



State of Utah
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Utah Labor Commission
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Commissioner

Occupational Safety and Health Division
CHRISTOPHER C. HILL
Director

July 28, 2017

Via U.S. Mail and E-Mail

Gregory J. Baxter, Regional Administrator, Region VIII
Occupational Safety and Health Administration
Denver Regional Office
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 551
Denver, CO 80204

**Re: Response of the Utah Occupational Safety and Health Division to the FY 2015
Comprehensive Federal Annual Monitoring and Evaluation Report**

Dear Mr. Baxter

Thank you for the opportunity to participate in the FY 2015 Federal Annual Monitoring and Evaluation (FAME) of the Utah Occupational Safety and Health (UOSH) Division state plan program. This letter will serve as UOSH's formal response to the specific findings and observations set forth in the FY 2015 FAME.

The mission of UOSH is to help ensure a safe and healthy workplace for every worker in the State of Utah. To this end, as pointed out in the FAME, UOSH "has taken every opportunity to improve since the previous FAME visit covering operations in FY 2013." Notably, the FY 2013 FAME contained eleven findings and eleven observations. The current FAME contains two findings and eight observations. UOSH has made significant improvements, as evidenced by the results of the FY 2015 FAME, and will continue to make improvements in accomplishing its mission.

UOSH responds specifically as follows to the two findings in the FY 2015 FAME:

Finding FY 2015-1: The percentage of health inspections where no violations were found (59.42%) is high as compared to the national average of 33.58%. Not all of the health files included information about the calibration of monitoring equipment (two cases), the results of sampling (2 cases), or that the sampling results were shared with the employer (seven cases).

UOSH Response: The FY 2015 FAME looked at 13 health-related cases out of a total of 82 health-related investigations conducted during FY 2015. This finding states that the percentage of cases where there were no violations were found is high as compared to the national average. That statistic cannot be denied. However, the statistic, itself, is not all-inclusive. Many of the health-related investigations were based on complaints and the scope of those complaints are limited to what is actually complained about and investigated. Furthermore, the implication is that because the UOSH percentage of cases with no violations found is higher than the national average, that hazard identification is an issue. This general, over-arching implication should not be reached without a more specific, case-by-case analysis.

That being said, UOSH is committed to continually improving in all aspects. Regarding hazard identification for health-related cases, UOSH will continue to emphasize hazard identification through training and continued self-assessment. Furthermore, an updated Field Operating Manual (FOM) will be completed in the near future which will describe specific policies related to UOSH operations.

Regarding the part of the finding relating to including the calibration information and results of sampling in the case files and sharing the sampling results with the employer, UOSH will continue to emphasize the importance of uniform and complete case files through training and retraining. Additionally, the updated FOM will be completed in the near future which will describe specific policies related to UOSH operations.

Finding FY2015-2: The whistleblower program had significant programmatic deficiencies involving the receipt, processing, and disposition of whistleblower complaints.

UOSH Response: The FY 2015 FAME looked at 30 of 61 closed case files from FY 2015. This is a significant increase in the audit from the FY 2013 FAME where the audit consisted of 27 administratively closed case files and only 13 investigative case files. The current finding is the exact same as Finding 13-08 in the FY 2013 FAME and contains almost verbatim language. UOSH disagrees with this finding and the implication that the UOSH Whistleblower program is in the same state it was in FY 2013. Significant updates and improvements have been made to the UOSH Whistleblower program. The first of which is that a Whistleblower Investigator position was created during FY 2015 which allowed one person to concentrate on and specialize exclusively in Whistleblower investigations. As a result of this, UOSH Whistleblower investigations are resolved in a timely manner and with a more uniform analysis and outcome.

The federal auditors who performed the audit on the UOSH Whistleblower cases indicated that there had been significant progress in the Whistleblower case investigations compared to previous audits. Also, the auditors indicated that UOSH had a better grasp on the main concepts involved in Whistleblower investigations and that the cases files were well organized.

The original draft of the FY 2015 FAME included several observations related to small aspects of some of the Whistleblower cases which were audited. Although UOSH agrees that improvements can be made to its Whistleblower program, the general statement made in the finding which uses the same language as the FY 2013 FAME is not accurate.

Regardless of the disagreement with the language in the finding, UOSH is committed to improving its Whistleblower program. The Whistleblower Investigator position is currently vacant and will be filled with a well-qualified, professional applicant. UOSH will take advantage of training opportunities for this Whistleblower Investigator both externally and internally. Furthermore, UOSH will draft a Utah Whistleblower Manual which will set out specific policies and procedures related to all aspects of the UOSH Whistleblower program.

Regarding the eight observations set out in the FY 2015 FAME, UOSH will continue to improve and adequately address each of the observations as necessary. The majority, if not all, of the issues addressed in the observations will be remedied with the finalization of the FOM which will be completed shortly.

The response to the findings and recommendations found in the FY 2015 FAME will be summarized in the corrective action plan (CAP) which UOSH will provide by the required date of August 15, 2016.

UOSH requests that this letter be posted on OSHA's webpage in conjunction with the FY 2015 FAME.

If you have any comments or concerns regarding this response or any UOSH matter, please feel free to contact me.

Sincerely,

Christopher C. Hill, Director
Utah Occupational Safety and Health Division

cc: Jaceson Maughan, Acting Utah Labor Commissioner