

FY 2015 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report

Utah Occupational Safety and Health Division (UOSH)



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I. Executive Summary

A. State Plan Activities, Trends, and Progress

This report assesses the activities of the Utah Occupational Safety and Health Division (UOSH) for Fiscal Year (FY) 2015. During FY 2015, UOSH conducted 597 inspections, 48 whistleblower investigations, and 48 state and local government consultation visits.

It is apparent that the UOSH program has taken every opportunity to improve since the previous FAME visit covering operations in FY 2014. The goal for UOSH is to implement a system that allows for continuous improvement and will, in turn, enhance the overall performance and effectiveness of the UOSH program. The UOSH staff has made a concerted effort to address each of the findings and observations from the previous FAME. The FY 2015 FAME visit yielded two findings and eight total observations, with one of those being a continued observation. In the brief time that the current management team has been in place with UOSH, significant improvements have been made.

B. State Plan Introduction

UOSH is housed within Utah's Labor Commission. The State Plan designee is Labor Commissioner Sherrie Hayashi, and Christopher Hill serves as the UOSH program director. The UOSH program consists of enforcement, whistleblower, cooperative programs, and private sector and state and local government consultation. State and local government consultation, the Voluntary Protection Program (VPP), 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. UOSH operates on a traditional five-day work week from a centrally located office in Salt Lake City. UOSH closely mirrors the federal program with some differences that allow for accommodation of unique state demands and issues.

UOSH jurisdiction includes private employers having one or more workers and all state and local government agencies, including public education. 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 December 2015 enforcement on-site review and the following data sources:

- 2015 State Operations Annual Report (SOAR)

- FY 2015 State Plan grant application
- FY 2015 State Activity Mandated Measures (SAMM) Report
- State Information Report
- Mandated Activities Report for Consultation (MARC)
- Minutes from quarterly meetings

The on-site review was conducted the week of December 7, 2015, by seven Region VIII representatives. The on-site review focused on a review of the enforcement case files, a review of the whistleblower program, and a review of the complaint process. The whistleblower review included a review of the State Plan's investigative case files, policies, procedures, and investigation results.

Enforcement case files were selected using the FY 2015 FAME guidance, *Suggested Procedures for Performing Random Sampling*. The population of case files evaluated was for inspections that had been conducted in FY 2015. The case file review consisted of 68 inspection files, all of which were located. Fifty-five of the inspection files were safety-related, and the remaining 13 were health-related. Included in the selected case files were eight fatality investigations.

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

OSHA has established a two-year cycle for the FAME process. This is a comprehensive year, and as such, OSHA performed on-site case file reviews.

D. Findings and Observations

The FY 2015 FAME visit yielded two findings and eight total observations, with one of those being a continued observation. The findings address the whistleblower program and deficiencies with how UOSH handles health inspections. There are multiple examples of cases that lack sampling data, calibration information for sampling equipment, and verification of sampling results being communicated; and there is an ongoing concern over the excessive in-compliance rate.

With regard to the observations, a consistent theme is the lack of appropriate documentation and inconsistencies within the inspection process. This can be attributed to the fact that the program does not have a finalized Field Operations Manual (FOM) to help the compliance staff document and develop legally defensible cases. Examples of this are improper grouping of violations, incomplete review of employer documents (e.g. OSHA-300 logs), and inadequate documentation of case files. A finalized FOM will also help with the deficiencies noted with the processing of complaints. See Appendix B for a listing of observations.

II. Major New Issues

In FY 2015, there was a substantial turnover of workers; ten positions were vacated and filled.

The compliance supervisor position has been filled twice since the beginning of the year. The whistleblower investigator position was created and then filled on December 1, 2014. In addition, eight compliance safety and health officers (CSHOs) retired, resigned, or left the program for various reasons. At this time, all eight of those positions have been filled.

III. Assessment of State Plan Performance

A. STATE PLAN ADMINISTRATION

1) Training

The following training was provided to CSHOs during FY 2015:

OSHA Webinar

- #0089 OSHA's Response to Ebola in the Workplace
- #0092 CSHO Unique Cases
- #0088 Retaliation for Injury Reporting
- #0093 Developing a Novel Chemical Exposure 5(a)(1)
- #0094 OSHA's Role in Executive Order 13673
- #0095 Electrical Hazards Overview
- #0097 Confined Spaces in Construction
- #0098 Hazard Communication 2012 Compliance Directive
- #0099 Reasonable Cause Investigative Standard
- #0101 Recent Revisions to Whistleblower Manual Chapter 6

OSHA Training Institute (OTI) Training

- #1000 Initial Compliance Course
- #2260 Permit-Required Confined Space Entry
- #9500 Coaching CSHOs
- #3380 Enhanced 40-Hour Health and Safety Course
- #1420 Basic Whistleblower Investigation
- #1500 Introduction to On-Site Consultation
- #3430 Advanced Process Safety Management in the Chemical Industries
- #3160 Steel Erection

Rocky Mountain Center for Occupational and Environmental Health OSHA Training Facility

- 8-hour HAZWOPER Refresher
- Asbestos Contractor and Supervisor Refresher
- OSHA 511: Occupational Safety and Health Standards for General Industry
- OSHA 501: Trainer Course in Occupational Safety and Health Standards for General Industry
- Annual Utah Conference on Safety and Industrial Hygiene
- Severe Injury and Fatality Prevention Seminar
- Accident and Incident Investigation for the Safety Professional
- Emotional Intelligence for the Safety and Health Professional

Advanced Safety and Health Management Systems

Other Training

Vigilant Guard 2014 Exercise (Emergency Management)

National Safety Council First-Aid Course

10-hour Outreach Course (General Industry)

10-hour Outreach Course (Construction)

Air Sampling Solutions for High Profile Issues

New Options for Noise Data Collections and Analysis and Hearing Conservation

OSHA Coding

OSHAcademy

Workers took online courses through the OSHAcademy. Each course was a minimum of two hours of training.

Staff Training Cost Savings

Although training is a significant expense for the agency, UOSH recognizes the importance of providing training to UOSH staff. Proper training contributes to the CSHOs' ability to represent UOSH with a high degree of professional expertise in the field of occupational safety and health. UOSH has implemented efforts to obtain training courses onsite and has utilized training centers within Utah to further educate CSHOs to help expand their knowledge of safety and health. CSHOs have also traveled out-of-state to attend training courses provided by the OTI Education Centers. Compliance supervisors have attended training at OTI to obtain tools and information that will assist them with helping CSHOs succeed at ensuring workers are provided with a workplace free from recognized hazards. UOSH's whistleblower investigator participated in whistleblower investigation training held at OTI, and a CSHO traveled out of state to participate in a VPP audit with OSHA to assist the VPP team and as a training opportunity. In addition to these out-of-state training opportunities, training has been provided to UOSH staff at the local level through in-house training, webinars, OSHAcademy courses, and courses taken locally. UOSH utilizes the expertise of its own most experienced CSHOs to provide training to new staff members in addition to local courses offered by the University of Utah and the Utah Safety Council. The Utah Labor Commission also provides regular training sessions in other general areas important to the achievement of its mission.

2) *Funding and Staffing*

The following table shows the federal award levels, one-time money, and the State Plan matching funds from FY 2013 through FY 2015.

Fiscal Year	Federal Award	State Plan Match	100% State Funds	Total Funding	% of State Plan Contribution	One-time Money
2015	\$1,522,000	\$1,522,000	\$315,533	\$3,359,533	54%	
2014	\$1,522,000	\$1,522,000	\$127,173	\$3,171,173	52%	\$58,866
2013	\$1,513,300	\$1,513,300		\$3,014,186	51%	

The UOSH program currently employs 26 full-time positions in the Compliance Section, which includes 10 safety and nine health compliance officers. The UOSH FY 2015 final grant amount, including both the overmatch and return of funds, was \$3,359,533.

The table below shows the number of UOSH full-time and part-time staff as of the end of FY 2015.

FY 2015 Staffing					
23(g) Grant Positions	Allocated FTE* Funded 50/50	Allocated FTE 100% State Plan Funded	Total	50/50 Funded FTA On Board as of 8/15/14	100% State Plan Funded FTE On Board as of 8/15/14
Managers/Supervisors (Admin)	2.05	0.00	2.05	1.10	0.00
First Line Supervisors	2.00	0.00	2.00	2.00	0.00
Safety Compliance Officers	12.00	0.00	12.00	10.00	0.00
Health Compliance Officers	10.00	0.00	10.00	9.00	0.00
Whistleblower Investigator	1.00	0.00	1.00	1.00	0.00
State and Local Government Sector Safety Consultants	0.50	0.00	0.50	0.50	0.00
State and Local Government Sector Health Consultants	0.50	0.00	0.50	0.50	0.00
Clerical/Admin/Data System	2.50	0.00	2.50	2.50	0.00
Total 23(g) FTE	30.55	0.00	30.55	26.60	0.00

3) *Information Management*

UOSH is in full use of the OSHA Information System (OIS) and utilizes the program for the input, preservation, tracking, and recall of work-related activities.

4) *State Internal Evaluation Program (SIEP) Report*

UOSH's SIEP Report included an internal evaluation of its internal operations. This is a critical component of the monitoring system and provides that mandates are met, remembering that State Plans have the flexibility to design and implement programs that will fit each individual state's needs and personnel resources.

Areas of Emphasis for SIEP Program

Inspection Scheduling
Accident Referral Investigations

Utah Adjudication Process
Contested Cases

Fatality and Catastrophe Investigations
Complaint Investigations
Case File Documentation
Case File Data Entry
Case File Review and Approval
Citation Processing
Assurance of Abatement
Petition for Abatement Modification
Denial of Entry Warrant

Informal Conference
Data Entry for Contested Cases
Data Entry for Informal Conference
Settlement of Cases
Data Entry of Settlement Cases
Data Quality – SAMM Report
CSHO Training
Industrial Hygiene Process
Review of Compliance Assistance Files

B. ENFORCEMENT

1) Complaints

UOSH conducted a total of 486 unprogrammed inspections in FY 2015, which included 86 complaint inspections and 250 referral inspections. As a matter of policy, UOSH conducts inspections and investigations generated from complaints when a valid complaint is received from a current worker or worker representative who has signed a complaint form. UOSH conducts referral inspections or complaint investigations if a valid complaint, that is not signed, is received from a current worker, worker representative, or a member of the general public where there is a specific concern for the safety and health of workers. Currently, complaint inspections and investigations are conducted for all valid complaints received by UOSH. If the complainant is unwilling to sign the complaint information it is processed as a referral. The negotiated number of days for UOSH to open complaint inspections is five workdays. In FY 2015, the average number of days to initiate a complaint inspection was 2.83. This is a significant improvement from the 6.76 average observed during the FY 2013 FAME, which was the last comprehensive review.

With regard to phone and fax investigations, UOSH processed 99 in FY 2015. During the FY 2015 FAME, 30 of those 99 investigations were reviewed.

Observation FY 2015-OB-1: Eight of the 30 complaint files reviewed lacked a thorough response to the complaint items, did not include all complaint items, and/or did not address all complaint items alleged by the complainant.

Federal Monitoring Plan FY 2015-OB-1: The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.

2) Fatalities

UOSH conducted 14 fatality inspections in FY 2015. Half of the inspections were related to construction activities, and the other half of the fatalities occurred in operations covered under general industry. The most frequent causes of the fatal incidents were falls (five), struck-by (four) and caught in-between (two). The other fatalities were due to drowning (one),

electrocution (one), and shooting (one). The Utah fatality rate for FY 2015 was 1.07, which is lower than the baseline Bureau of Labor Statistics (BLS) three-year average of 1.1.

Of the 98 files reviewed, seven of them were fatalities. Five of those were inspected the day that the fatality was reported. Three of the fatality cases were not reported in a timely manner, and two of those three employers were cited for not notifying UOSH within the required time period of eight hours. The next-of-kin letters to notify family members of UOSH's involvement were sent in all cases but one. Two of the fatality cases did not have information in the files to indicate that the final next-of-kin letters were sent.

Observation FY 2015-OB-2 (formerly FY 2014-OB-2): Next-of-kin letters were not written or sent in two of the seven fatality case files reviewed, and family members must request inspection findings after the completion of the inspection.

Federal Monitoring Plan FY 2015-OB-2 (formerly FY 2014-OB-2): The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.

3) Targeting and Programmed Inspections

According to the UOSH SOAR, UOSH developed and implemented a Local Emphasis Program (LEP) for the construction industry, which became effective on August 1, 2014, with the emphasis of inspections in both residential and commercial construction. The goal of this program is to establish an enforcement initiative to reduce the incidents of injury, illness, and fatalities among workers in the construction industry by focusing on struck-by, caught in-between, electrical, and fall hazards ("big four" hazards). UOSH used the 2010 census to create a list of towns and cities with populations of 1,000 or more people. The towns and cities were placed in random order with a scheduling cycle for inspections set to 15 towns and cities per cycle. Upon completion of each cycle, the next cycle is selected for inspection.

During FY 2015, CSHOs conducted 113 inspections under the Construction LEP (affecting 2,540 workers) with 211 hazards identified and eliminated. There were six repeat violations, 195 serious violations, and 10 other-than-serious violations. The most frequently cited standards were those related to fall protection (Subpart M of 29 Code of Federal Regulations (CFR)) with 83 violations and scaffolds (Subpart L of 29 CFR) with 58 violations.

UOSH also developed an LEP to address amputation hazards. From November 1, 2014, through September 30, 2015, CSHOs conducted 76 inspections under the Amputation LEP (affecting 5,839 workers), with 163 hazards identified and eliminated. There were 154 serious violations and nine other-than-serious violations. The most frequently cited standards were those related to machine guarding at 85 violations and lockout-tagout at 30 violations.

According to OIS information, 21.6% of all inspection activity was programmed.

4) Citations and Penalties

According to the SAMM Report, the percentage of inspections without citations in FY 2015 for safety was 34.37% and for health was 59.42%. These numbers can be compared to the national averages of 28.47% for safety and 33.58% for health in FY 2015, which includes data from the State Plans and OSHA. The percent in-compliance for health inspections is 78% above the national average noted in the SAMM Report.

The average number of violations per inspection was 1.38 for serious, willful, or repeat and 0.31 for other-than-serious. These average numbers can be compared to the national data for FY 2015, which showed 1.92 for serious, willful, or repeat and 0.87 for other-than-serious. The percentage of inspections with serious, willful, or repeat citations is approximately 28% below the national average noted in the SAMM Report.

A review of the Inspection Summary Report shows that roughly 313 of the 685 inspections conducted were closed with no violations issued. Of the approximately 369 inspections where citations were issued, 92.4% had serious violations, 2.4% had repeat violations, and less than 1% had willful violations. There was one failure-to-abate (FTA) citation issued and zero unclassified citations. Of the 497 violations cited, 78.4% of the violations were serious, 19.1% were other-than-serious, 2.3% were repeat, and 0.2% was FTA. According to the SAMM Report, the percentage of inspections conducted in the state and local government sector was 3.36%. The negotiated percentage for UOSH is 6.25%; this represents a deviation of 49%. The SAMM Report specifies that the difference should not deviate more than +/- 5% from the negotiated percentage.

UOSH's average current penalty per serious violation in private sector (SAMM 8: 1 - 250+ workers) was \$1,282.29 in FY 2015. The further review level (FRL) is +/-25% of the national average (\$2,002.86), which equals \$1,502.14. Penalty levels are at the core of effective enforcement, and State Plans are, therefore, required to adopt penalty policies and procedures that are "at least as effective as" (ALAE) those contained in the FOM, which was revised on October 1, 2015, to include changes to the penalty structure in Chapter 6 – Penalty and Debt Collection.

Note that with the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA is now required to raise its maximum penalties in 2016 and to increase penalties according to the consumer price index each year thereafter. State Plans are required to follow suit. As a result of this increase in maximum penalties, OSHA will be revising its penalty adjustment factors in Chapter 6 of the FOM. Following completion of the FOM revision and after State Plans have the opportunity to adopt the required changes in a timely manner, OSHA will be moving forward with conducting ALAE analysis of State Plan penalty structures, to include an evaluation of average current penalty per serious violation data.

In the private sector, for employers with 25 or fewer workers, the average current serious penalty for FY 2015 was \$807.10. For employers with 26-100 workers, the average current serious penalty for FY 2015 was \$1,637.78. For employers with 101-250 workers, the average current serious penalty for FY 2015 was \$1,982.37. Finally, for employers with more than 250 workers, the average current serious penalty for FY 2015 was \$3,451.92.

The review of inspection files showed some inappropriate use of grouping and improper classification of issued citations. With respect to the grouping of citations, there were cases where three or four items were grouped when there was no justification to do so. These inspections dealt with violations of the forklift and woodworking standards.

It was observed that the OSHA-300 logs obtained from employers are often times incomplete, not accurate, and are not entered into the OIS case file.

Finally, the UOSH program would benefit greatly from the completion of formal written policies and procedures. The program has been working on a draft FOM for quite some time.

Finding FY 2015-1 (formerly FY 2014-2): 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 (two cases), or that the sampling results were shared with the employer (seven cases).

Recommendation FY 2015-1 (formerly FY 2014-2): UOSH should provide additional training for compliance officers in the recognition of violations and documentation of violations. Areas of focus should include hazard recognition, sampling strategies, and case file documentation. The completion of the UOSH FOM will also assist in satisfying this finding.

Also, the program should ensure health-related cases are adequately processed and reviewed to address potential health-related concerns. When UOSH is provided with information that alleges potentially serious health issues, (e.g. silica, lead, alleged serious health effects) this information should be used as justification to initiate more health-related inspections.

Observation FY 2015-OB-3: For FY 2015, UOSH was 28% below the national average with respect to the issuance of citations that are considered to be serious, willful, repeat, or unclassified. Nine of 40 of cases showed inconsistent application of the gravity-based penalty system (probability/severity), inappropriate use of grouping, or improper classification of issued citations.

Federal Monitoring Plan FY 2015-OB-3: The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.

Observation FY 2015-OB-4: According to the FY 2015 SAMM data, UOSH was approximately 49% below the negotiated average with respect to their total percent of inspections conducted in the state and local government sector.

Federal Monitoring Plan FY 2015-OB-4: The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.

Observation FY 2015-OB-5: The case file review found that in seven of 68 cases, the employer's OSHA-300 logs were not kept for various reasons (e.g. employer believed exempt, but they were covered by the standard), were incomplete, and/or were not entered into OIS.

Federal Monitoring Plan FY 2015-OB-5: The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.

Observation FY 2015-OB-6: UOSH does not currently have a written policy for processing complaints and referrals. For several years, UOSH has been working toward completing a FOM, but a final FOM has not been implemented. The lack of a final FOM can create an inconsistent method for completing work, lead to confusion for the staff, and potentially compromise the quality of the work product.

Federal Monitoring Plan FY 2015-OB-6: The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.

5) Abatement

During the FY 2015 FAME, it was determined that adequate information or documentation was provided in 34 of the 36 (94%) reviewed files that had citations. The two cases that did not contain the information were issued as "corrected during inspection", but lacked the verification of the abatement. Two separate cases were designated for follow-up inspections, but there was no indication in the file that the follow-up had taken place.

Observation FY 2015-OB-7 (formerly FY 2014-5): Abatement policies were not consistently followed. It was determined that six of the 38 files with citations had deficiencies with abatement. These deficiencies were mainly related to providing too much time for abatement or not including abatement for conditions that were "corrected during inspection". However, there have been improvements regarding the receipt of abatement. Therefore, this item, which was a finding in FY 2014, has been converted to an observation.

Federal Monitoring Plan FY 2015-OB-7 (formerly FY 2014-5): The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.

6) Worker and Union Involvement

Of the 68 inspection files reviewed, only three of them involved sites where the workers were represented by a union. Each of those three files indicated that the union was involved in the

opening conference, walkaround, and closing conference. Those files also documented that worker interviews did take place, and they were adequately documented.

Some case files lacked documentation of worker interviews. Some of these files stated that workers had been interviewed, but no verification in the form of CSHO notes or audio recordings could be located.

Observation FY 2015-OB-8: It was determined that 12 of the 68 case files lacked documentation that worker interviews had been conducted as part of the investigative process.

Federal Monitoring Plan FY 2015-OB-8: The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.

C. REVIEW PROCEDURES

1) Informal Conferences

Of the 68 files reviewed, informal conferences were conducted for seven. In each of the cases where an informal conference took place, UOSH followed their own established procedures and adequately documented those procedures.

Additionally, Penalty Reduction Agreements (PRAs) are sent with citations to employers who employ 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 but no reclassification of violations. The use of the PRA decreases the number of informal conferences conducted by the UOSH program.

2) 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 Appeals 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.

D. STANDARDS AND FEDERAL PROGRAM CHANGES (FPCs) ADOPTION

Standards Adoption Process

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. UOSH has six months to incorporate these final rules by reference. In order to incorporate a rule, UOSH 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 UOSH. 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).

UOSH is current with their adoption of all standards and FPCs.

Federal Guidance Adopted

29 CFR Part 1910, 1926	Electric Power Generation	UOSH incorporated identical on 12/30/15.
29 CFR Part 1926.1200	Confined Spaces in Construction	UOSH incorporated identical on 12/30/15.
29 CFR Part 1926	Cranes and Derricks in Construction	UOSH adopted on 11/30/15.
CPL-02-00-158 2014 705	Inspection Procedures for Respiratory Protection Standard	UOSH adopted on 03/05/15.
CPL-02-01-056 2014 684	Inspection Procedures for Accessing Communication Towers by Hoist	UOSH adopted on 03/17/15.
CPL-02-01-057 2015 724	Compliance Directive for the Cranes and Derricks in Construction Standard	UOSH adopted on 06/17/15.
CPL-02-02-078 2015	Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis	UOSH adopted on 12/30/15.
CPL-02-02-079 2015	Inspection Procedures for the Hazard Communication Standard (HCS 2012)	UOSH adopted on 01/09/16.
CPL-03-00-018 2015 725	REVISION - National Emphasis Program - Primary Metal Industries	UOSH adopted on 06/20/15.
TED-03-01-004 2015 825	Special Government Employee Policies & Procedures Manual for the Occupational Safety and Health Administrations Voluntary Protection Programs CSP-03-01-004	UOSH adopted on 01/29/16.
29 CFR Part 1904	Occupational Injury and Illness Recording Requirements	UOSH incorporated nearly identical 12/30/15.

E. VARIANCES

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

F. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

According to the FY 2015 grant application, approximately 15% of workers in Utah work in the state and local government sector. According to the UOSH FY 2015 SOAR, 20 inspections, 48 consultation visits, and 100 interventions were all conducted in the state and local government sector. The number of compliance inspections in the state and local government sector represents approximately 3.4% of the total inspections for the year. UOSH does not assess monetary penalties in the state and local government sector but does ensure abatement is received for any issued citations.

During FY 2015, there were no new state and local government Safety and Health Achievement Recognition Program (SHARP) participants. There are currently seven state and local government SHARP participants. All of the existing SHARP entities were renewed in FY 2015.

G. WORKPLACE RETALIATION PROGRAM

The FAME audit was conducted by an onsite audit of the UOSH whistleblower program. The audit included a review of the overall whistleblower program, including policy and procedures and investigative files. The audit, which involved a review of administratively closed and investigative case files, included a review of 30 of 61 closed case files from FY 2015.

Given the sample size, the ability to identify trends was limited. Thus, the recommendations were based upon potential trends and significant observations.

The following table is a summary of whistleblower complaints during FY 2015:

Disposition	Totals
Total cases from FY 2015	61
Cases completed in FY 2015	61
Cases completed timely	33
Overage cases	41
~ Withdrawn	22
~ Dismissed	28
~ Merit	3
~ Settled	7
~ Settled other	4
~ Litigated	3
Administratively closed	~
Investigator on staff	3

UOSH reviewed all potential complaints for appropriate coverage requirements, timeliness of filing, and the presence of a prima facie allegation. New complaints were received in three forms: a health and safety complaint, telephonic complaint, or referral from OSHA. In those cases, the complaint was forwarded to the investigator to conduct a formal interview. The complaint intake process was completed entirely by the investigator.

UOSH appropriately referred federal statute cases to the OSHA Denver Regional Office and had procedures in place to notify complainants of the right to concurrently dual-file Section 11(c) complaints with the OSHA Denver Regional Office.

UOSH appropriately entered whistleblower data into the Integrated Management Information System (IMIS) after the information was obtained by the investigator assigned to the case. In several cases, the case file did not have a copy of the IMIS summary sheet; thus, it was recommended that the final IMIS summary sheet be printed off for documentation purposes. In several instances, cases appeared to be administratively closed for withdrawal on the IMIS summary sheet; however, the cases were listed on the Length of Investigation Report, which typically only lists docketed cases.

In 2015, UOSH had two safety and health inspectors performing collateral duty and phased them out upon the hiring of a full-time whistleblower investigator. Whistleblower training for UOSH was provided by the Directorate of Whistleblower Protection Programs. The new investigator attended the basic whistleblower training classes provided by OTI. The investigator has contacted OSHA staff to seek guidance, ask questions, and ensure proper referrals of cases. The UOSH program has staffed one manager and one investigator assigned to the whistleblower program.

Finding FY 2015-2 (formerly FY 2014-8): The whistleblower program had significant programmatic deficiencies involving the receipt, processing, and disposition of whistleblower complaints.

Recommendation FY 2015-2 (formerly FY 2014-8): UOSH should ensure that appropriate training and oversight are conducted.

H. COMPLAINTS ABOUT STATE PROGRAM ADMINISTRATION (CASPA)s

No CASPA)s were filed in FY 2015.

I. VOLUNTARY COMPLIANCE PROGRAM

UOSH continues to promote VPP through presentations with the assistance of existing VPP members and workers. In FY 2015, the VPP coordinator presented at the Utah Safety Council's Safety and Industrial Hygiene Conference and provided information on VPP to the conference attendees. UOSH also focuses on providing awareness to the

compliance and consultation staff to help with identifying potential candidates for the VPP program. Other means available to promote VPP in Utah are the Labor Commission website; the Labor Commission newsletter; participation at conferences, such as the VPP Participants' Association's National and Regional Conferences; and through other professional associations. UOSH has continued the agreement with OSHA to utilize the use of federal "Special Government Employees" to assist the compliance staff in VPP audits.

UOSH currently has eight companies participating in VPP, and two more applications are either in the review process or UOSH is waiting for corrections to be made by the applicant. UOSH continues to use the federal VPP directive, CSP 03-01-003, for conducting VPP-related activities.

J. STATE AND LOCAL GOVERNMENT SECTOR 23(d) ON-SITE CONSULTATION PROGRAM

The State and Local Government Sector Consultation Program conducted 43 visits statewide. Of the 43 visits conducted, 33 were initial visits, eight were training and education visits, and two were follow-up visits.

As a result of the 33 initial visits conducted, 102 serious hazards were identified and abated.

The State and Local Government Sector Consultation Program conducted 100 compliance assistance activities that involved outreach, promotion, training, and education, with both safety- and health-related aspects. Many cities were visited in Weber and Davis Counties as an ongoing outreach effort to promote state and local government sector consultation.

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 state and local government sector consultation previously or from outreach activities that have recently taken place.

The MARC Metric 3 indicates that UOSH consulted with workers in 100% of the state and local government sector initial visits. MARC 4A indicates all serious hazards that were identified were corrected in a timely manner. MARC 4D shows that 80% of the identified serious hazards were corrected within the original timeframe or during the on-site visit; the goal is 65%. None of the serious hazards had a corrective action that went over 90 days past due, as reflected in MARC 5.

K. REGIONAL SPECIAL STUDY (IF CONDUCTED)

No special studies were requested for the FY 2015 FAME.

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

UOSH has developed three specific strategic goals (USGs) for the period of 2015-2019.

Strategic Goal #1 (USG1) – Achieve an effective impact in the reduction of Utah’s fatality rate for industries that are under UOSH jurisdiction by 2019, measured by the most current averages of BLS fatality data available from 2010-2012.

Annual Performance Goal #1 – Achieve a fatality rate that is lower than the BLS baseline rate of 1.1.

In FY 2015, UOSH’s fatality rate was 1.07. This is lower than the BLS baseline of 1.1. UOSH has met this goal.

Strategic Goal #2 (USG2) – Achieve an effective impact in the reduction of injuries and illnesses in industries that are under UOSH jurisdiction, measured by the most current average of BLS total recordable cases (TRC) rate from 2010 to 2012.

Annual Performance Goal #2 – Achieve an annual reduction in the total workplace injuries and illnesses rate for all industries.

In FY 2015, the BLS baseline TRC rate for all industries was 3.6. The most recent data for UOSH indicates that the TRC rate for all industries is 3.3. UOSH has met this goal.

Strategic Goal #3 (USG3) – Increase participation in consultation services, recognition programs, and compliance assistance to promote workplace safety and health.

Annual Performance Goal #3 – Increase by 1% the number of compliance interventions. Conduct presentations to promote recognition applications.

At the start of FY 2015, UOSH had a goal to conduct 200 interventions. They exceeded this goal during the course of the year by completing 295 interventions.

Interventions	Baseline	2015 Goal	2015 Results
State and Local Government Sector Consultation Visit	42	45	41
State and Local Government Sector Consultation Compliance Assistance (CA)	20	25	100
VPP Applications	1	1	0
VPP Participants	5	6	8
State and Local Government Sector SHARP Applications	2	2	1
State and Local Government Sector SHARP Participants	5	7	7
Partnerships	1	1	0
Compliance Assistance	195	200	295

V. Other Special Measures of Effectiveness and Areas of Note

There were none.

Appendix A – New and Continued Findings and Recommendations
 FY 2015 Utah Comprehensive FAME Report

FY 20XX-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
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 (two cases), or that the sampling results were shared with the employer (seven cases).	UOSH should provide additional training for compliance officers in the recognition of violations and documentation of violations. Areas of focus should include hazard recognition, sampling strategies, and case file documentation. The completion of the UOSH FOM will also assist in satisfying this finding.	FY 2014-2
FY 2015-2	The whistleblower program had significant programmatic deficiencies involving the receipt, processing, and disposition of whistleblower complaints.	UOSH should ensure that appropriate training and oversight are conducted.	FY 2014-8

Appendix B – Observations Subject to Continued Monitoring
 FY 2015 Utah State Plan Comprehensive FAME Report

Observation # FY 2015-OB-#	Observation# FY 20XX-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2015-OB-1		Eight of the 30 complaint files reviewed lacked a thorough response to the complaint items, did not include all complaint items, and/or did not address all complaint items alleged by the complainant.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.	New
FY 2015-OB-2	FY 2014-OB-2	Next-of-kin letters were not written or sent in two of the seven fatality case files reviewed, 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 2016.	Continued
FY 2015-OB-3		For FY 2015, UOSH was 28% below the national average with respect to the issuance of citations that are considered to be serious, willful, repeat, or unclassified. Nine of 40 cases showed inconsistent application of the gravity-based penalty system (probability/severity), inappropriate use of grouping, or improper classification of issued citations.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.	New
FY 2015-OB-4		According to the FY 2015 SAMM data, UOSH was approximately 49% below their negotiated percentage of inspections conducted in the state and local government sector.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.	New
FY 2015-OB-5		The case file review found that in seven of 68 cases, the employer's OSHA-300 logs were not kept for various reasons (e.g. employer believed exempt, but they were covered by the standard), were incomplete, and/or were not entered into OIS.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.	New
FY 2015-OB-6		UOSH does not currently have a written policy for processing complaints and referrals. For several years, UOSH has been working toward completing a FOM, but a final FOM has not been implemented.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.	New
FY 2015-OB-7	FY 2014-5	Abatement policies were not consistently followed. It was determined that six of the 38 files with citations had deficiencies with abatement. These deficiencies were mainly related to providing too much time for abatement or	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2016.	New

		not including abatement for conditions that were “corrected during inspection”. However, there have been improvements regarding the receipt of abatement.		
FY 2015-OB-8		It was determined that 12 of the 68 case files lacked documentation that worker interviews had been conducted as part of the investigative process.	The OSHA Regional Office will continue to effectively monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2016.	New
PREVIOUS FAME				
FY 2014-OB-1	FY 2013-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.		Closed
FY 2014-OB-2	FY 2013-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.	This will be verified during the next on-site audit.	Continued
FY 2014-OB-3	FY 2013-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.		Closed
FY 2014-OB-4	FY 2013-OB-8	Not all field notes and worker interview statements were placed in the files.		Closed
FY 2014-OB-5	FY 2013-OB-10	UOSH did not implement the enforcement requirement within a directive that required enforcement.		Closed

Appendix C - Status of FY 2014 Findings and Recommendations

FY 2015 Utah Comprehensive FAME Report

FY 2014	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2014-1	There is no process in place to determine whether targeting programs are effective.	UOSH should evaluate, on an annual or more frequent basis, the effectiveness of its targeting programs.	UOSH has developed a system to evaluate, at least annually, the effectiveness of targeting programs. UOSH is in the process of evaluating the Construction Local Emphasis Program.	July 2015	Closed, December 2015
FY 2014-2	The number of inspections where no violations were found is high.	UOSH should provide additional training for compliance officers in the recognition of violations and in the documentation of violations.	<p>On November 1, 2014, supervisors reviewed all case files to ensure that violations were documented appropriately.</p> <p>On July 31, 2015, compliance safety and health officers (CSHOs) and supervisors were provided with case file documentation guidelines, which include the documentation of violations.</p>	September 30, 2016	Open, December 2015

On September 17, 2015, CSHOs were trained on evidence gathering during an inspection in order to effectively support violations.

Compliance manager will conduct audits of case files to ensure violations are properly documented. Additional training will be provided based on findings of audit.

UOSH uses formal OSHA Training Institute training courses, OSHA webinars, focused internal training sessions, and OSHAcademy web-based training to provide refresher training to CSHOs in the recognition of violations.

			While the percent “in-compliance for safety cases has improved, the lapse time for health cases is significantly higher (78%) than the national average.		
FY 2014-3	During the audit, interviews indicated that compliance officers were instructed that no violations should be issued as willful.	UOSH should instruct compliance officers on the identification and development of willful violations and cite willful violations as willful.	UOSH has issued willful citations as documented in the FY 2013 FAME Report and will continue to issue willful citations as warranted. In September 2014 and August 2015, CSHOs received refresher training on the identification and development of willful violations and when issuance of such citations is appropriate.	August 2015	Closed, December 2015
FY 2014-4	By policy, UOSH provides a 30-day abatement period.	UOSH should ensure that the shortest possible abatement period is given in order to abate hazards quickly.	Per the Utah Operations Manual, abatement periods are the shortest interval within which the employer can	August 2015	Closed, December 2015

			<p>reasonably be expected to correct the violation. CSHOs have been informed that the requirement for abatement periods is no longer set at 30 days for all violations. This policy is being followed on inspections conducted.</p>		
FY 2014-5	Abatement policies were not consistently applied.	UOSH should ensure that employers provide appropriate abatement verification.	<p>UOSH will ensure that employers provide appropriate abatement verification to include abatement certification and documentation to support that hazards have been corrected. CSHOs received training on the documents required from the employer in order to satisfy abatement verification.</p> <p>While there are still deficiencies in documenting abatement in the field and in assigning appropriate abatement</p>		<p>Converted to Observation, December 2015</p>

			<p>periods in six of 38 cases reviewed, there have been improvements regarding the receipt of abatement. Therefore, this item has been converted to an observation.</p>		
FY 2014-6	<p>UOSH does not consistently document modifications that were made in the informal and formal conference.</p>	<p>UOSH should document why modifications are made and be consistent about the modifications that were made during the informal conference.</p>	<p>Justifications for modifications to the citations and notifications of penalties are now documented in the case file by placing emails of such modifications in file and/or documenting such modifications in the UOSH Case Notes Sheet located in the file.</p>	<p>August 2015</p>	<p>Closed, December 2015</p>
FY 2014-7	<p>UOSH did not properly adopt rule changes through its formal rule change process in FY 2013.</p>	<p>UOSH should ensure that all rule changes are adopted and implemented.</p>	<p>UOSH will ensure that all applicable rule changes are properly adopted and implemented in the future per “ADM-007 <i>Adopting Final Rules and OSHA Directives (January 1, 2003)</i>”.</p>	<p>July 2015</p>	<p>Closed, December 2015</p>

			<p>UOSH has adopted a rule which became effective on July 8, 2015, relating to multi-employer worksites. On July 28, 2015, CSHOS were trained on the multi-employer worksite rule. UOSH is also in the process of evaluating and updating other administrative rules through its formal rule change process.</p>		
FY 2014-8	<p>The whistleblower program throughout FY 2014 had significant programmatic deficiencies involving the receipt, processing, and disposition of whistleblower complaints.</p>	<p>UOSH should ensure that appropriate training and oversight are conducted.</p>	<p>UOSH has one designated whistleblower investigator who has a background in law, has received whistleblower training, and understands the rules and regulations relative to whistleblower investigations.</p> <p>While there have been slight improvements,</p>	September 30, 2016	Open, December 2015

			the receipt, processing, and disposition of whistleblower complaints continue to be major issues.		
FY 2014-9	Key elements of the enforcement process were eliminated. Some inspections were not reviewed by management, and compliance officers were not reviewing OSHA Form 300 logs.	UOSH should ensure that citations issued are legally sufficient, reviewed by management, and that OSHA Form 300 logs are appropriately analyzed.	<p>Previously, a limited number of inspections were not reviewed by UOSH management. However, prior to the OSHA audit, UOSH implemented a policy requiring review of all case files by UOSH management.</p> <p>UOSH conducted OSHA-300 log training on April 2, 2014, and instructed CSHOs to collect and review OSHA-300 logs during all inspections where OSHA-300 logs are required.</p> <p>The UOSH Assistant Attorney General and the Utah Labor Commission Deputy Commissioner/</p>	September 2015	Closed, December 2015

			<p>General Counsel conducted training for all CSHOs on developing a legally sufficient case file on July 17, 2014.</p> <p>CSHOs were trained on evidence gathering by the Assistant Attorney General on September 17, 2015.</p>		
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Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 UOSH Comprehensive FAME Report

OSHA is in the final stages of moving operations from NCR, a legacy data system, to OIS, a modern data system. During FY 2015, OSHA case files and most State Plan case files were captured on OIS. However, some State Plan case files continued to be processed through NCR. The SAMM Report, which is native to IMIS, a system that generates reports from the NCR, is not able to access data in OIS. Additionally, certain algorithms within the two systems are not identical. These challenges impact OSHA's ability to combine the data. In addition, SAMMs 5, 8, 9, 11, 12, 15, and 17 have further review levels that should rely on a three-year national average. However, due to the transition to OIS, the further review levels for these SAMMs in this year's report will rely on a one-year national rate pulled only from OIS data. Future SAMM year-end reports for FY 2016 and FY 2017 should rely on a two-year national average and three-year national average, respectively. All of the State Plan and federal whistleblower data is captured directly in OSHA's WebIMIS System. See the Notes column below for further explanation on the calculation of each SAMM.

All of the Utah State Plan's enforcement data was captured in OIS during FY 2015. The Utah State Plan opened 596 enforcement inspections, and they were all captured in OIS.

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

State Plan: **Utah - UTAH OSHA**

FY 2015

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	2.83	TBD	State Plan data is pulled from OIS. Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	1.79	N/A	State Plan data is pulled only from OIS. 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)	1.06	TBD	State Plan data is pulled from OIS. Further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	.09	N/A	State Plan data is pulled only from OIS. 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%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.

5	Average number of violations per inspection with violations by violation type	SWRU: 1.38	+/-20% of SWRU: 1.92	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
		Other: .31	+/-20% of Other: .87	
6	Percent of total inspections in state and local government workplaces	3.36%	+/-5% of 6.25%	State Plan data is pulled from OIS. Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
7	Planned v. actual inspections – safety/health	S: 514	+/-5% of S: 704	State Plan data is pulled from OIS.
		H: 82	+/-5% of H: 96	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,282.29	+/- 25% of \$2,002.86	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	a. Average current serious penalty in private sector (1-25 workers)	\$807.10	+/- 25% of \$1,402.49	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,637.78	+/- 25% of \$2,263.31	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	c. Average current serious penalty in private sector (101-250 workers)	\$1,982.37	+/- 25% of \$3,108.46	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.

	d. Average current serious penalty in private sector (greater than 250 workers)	\$3,451.92	+/- 25% of \$3,796.75	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
9	Percent in compliance	S: 34.37%	+/-20% of S: 28.47%	State Plan data is pulled from OIS.
		H: 59.42%	+/-20% of H: 33.58%	Further review level is based on a one-year national rate, pulled only from OIS.
10	Percent of work-related fatalities responded to in one workday	92.86%	100%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
11	Average lapse time	S: 34.16	+/-20% of S: 42.78	State Plan data is pulled from OIS.
		H: 52.27	+/-20% of H: 53.48	Further review level is based on a one-year national rate, pulled only from OIS.
12	Percent penalty retained	66.19%	+/-15% of 67.96%	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
13	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	33%	100%	State Plan data is pulled from WebIMIS. Further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	25%	+/-20% of 24%	State Plan data is pulled from WebIMIS. Further review level is based on a three-year national average, pulled from WebIMIS.

16	Average number of calendar days to complete an 11(c) investigation	170	90	State Plan data is pulled from WebIMIS. Further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.10%	+/-25% of 1.35%	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.