSHA reviews all potential complaints for appropriate coverage requirements, timeliness of filing and the presence of a prima facie allegation. The screening process is documented on a *Whistleblower Pre-Screen & Intake Case File Checklist*.

New complaints are received in two forms, a written health and safety complaint or a telephone complaint. In either case, the complaint is forwarded to the investigator to conduct a formal interview. The investigator interviews the complainant and evaluates the complaint for coverage requirements, timeliness of filing and the presence of a prima facie allegation.

The complaint intake process is completed entirely by the investigator. The supervisor is informed and oversees the screening and intake process. In all cases, the supervisor keeps track of cases by using a spreadsheet prior to being placed into the IMIS system.

Utah OSHA appropriately referred federal statute cases to the OSHA Denver Regional Office and has procedures in place to notify complainants of the right to concurrently dual file

Section 11(c) complaints with the OSHA Denver Regional Office. The audit included a review of 27 administratively closed cases from FY 2013.

Of the 27 administratively closed cases, ten complaints did not properly identify the protected activity. In a variety of cases, protected activity was not correctly identified. Additionally, one case did not analyze improper work refusal. Three cases did not identify the adverse employment action. In a variety of cases, Utah OSHA incorrectly determined the Complainant's transfer, denial of time off, or termination was not deemed an adverse action. Fourteen cases did not document the Complainant's recorded interview and/or a memo to file regarding conversations with the investigator.

Although most of the files were organized and the investigations were essentially appropriate, a few case files displayed loose notes and unorganized hand written notes.

The audit included a review of 13 cases that were not administratively closed covering FY 2013. Given the small sample size, the ability to identify trends was limited. Thus, the recommendations were based upon significant observations.

Many of the dismissed cases did not properly identify all of the protected activity. In cases with multiple protected activities, respondent knowledge was not addressed with each specific protected activity.

Two cases indicated there was no adverse action; however, an adverse action had occurred. Three cases had disparate treatment that would have been strengthened with additional evidence. Ten cases did not share the Respondent's written response to the Complainant in order to provide an opportunity to rebut Respondent's position and did not test the Respondent's defense in the analysis. In case files where the Respondent provided a written position statement, Utah OSHA did not provide the Complainant a copy to review and rebut the information. Utah OSHA will improve the quality of the investigation by providing a copy of the information to the Complainant.

The audit was unable to determine if settlements provided appropriate relief as none of the 13 cases reviewed had supporting documents.

Discrimination training for Utah OSHA has been provided by Region VIII. The last formal training was conducted in 2009; however, with the transition of management there have been two new investigators assigned to the unit. The two new investigators received two weeks of whistleblower training (OTI Course 1420) in FY 2014. Additionally, a new supervisor has been assigned to oversee the discrimination unit. On-the-job training was provided through the process of working with peers on these cases. All cases were discussed by the entire group. The supervisor worked closely with the Regional Supervisory Investigator (RSI) and communicated that information directly to the group during these sessions. The Utah OSHA program has staffed one supervisor, five investigators/compliance officers. In addition, an administrative staff member assisted when needed. The program has changed supervisors and added two fulltime new whistleblower investigators.

## Findings and Recommendations

Finding 13 - 08 The discrimination program throughout FY 2013 had significant programmatic deficiencies involving the receipt, processing and disposition of whistleblower complaints. Utah OSHA should ensure that appropriate training and oversight is conducted.

## **7. SPECIAL STUDY – STATE PLAN TARGETING PROGRAMS**

### **Development of Targeting Programs**

Utah OSHA has targeting programs in place for both construction and general industry. Utah OSHA did develop a written policy, ENF - 006, *UOSH Compliance Inspection Emphasis Procedures* in FY 2004. This policy was revised in FY 2011. This policy includes selection procedures based on Bureau of Labor Statistics (BLS) rates.

The emphasis programs in place in FY 2013 were initiatives addressing the public sector, oil and gas exploration, machine guarding and LOTO, and chemical process safety management. Additionally, a residential emphasis program was in place in FY 2013.

In FY 2013, no new targeting programs were developed. In FY 2013, the effectiveness of Utah OSHA's targeting programs and LEPs was not formally evaluated. Programs were continued from previous years.

### **8. CASPAs**

There were two CASPAs alleging issues with regard to discrimination filed in FY 2013 in Utah. These CASPAs were both resolved.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

Utah OSHA had signed the "Utah Arches Workplace Safety and Health Partnership" document in May 20, 2010. These partnerships were in place through FY 2013 where, as part of the partnership, fifteen safety walks at five different construction sites took place. The safety walks involved a compliance officer working with a general contractor and his subcontractors on a construction site to identify and correct hazards. Citations were not issued for violations that were encountered. In early FY 2014, the Arches Partnership was dissolved.

Utah OSHA's written partnerships and alliances did not include all of the required program elements and there were no provisions for annual evaluation of each respective agreement. Interviews with staff indicated that there was inconsistency in how alliances and partnerships were addressed, with different verbal instructions throughout the year. Additionally, enforcement incentives, such as citation exemptions, were offered.

Utah OSHA promotes VPP through presentations with the assistance of existing VPP

members and workers. Utah OSHA currently has seven participants in the VPP, six are Star sites, and one is a Merit site.

An on-site review of the Voluntary Protection Program was conducted as part of the FY 2013 audit. Based upon information obtained during this audit, it appears that Utah OSHA acknowledges these deficiencies in the administration of the VPP, and Utah OSHA has taken important first steps to address these opportunities for growth and improvement. First of all, the new director is committed to the implementation of an effective VPP. More importantly, Utah OSHA has assigned the administration of VPP to one compliance officer who is now clearly designated as the responsible party in charge of VPP.

It is unclear to the Utah OSHA staff who is assigned the responsibility for the administration and management of this program during the 2013 calendar year. As a result, VPP applications that were received were not subjected to an effective review process.

Sites inquiring about the disposition of their VPP applications are often unable to obtain a response from Utah OSHA personnel. Little infrastructure had been developed to centrally manage VPP in a manner that allowed Utah OSHA personnel to determine what companies were in VPP, which sites were due for a recertification audit, or how many VPP applications had been received.

Personnel with responsibility for VPP did not receive appropriate training or guidance.

#### Findings and Recommendations

OB - 11 Utah OSHA provided inappropriate enforcement incentives for companies that participated in alliances with Utah OSHA.

Finding 13 – 09 The Voluntary Protection Program (VPP) in operation at Utah OSHA in FY 2013 was stagnant due to inconsistent resource commitment to the program. Utah OSHA should provide clear guidance and support to the designated responsible compliance officer for the administration of VPP in addition to developing accountability measures for VPP administration and include these in the performance standards for the responsible parties.

### **10. PUBLIC SECTOR ON-SITE CONSULTATION PROGRAM**

The Public Sector Consultation Program conducted 58 visits statewide. Of the 58 visits, 42 were initial visits, seven were training and assistance visits and nine were follow-up visits. As a result of the 42 initial visits conducted, 154 serious hazards were identified and abated.

The Public Sector Consultation Program conducted 82 interventions, of which 67 were outreach and 15 were training which was not associated with a visit. Of the 67 outreach interventions, 30 addressed both safety and health, 28 only safety and 9 only health.

A number of state agencies, county departments, cities and special service districts were provided assistance this year. Many of these requests came from those visited in promotion

of public sector consultation in previous years, or from the outreach activities from the current and prior years.

**Public Sector Consultation Activity Table**

<b>Activity</b>	<b>Quantity</b>	<b>Totals</b>
Initial Visit	42	<b>58</b>
Training classes after initial visit	7	
Follow-up Visit	9	
<b>Total Number of Public Sector Consultation Visits</b>		
Outreach Intervention	67	<b>82</b>
Training not associated with a visit	15	
<b>Total Number of Public Sector Interventions</b>		

**11. STATE PLAN ADMINISTRATION**

- *Training*

Throughout FY 2013, training of compliance officers was limited to primarily in-house training and webinars. New compliance officers were trained by a senior compliance officer and a training coordinator who developed a several-month class and on-the-job training program. The training program for compliance officers was described in GEN 001, a Utah Labor Commission Policy entitled *Training of new CSHO's*, which was issued on December 3, 2002.

For the past several years, training has been limited, and, compliance officers rarely attended the OSHA Training Institute (OTI) in Arlington Heights, Illinois.

The following training, according to the SOAR, was provided to compliance officers in FY 2013:

- OSHA Webinar #0050 - Practical Noise Control Engineering
- OSHA Webinar #0069 - Recognizing Failures in Machine Safeguarding Systems
- OSHA Webinar #0067 - Safeguarding Robotics
- OSHA Webinar #0066 - Standards and Citation Policy for Roadway and Work Zone Inspections
- OSHA Webinar #0065 - CSHO Safety in Roadway and Highway Construction Work Zones
- OSHA Webinar #0068 - Documenting Heat Stress Violations
- OSHA Webinar #0062 - Lead Removal in Bridge Demolition
- MSDS pro Webinar - GHS and the US Manufacturer - Labeling and Safety Data Sheet Revisions

- HAZCOMM 2012 - The Revised Standard and What Changes You CAN Expect in the Workplace
- CPR and Auto-Defibrillator training
- What is new in window washer Safety equipment - local vendor
- Hearing Conservation - 3M corp
- Phone Duty training - Proper answering, message transfer, customer service training (in-house)
- Proof-reading - Tips for better proof-reading (in-house)
- OSHA 2045 Machinery and Machine Guarding Standards (approximately 20 CSHOs).
- Industrial Hygiene Monitoring and Exposure Assessment Strategies (1 CSHO)
- Industrial Hygiene in Construction: A Practical Approach (1 CSHO)
- Asbestos Contractor/Supervisor Training (2 CSHOs)
- HAZWOPER Refresher (1 CSHO)
- Safety in Excavation Course - Trench Shoring Services (2 CSHOs)
- Crane Signal Person Qualifications - International Union of Operating Engineers (2 CSHOs)
- Rigger Qualification- International Union of Operating Engineers (2 CSHOs)
- Asbestos Contractor Supervisor Refresher (Public Sector Consultant)
- Lead Supervisor Refresher (Public Sector Consultant)

### Findings and Recommendations

Finding 13 - 10 Compliance officers are not equally trained in developing a legally sufficient case or in conducting a thorough inspection. Utah OSHA should ensure that all compliance officers are appropriately trained with regard to legal sufficiency and case development.

- *Funding*

Utah OSHA's federal 23(g) grant was \$1,513,000. The State Plan funding, including their overmatch was allocated to be \$1,669,810 resulting in a total budget of \$3,182,810. Utah OSHA did not utilize all of their funding, in part, because of unfilled vacancies, and returned \$6,057 to the federal government, and did not use \$162,567 of State Plan funds. Four percent of the federal funding was returned, and 9.7% of the State Plan funding was returned. In total 5.29% of the funding available to Utah OSHA was returned to the federal government and the state government.

- *Staffing (including benchmarks, furloughs, hiring freezes, etc.)*

Utah OSHA has benchmarks of ten safety compliance officers and eight health compliance officers, respectively. Staffing levels throughout FY 2013 varied, but the benchmarks were

met. According to the FY 2014 grant application, which would indicate 2013 staffing levels, there were eleven safety compliance officers and ten industrial hygiene and health compliance officers.

In FY 2013, both the program administrator and the 23(g) grant manager left, leaving these positions vacant for three months and nine months, respectively. In early FY 2014, both of these positions were filled and significant restructuring of the department occurred.

- *Information Management*

Utah OSHA had worked on the development of a state-specific data management system called SafeBase throughout FY 2012 and most of FY 2013. Compliance officers began using SafeBase in the second quarter of FY 2013. While Utah OSHA had been informed that the system would have to interface with the Integrated Management Information System (IMIS), there was no interface in place. A decision to dually enter data into both SafeBase and the NCR was made. After some time, a decision to go back to the NCR only, leaving SafeBase until improvements could be made to the actual system. Currently, Utah OSHA has determined that they will utilize the OIS and discontinue use of SafeBase.

- *State Internal Evaluation Program (SIEP) Report*

According to the Utah OSHA SOAR, the State Internal Evaluation Program (SIEP) included an internal evaluation of the efficiency of the citation process using the Lean Six Sigma process. There was no report generated with regard to this process. During the on-site portion of this audit, no documentation regarding the SIEP was encountered.

#### Findings and Recommendations

Finding 13 - 11 Key elements of the enforcement process were eliminated. Some inspections were not reviewed by management, and compliance officers were not reviewing 300 logs. Utah OSHA should ensure that citations issued are legally sufficient, reviewed by management, and that 300 logs are appropriately analyzed.

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

FY 2013 marked the fifth year of Utah's five-year Strategic Management Plan (2009 - 2013).

**Strategic Goal #1 - Achieve an effective impact in the reduction of Utah fatality rate for industries that are under Utah OSHA jurisdiction by 2013, measured by the most current BLS fatality data available for the state.**

**Annual Performance Goal #1 - Achieve a rate of fatalities lower than the baseline rate of 1.5.**

In FY 2013, Utah OSHA's twelve fatalities yielded a Fatality Rate of 1.03. This is lower than the baseline of 1.5. Utah OSHA met this goal.

**Strategic Goal #2 - Achieve an effective impact in the reduction of injuries and illnesses in industries that are under Utah OSHA jurisdiction, measured by the most current average of Bureau of Labor Statistics (BLS) total recordable case rate (TRC) from 2009 - 2013.**

**Annual Performance Goal #2 - Effect an annual reduction of 0.1 of the BLS TRC rate.**

In FY 2012, the BLS baseline was a Total Recordable Cases Rate (TRC) of 5.5 per 100,000 workers, and Utah's goal was a TRC of 5.4 per 100,000 workers. The most recent data for Utah indicates a TRC rate of 3.4. Utah OSHA met this goal

**Strategic Goal #3 - Promote a safety and health culture through increased participation of consultation services, VPP, SHARP and Compliance Assistance.**

**Annual Performance Goal #3 - Increase by 1% per each year, the number of consultation services, workshops, presentations, VPP applications, SHARP applications and participation in Compliance Assistance activities.**

<b>Interventions</b>	<b>Baseline</b>	<b>2013 Goal (5% increase from baseline)</b>	<b>2013 Results</b>	<b>% Change from Baseline</b>
21(d) Consultation Visits	292	307	392	34%
Form 66s	217	228	550	153%
Form 55s	426	426	305	-28%
Public Sector Consultation	15	15	58	287%
VPP Presentations	5	5	2	-60%
VPP Applications	1	1	3	200%
SHARP Presentations	10	11	12	20%

Sharp Applications	2	2	2	0
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**V. Other Special Measures of Effectiveness and Areas of Note**

None.

**Appendix A – New and Continued Findings and Recommendations**  
**FY 2013 Utah State Plan Comprehensive FAME Report**

Rec #	Findings	Recommendations	FY 2012
13-01	There was no process in place to determine whether targeting programs were effective.	Utah OSHA should evaluate, on an annual or more frequent basis, the effectiveness of their targeting programs.	
13-02	The number of inspections where no violations were found is high.	Utah OSHA should provide additional training for compliance officers in the recognition of violations, and in the documentation of violations.	
13-03	During the audit, interviews indicated that compliance officers were instructed that no violations should be issued as willful.	Utah OSHA should instruct compliance officers on the identification and development of willful violations, and cite willful violations as willful.	
13-04	By policy, UT provides a 30-day abatement period.	Utah OSHA should ensure that the abatement period is the shortest interval in which the employer can reasonably be expected to correct the violation.	
13-05	Abatement policies were not consistently applied.	Utah OSHA should ensure that employers provide appropriate abatement verification.	
13-06	Utah OSHA does not consistently document modifications that were made in the informal and formal conference.	Utah OSHA should document why modifications are made and be consistent about the modifications that were made during the informal conference.	
13-07	Utah OSHA did not properly adopt rule changes through their formal rule change process in FY 2013.	Utah OSHA should ensure that all rule changes are adopted and implemented.	
13-08	The discrimination program throughout FY 2013 had significant programmatic deficiencies involving the receipt, processing and disposition of whistleblower complaints.	Utah OSHA should ensure that appropriate training and oversight is conducted.	
13-09	The Voluntary Protection Program (VPP) in operation at Utah OSHA in FY 2013 was stagnant due to inconsistent resource commitment to the program.	Utah OSHA should provide clear guidance and support to the designated responsible compliance officer for the administration of VPP in addition to developing accountability measures for VPP administration and include these in the performance standards for the responsible parties.	
13-10	Compliance officers are not equally trained in developing a legally sufficient case nor in conducting a thorough inspection.	Utah OSHA should ensure that all compliance officers are appropriately trained with regard to legal sufficiency and case development.	
13-11	Key elements of the enforcement process were eliminated. Some inspections were not reviewed by management, and compliance officers were not reviewing 300 logs.	Utah OSHA should ensure that citations issued are legally sufficient, reviewed by management, and that 300 logs are appropriately analyzed.	

**Appendix B – Observations Subject to Continued Monitoring**  
**FY 2013 Utah State Plan Comprehensive FAME Report**

Rec # [OB-1]	Observations	Federal Monitoring Plan	FY 2012
OB-1	In some cases when referrals were received from the public or from workers who would not sign complaints, there was no contact information for that person documented in the files.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2014.	
OB-2	Processes, such as requiring a worker to print a complaint form, sign it and mail it in may hinder the formal complaint process.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2014.	
OB-3	Next-of-kin letters were not written or sent in two of the fatality cases, and family members must request inspection findings after the completion of the inspection.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2014.	
OB-4	A review of the inspection files showed inconsistent grouping of violations. For example, a machine shop has a variety of different guarding violations on different machines grouped into one serious violation. Utah OSHA should train their workers on appropriate grouping of violations.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2014.	
OB-5	Violations of the LOTO standard were not in accordance with the LOTO directive. In several cases, where LOTO violations were issued, only the program was cited, rather than its elements. This can result in inadequate abatement.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2014.	
OB-6	Few inspections addressed personal protective equipment such as safety glasses.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2014.	
OB-7	Few inspections, even at employers with typically high noise levels such as machine shops, addressed health hazards or noise, either through sampling or through referrals to an industrial hygienist.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2014.	
OB-8	Not all field notes and worker interview statements were placed in the files.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2014.	
OB-9	In three cases, unions were not represented in inspections, nor were copies of the citations sent to the unions.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2014.	
OB-10	Utah OSHA did not implement the enforcement requirement within a directive that required enforcement.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2014.	
OB-11	Utah OSHA provided inappropriate enforcement incentives for companies that participated in alliances with Utah OSHA.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during	

Appendix B – Observations Subject to Continued Monitoring  
FY 2013 Utah State Plan Comprehensive FAME Report

		quarterly meetings throughout FY 2014.	
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Appendix C – Status of FY 2012 Findings and Recommendations  
FY 2013 Utah State Plan Comprehensive FAME Report

FY 2013 Utah State Plan Comprehensive FAME Report					
FY 12- Rec #	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status

## Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report

### FY 2013 Utah State Plan Comprehensive FAME Report

OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to National Averages (the collective experience of State Plans and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (Collective experiences of State Plan and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

<b>U.S. Department of Labor</b>				
Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: Utah			FY 2013	
<b>SAMM Number</b>	<b>SAMM Name</b>	<b>State Plan Data</b>	<b>Reference/Standard</b>	<b>Notes</b>
<b>1</b>	Average number of work days to initiate complaint inspections	6.76	(Negotiated fixed number for each state) - 5	State data taken directly from SAMM report generated through IMIS.
<b>2</b>	Average number of work days to initiate complaint investigations	0.81	(Negotiated fixed number for each state) - 3	State data taken directly from SAMM report generated through IMIS.
<b>4</b>	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100%	100%	State data taken directly from SAMM report generated through IMIS.
<b>5</b>	Number of denials where entry not obtained	0	0	State data taken directly from SAMM report generated through IMIS.
<b>9a</b>	Average number of violations per inspection with violations by violation type	1.74	SWR: 2.04	State data taken directly from SAMM report generated through IMIS; national data was manually calculated from

<b>9b</b>	Average number of violations per inspection with violations by violation type	0.27	Other: .88	data pulled from both IMIS and OIS for Fiscal Years (FY) 2011-2013.
<b>11</b>	Percent of total inspections in the public sector	11.12	(Negotiated fixed number for each state) - 6.5%	State data taken directly from SAMM report generated through IMIS.
<b>13</b>	Percent of 11c Investigations completed within 90 calendar days	83.33	100%	State data taken directly from SAMM report generated through IMIS.
<b>14</b>	Percent of 11c complaints that are meritorious	25	24.8% meritorious	State data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2011-2013.
<b>16</b>	Average number of calendar days to complete an 11c investigation	58.41	90 Days	State data taken directly from SAMM report generated through IMIS.
<b>17</b>	Planned vs. actual inspections - safety/health	896/129	(Negotiated fixed number for each state) - 581/142	State data taken directly from SAMM report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
<b>18a</b>	Average current serious penalty - 1-25 Employees	a. 891.22		State data taken directly from SAMM report generated through IMIS; national data is not available.
<b>18b</b>	Average current serious penalty - 26-100 Employees	b. 1260.91		
<b>18c</b>	Average current serious penalty - 101-250 Employees	c. 1872.87		
<b>18d</b>	Average current serious penalty - 251+ Employees	d. 3065.33		
<b>18e</b>	Average current serious penalty - Total 1 - 250+ Employees	e. 1266.70		
<b>19</b>	Percent of enforcement presence	1.47%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.

<b>20a</b>	20a) Percent In Compliance – Safety	Safety - 43.47	Safety - 29.1	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>20b</b>	20b) Percent In Compliance – Health	Health - 41.90	Health - 34.1	
<b>21</b>	Percent of fatalities responded to in 1 work day	83%	100%	State data is manually pulled directly from IMIS for FY 2013
<b>22</b>	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
<b>23a</b>	Average Lapse Time - Safety	27.74	43.4	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>23b</b>	Average Lapse Time - Health	66.85	57.05	
<b>24</b>	Percent penalty retained	69.81	66	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>25</b>	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State data taken directly from SAMM report generated through IMIS.