

# **FY 2019 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report**

Utah Occupational Safety and Health Division  
(UOSH)



**Evaluation Period: October 1, 2018 – September 30, 2019**

Initial Approval Date: January 10, 1973  
State Plan Certification Date: November 19, 1976  
Final Approval Date: July 16, 1985

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## Contents

I.	Executive Summary.....	1
II.	State Plan Background.....	1
	A. Background.....	1
	B. New Issues.....	2
III.	Assessment of State Plan Performance.....	3
	A. Data and Methodology.....	3
	B. Review of State Plan Performance.....	4
	1. Program Administration.....	4
	2. Enforcement.....	5
	3. Review Procedures.....	12
	4. Standards and Federal Program Changes (FPCs) Adoption.....	13
	5. Variances.....	15
	6. State and Local Government Worker Program.....	16
	7. Whistleblower Program.....	16
	8. Complaint About State Program Administration (CASPA).....	19
	9. Voluntary Compliance Program.....	19
	10. State and Local Government 23(g) On-Site Consultation Program.....	19
	11. Private Sector 23(g) On-Site Consultation Program.....	20

## Appendices

Appendix A – New and Continued Findings and Recommendations.....	A-1
Appendix B – Observations and Federal Monitoring Plans.....	B-1
Appendix C – Status of FY 2018 Findings and Recommendations.....	C-1
Appendix D – FY 2019 State Activity Mandated Measures (SAMM) Report.....	D-1
Appendix E – FY 2019 State OSHA Annual Report (SOAR).....	E-1

## **I. Executive Summary**

The purpose of this report is to assess the Utah State Plan's performance for Fiscal Year (FY) 2019 and its progress in resolving the outstanding finding from the previous Federal Annual Monitoring Evaluation (FAME) Report.

The Utah Occupational Safety and Health Division (UOSH) again experienced significant turnover at the compliance safety and health officer (CSHO) level. Over the course of FY 2019, five of their CSHOs and one compliance supervisor left UOSH due to retirement, promotion, or jobs in the private sector. In addition, the whistleblower program experienced some personnel changes at the end of FY 2018, and a new investigator is now in place. Despite the staffing challenges, UOSH performed at a very high level. Some areas where the State Plan performed particularly well included the number of inspections conducted, the percent of workplaces in the state with an enforcement presence, the percent of total inspections in state and local government workplaces, the average lapse time for safety and health inspections, and the response time to initiate complaint investigations.

The State Plan made progress in addressing the one finding and four observations from the FY 2018 Follow-up FAME Report. To resolve the finding related to identifying and addressing all hazards and the lack of case file documentation, the State Plan provided training to its CSHOs in FY 2018 and 2019. The State Plan was also successful in closing three observations involving the documentation of complaints, updating the WebIMIS for whistleblower cases, and sharing information from whistleblower case files without redacting non-management information.

This FY 2019 Comprehensive FAME Report includes two new findings. Documentation of worker participation during inspections was still lacking, so OSHA converted a longstanding observation to a new finding. In addition, the State Plan did not follow the guidance in the UOSH Whistleblower Investigations Manual to handle reported injuries as a protected activity, which resulted in another new finding.

This FAME Report has six new observations related to: processing complaints and referrals; suspending and closing an inspection without completing the inspection process; the need for follow-up inspections for fatalities; allowing abatement to consist of employers correcting certain hazards during inspections; the scope of inspections for the Site-Specific Targeting (SST) Directive; and processing whistleblower complaints. Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and the related federal monitoring plans. Appendix C describes the status of previous findings with associated completed corrective actions.

## **II. State Plan Background**

### **A. Background**

UOSH is housed within Utah's Labor Commission. The State Plan designee is Labor Commissioner Jaceson Maughan. The program consists of enforcement, whistleblower, and

cooperative programs, as well as private sector and state and local government consultation. The 23(g) grant administers and funds the Voluntary Protection Program (VPP) and Partnerships. The 23(g) grant also administers the state and local government consultation activities, but no funding is provided through the grant. Consultation in the private sector is separately funded through a 21(d) cooperative agreement. UOSH closely mirrors the federal program, with some differences that allow for the accommodation of unique state demands and issues.

Currently, UOSH employs 25 full-time positions in the Compliance Section, including 10 safety and nine health compliance officers, one full-time whistleblower investigator, a compliance assistance specialist, a senior business analyst, and one compliance support position. Management includes the director and the field operations manager.

The following table shows the federal award levels, State Plan matching funds, and one-time money from FY 2017 through FY 2019.

<b>Fiscal Year</b>	<b>Federal Award</b>	<b>State Plan Match</b>	<b>100% State Funds</b>	<b>Total Funding</b>	<b>% State Plan Contribution</b>	<b>One-time Money</b>
2019	\$1,528,800	\$1,528,800	\$0	\$3,057,600	50%	N/A
2018	\$1,528,800	\$1,528,800	\$78,202	\$3,135,802	51%	N/A
2017	\$1,528,800	\$1,528,800	\$309,253	\$3,366,853	54%	N/A

Overall, UOSH performed at a very high level in FY 2019. Some notable accomplishments include performing a total of 1,438 compliance interventions, including 1,118 inspections, 76 consultation visits, and 244 compliance assistance activities in the state and local government and private sectors. This is an increase of 13.6% from FY 2018. These interventions identified and corrected 1,839 hazards and removed approximately 195,726 workers from these hazards.

Another significant success for UOSH was their continuing transition to an electronic case file system. Ultimately, this will assist the State Plan in reducing the amount of storage space needed for files, increase the overall organization of their office environment, and most importantly, increase the efficiency of the compliance staff.

## **B. New Issues**

### Maximum Penalty Increase

In accordance with the Bipartisan Budget Bill passed November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum penalties. As required by law, OSHA then increased maximum penalties annually according to the consumer price index. The Utah State Plan has not yet completed legislative changes to increase maximum penalties.

### III. Assessment of State Plan Progress and Performance

#### A. Data and Methodology

OSHA established a two-year cycle for the comprehensive FAME process. FY 2019 was a comprehensive year, and as such, OSHA was required to conduct an on-site evaluation and case file review. A six-person OSHA team, which included a whistleblower investigator, assembled to conduct a case file review. With UOSH converting to paperless case files, the team conducted the case file review in the Denver Regional Office during the week of January 6 through 10, 2020. Several team members travelled to Salt Lake City in early February to interview management and employees, to discuss inspection and complaint procedures, and to review selected inspection and complaint files. A total of 167 safety, health, fatality, complaint, and whistleblower case files were reviewed. OSHA randomly selected these case files from closed inspections and investigations conducted during the evaluation period (October 1, 2018, through September 30, 2019). The selected population included:

- Twelve (12) fatality case files
- Forty (40) complaint case files
- Seventy (70) safety case files
- Twenty (20) health case files
- Twenty-five (25) closed whistleblower case files

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

- State Activity Mandated Measures (SAMM) Report (Appendix D)
- State Indicators Report (SIR)
- State OSHA Annual Report (SOAR) (Appendix E)
- Inspection Summary Report
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Limited case file review

Each SAMM has an agreed-upon further review level (FRL) which can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2019 SAMM Report and includes the FRL for each measure.

## **B. Review of State Plan Performance**

### **1. PROGRAM ADMINISTRATION**

#### a) Training

Throughout FY 2019, The State Plan provided training to UOSH staff through several sources, including from the field operations manager, from the OSHA Training Institute (OTI), and from online courses. The FY 2019 SOAR in Appendix E presents a complete listing of all the training completed.

#### b) OSHA Information System

UOSH has a contract with OSHA for the use of the OSHA Information System (OIS) as its primary inspection database. The use of OIS contributed to the efficiencies of the program by standardizing input, processing, and reporting. UOSH also used OIS for monitoring the State Plan's operation.

#### c) State Internal Evaluation Program Report

During FY 2019, UOSH performed quarterly reviews and reported on a random sample of safety and health inspection case files through the State Internal Evaluation Program (SIEP). The State Plan used the SIEP to ensure quality and efficiency in the case file development process. UOSH has included the following elements in their SIEP as areas of emphasis:

#### **Areas of Emphasis for the SIEP**

Inspection Scheduling	Utah Adjudication Process
Accident Referral Investigations	Contested Cases
Fatality/Catastrophe Investigations	Informal Conference
Complaint Investigations	Data Entry for Contested Cases
Case File Documentation	Data Entry for Informal Conferences
Case File Data Entry	Settlement of Cases
Case File Review and Approval	Data Entry of Settlement Cases
Citation Processing	Data Quality – SAMM Report
Assurance of Abatement	CSHO Training
Petition for Abatement Modification	Industrial Hygiene Process
Denial of Entry Warrant	Review of Compliance Assistance Files

#### d) Staffing

A new whistleblower investigator joined the State Plan at the beginning of FY 2019. Later in the fiscal year, one compliance supervisor retired, and the State Plan eliminated this position. As stated earlier, five compliance officers left the Compliance Section either by retirement or for other employment opportunities. UOSH filled four of those positions throughout the year, leaving one CSHO position vacant at the end of FY 2019.

## 2. ENFORCEMENT

#### a) Complaints

UOSH conducted 186 complaint inspections and 128 complaint investigations during FY 2019, compared to 192 complaint inspections and 88 complaint investigations in FY 2018. As a matter of policy, UOSH considers formal complaints to be those complaints where the complainant is a current worker or worker representative who has signed a complaint form. Non-formal complaints are from a variety of sources who are not current workers, but also include complaints from current workers who do not sign the complaint. A referral addresses an allegation made by a CSHO, a safety and health agency, a whistleblower investigator, media, another government agency, or an employer reporting a non-fatal accident. UOSH will also conduct a complaint or referral inspection if the complaint alleges that a permanent and disabling injury or illness has occurred and the condition still exists; if the allegation is an imminent danger situation; if the allegation concerns an emphasis program; or if the establishment has a history with UOSH that involves egregious, willful, failure-to-abate, or repeated citations in the last three years.

With respect to SAMMs 1, 2, and 3, UOSH performed satisfactorily throughout the evaluation period. OSHA and the State Plan negotiate the FRLs for SAMMs 1 and 2. SAMM 1 measures the average number of workdays to initiate a complaint inspection, and the FRL is five days. In FY 2019, the State Plan took an average of 4.73 days to initiate a complaint inspection, which is similar to the average of 4.15 days in FY 2018. UOSH met the FRL in both FY 2018 and FY 2019. Next, SAMM 2 accounts for the average number of workdays to initiate a complaint investigation; the FRL is three days. In FY 2019, UOSH took an average of 0.89 days to initiate a complaint investigation, which is similar to the 0.92 days it took in FY 2018. Again, the State Plan met the FRL in the last two fiscal years. SAMM 3 measures the percentage of imminent danger complaints and referrals that the State Plan responded to within one workday, with an FRL of 100% fixed for all State Plans. UOSH met this FRL in both FY 2018 and FY 2019.

The FY 2018 FAME Report included an observation related to non-formal complaint files.

**Observation FY 2018-OB-01 (previously FY 2017-OB-01, FY 2016-OB-01, and FY 2015-OB-01):** Through the review of non-formal complaint files, it was determined that in 14 of the 40 (35%) non-formal complaint cases, UOSH did not document any initial contact with the employers prior to sending the complaint notices. Therefore, the employers may have received the complaint notices without any explanation of the process from the State Plan. It was also

determined that six of the 40 (15%) non-formal complaint files which required employer responses lacked sufficient information to justify closing the complaint.

**Status FY 2018-OB-01 (previously FY 2017-OB-01, FY 2016-OB-01, and FY 2015-OB-01):**

The State Plan's electronic complaint process now involves contacting the employer prior to emailing the complaint. The case file review did not identify any instances of UOSH failing to contact the employer. In addition, the State Plan has centralized complaint processing with two senior compliance officers. In FY 2019, only two of 40 (5%) files lacked sufficient documentation of abatement, which was an improvement over the six of 40 (15%) files in FY 2018. This observation is closed.

While UOSH has improved in some areas related to non-formal complaint files, the State Plan still needs work with unprogrammed files.

**Observation FY 2019-OB-01:** In FY 2019, seven of the 40 unprogrammed activities (complaints/referrals/accidents) files reviewed had areas of concern: two (5%) complaint files lacked abatement documentation; two complaints (5%) in OIS did not include all of the hazards originally complained about; and three (7.5%) complaints included references to whistleblower concerns, but the files did not include documentation of referrals to a whistleblower investigator.

**Federal Monitoring Plan FY 2019-OB-01:** The OSHA Regional Office will monitor the State Plan's performance in this area during quarterly meetings throughout FY 2020.

**Status FY 2019-OB-01:** This observation is new.

Next, SAMM 4 addresses the number of inspections where employers deny entry and the State Plan does not gain access to the worksite. UOSH met the fixed FRL of zero in both FY 2019 and FY 2018.

Although SAMM 4 data shows that the State Plan did not experience any denials of entry in FY 2019, the case file review showed that on one inspection, the employer refused entry in the middle of an inspection. After UOSH obtained a warrant to perform the inspection, the State Plan suspended and closed the inspection without completing the inspection process. This resulted in an observation.

**Observation FY 2019-OB-02:** UOSH obtained a warrant for an inspection, then suspended and closed the inspection without completing the inspection process.

**Federal Monitoring Plan FY 2019-OB-02:** The OSHA Regional Office will monitor the State Plan's performance in this area during quarterly meetings throughout FY 2020.

**Status FY 2019-OB-02:** This observation is new.



## b) Fatalities

During the evaluation period, UOSH investigated 15 workplace fatalities. Of these 15 fatalities, one inspection involved a sole proprietor, and one inspection involved three fatalities at one site (all electrocutions when a telescoping boom truck came into contact with an overhead power line).

SAMM 10 measures the percent of work-related fatalities responded to in one workday. All State Plans have a fixed FRL of 100% for this measure. The FY 2019 data presented an outlier because UOSH responded to 10 of 11 (90.91%) of work-related fatalities in one workday. In one case, a state government office initially reported a fatality as a heart attack. However, the State Plan received additional information which later showed a potential work connection, so UOSH opened an inspection more than one day later. In FY 2018, the State Plan was also late on one case (93.75%) due to circumstances beyond their control.

The case file review showed that the State Plan conducted fatality inspections in accordance with established policies and procedures, except for not conducting follow-up inspections. For the six fatality inspections involving serious citations, the State Plan did not conduct any follow-up inspections. Chapter 11 of the UOSH Field Operations Manual (FOM) provides that “[w]here the worksite continues to exist, UOSH will normally conduct a follow-up inspection if serious citations have been issued.” This resulted in an observation.

**Observation FY 2019-OB-03:** The State Plan did not conduct follow-up inspections for six fatality inspections that included serious citations.

**Federal Monitoring Plan FY 2019-OB-03:** The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.

**Status FY 2019-OB-03:** This observation is new.

There were also two fatality cases where the initial next-of-kin notification letter was not in the case file, but all of the files did include the final next-of-kin letter. OSHA discussed this issue with the State Plan, but did not identify this as an observation.

## c) Targeting and Programmed Inspection

The State Plan performed well with respect to SAMM 7, which compares the actual number of safety and health inspections conducted to the projected number of inspections. The State Plan and OSHA negotiated the FRL through the grant application. In FY 2019, the FRL range for safety inspections conducted was from 763.80 to 844.20 inspections. UOSH was outside the FRL range with 955 safety inspections, which was a positive outcome. For health, the FRL range was from 119.70 to 132 inspections. UOSH was again outside the FRL with 163 health inspections. Similarly, the State Plan performed well in FY 2018 with 828 safety inspections and 147 health inspections.

SAMM 17 addresses the percentage of enforcement presence in the state. The three-year national average serves as the basis for the FRL, and UOSH's FRL range was between 0.92% and 1.54%. UOSH was positively outside the FRL range with a rate of 1.85%. By comparison, the percentage of enforcement presence in FY 2018 was 1.66%.

The local emphasis programs (LEPs) that UOSH developed for construction, amputations, and state and local government workplaces (UOSH refers to this as the Public Sector LEP) have greatly contributed to the State Plan's enforcement presence, as these programs have accounted for approximately 46% of their inspection total. According to the SOAR, the Construction LEP contributed 213 inspections, with 352 hazards identified and eliminated, and 1,613 workers affected. The Construction LEP inspections also identified 19 repeat violations, 308 serious violations, and 25 other-than-serious violations. The Amputations LEP contributed 226 inspections, with 513 hazards identified and eliminated, affecting 12,747 workers. Of these 513 hazards, 477 were serious violations, and 36 were other-than-serious (OTS) violations. The Public Sector LEP implemented in FY 2018 contributed 75 inspections, with 200 violations identified and eliminated, affecting 12,627 workers. Of the 200 hazards, 146 were serious violations, and 54 were OTS violations.

Next, SAMM 9 calculates the State Plan's in-compliance rates; i.e., the percent of safety and health inspections without violations. High in-compliance rates may indicate that the State Plan is not targeting worksites that are highly hazardous and prone to having serious violations. The safety FRL range for SAMM 9 was from 24.24% to 36.36%. In FY 2019, the Utah State Plan's percent in compliance for safety inspections was 42.08%, which was outside (higher than) the FRL. By comparison, the safety in-compliance rate in FY 2018 was 33.99%. In FY 2019, the FRL range for health inspections was from 28.90% to 43.34%. UOSH's percent in compliance for health inspections was 46.54%, which is also outside (higher than) the FRL. The rate was a slight decrease from the FY 2018 rate of 47.10%.

UOSH has taken corrective action to address the in-compliance rate. The former compliance supervisor assigned a number of complaints for inspection that may possibly have been better handled as investigations (by email). Since this supervisor has retired, the State Plan is closely scrutinizing which complaints and referrals qualify for inspection based on established criteria. As a result, complaints assigned for inspection may yield a higher citation rate. In addition, UOSH may be able to do more programmed inspections, which have the potential for a higher citation rate. Also, the FY 2018 in-compliance rate of 33.99% for safety inspections of supports the possibility that the rate of 42.08% in FY 2019 may be an abnormality.

With regard to the health in-compliance rate, the State Plan experienced some turnover in health personnel. Still, UOSH made improvements with respect to health inspections through increased worker training, with an emphasis on industrial hygiene sampling. While the in-compliance rate was high, OSHA observed improvements and believes this aspect of the State Plan is heading in a positive direction. Although the health in-compliance rate for FY 2019 is a cause for concern, it is not at a level where it would compromise the effectiveness of the State Plan.

Next, the review team focused on hazard identification, which has been a significant issue for UOSH in recent years. The FY 2018 FAME Report included a continued finding.

**Finding FY 2018-01 (previously FY 2017-01):** In FY 2017, it was determined that UOSH may not be identifying and addressing all potential apparent violations when closing cases (eight of 80 or 10% of cases), verifying adequate evidence to support violations (10 of 37 or 27% of cases), and justifying the severity and probability of the violations (eight of 39 or 21% of cases).

**Status FY 2018-01 (previously FY 2017-01):** During FY 2018, the State Plan provided training for their field and management staff. The training topics included hazard recognition, multi-employer issues, proper citation methods, and citation probability and severity. The State Plan provided additional training in FY 2019, including additional health and construction classes. OSHA found that UOSH has improved their process for identifying and documenting hazards (seven of 102 or 7% of cases), verifying evidence to support violations (three of 102 or 3% of cases), and for justifying the severity and probability (three of 102 or 3% of cases). This finding is closed.

The Inspection Summary Report showed that UOSH issued a total of 1,054 violations throughout FY 2019. Of these violations, 863 (82%) were classified as SWRU (serious, willful, repeat, or unclassified), and 191 (18%) were classified as OTS. The report also showed that two inspections included willful citations, and 28 inspections included repeat citations.

The State Plan had one significant case in FY 2019 which resulted in a penalty of \$292,500 in FY 2020. The State Plan had no other significant cases in FY 2019.

SAMM 5 data shows that UOSH was slightly outside the FRL range for identifying hazards per inspection in FY 2019. The FRL range was from 1.43 to 2.15 for SWRU violations. The State Plan identified an average of 1.37 SWRU violations per inspection in FY 2019. This is a decrease compared to the FY 2018 average of 1.52 SWRU violations per inspection.

The FRL range for OTS violations was from 0.78 to 1.16 in FY 2019, and UOSH identified an average of 0.30 OTS violations per inspection. In this case, being outside the FRL range is a positive outcome for UOSH. By comparison, in FY 2018, the State Plan identified an average of 0.16 OTS violations per inspection. When reviewed in the context of overall numbers of violations, OSHA is not concerned about UOSH's rate of SWRU and OTS violations.

#### d) Citations and Penalties

OSHA found that the State Plan typically classified violations, especially willful and repeated violations, appropriately. The gravity of the hazard is also a factor in the penalty calculation. Overall, OSHA agreed with the State Plan's assessment of the gravity of hazards. While the review team observed some instances of excessive grouping, the team did not notice a pattern that would warrant a finding or observation. For the most part, the State Plan supported violations with adequate evidence. In addition, the field operations manager reviewed the violations issued. The State Plan conducted Legal Aspects training in FY 2019, and this training may have helped CSHOs bolster the evidence to support violations, as well as determine the severity and probability of violations.

The amount of penalties continued to be an area of concern during the evaluation period. SAMM 8 calculates the average current serious penalty in the private sector, and the FRL range was from \$2,153.97 to \$3,589.95 for employers with one to greater than 250 workers. In FY 2019, UOSH was below the FRL range with an average current serious penalty of only \$1,249.56. By comparison, in FY 2018, the State Plan had an average current serious penalty of \$1,315.40. As stated above, UOSH has been unable to raise its maximum penalties as required due to challenges within Utah’s legislative process; therefore, the State Plan cannot meet the FRL at this time.

Also, one of the factors in penalty calculations is the size of the employer. UOSH determines the size of the employer based only on the number of people working for a company within the state of Utah, while the federal policy includes the total number of workers nationwide. Chapter 6 of the UOSH FOM provides that a “maximum penalty reduction of up to 60% is permitted for small employers (80% for serious and willful violations, See Table 6-6). ‘Size of employer’ shall be calculated on the basis of the maximum number of employees of an employer state-wide, at any one time during the previous 12 months.”

In contrast, the OSHA FOM states that a “maximum penalty reduction of 70% is permitted for small employers. ‘Size’ of an employer shall be calculated on the basis of the maximum number of employees for an employer at **all** workplaces nationwide, including State Plan states, at any one time during the previous 12 months.” While the review team identified this as an inconsistency compared to OSHA, the team did not raise this issue as an observation at this time.

#### e) Abatement

The State Plan applies extensive use of the “corrected during inspection” notation. OSHA found that the State Plan allowed the employers to correct fall or trenching hazards during the inspection in 12 of 70 cases. Also, two of those 12 cases included repeat violations which the compliance officer noted as “corrected during inspection”. However, the files did not contain sufficient documentation to establish whether there was evidence of continuing violative practices. According to Chapter 7 of the UOSH FOM, “[n]otations stating ‘Corrected during Inspection’ shall not be made on the citation in cases where there is evidence of a continuing violative practice by an employer (i.e. failure to provide fall protection is a recurring condition based on the citation case history or other indications suggesting widespread violations of the same or similar standards at other establishments or construction worksites.)”

Evidence of a continuing violative practice includes significant deficiencies in the employer’s safety and health program, such as the lack of communication and training and the lack of hazard prevention and control. Based on the twelve files where the compliance officer identified fall or trenching hazards as “corrected during the inspection”, a new observation is included in this report.

**Observation FY 2019-OB-04:** In 12 of 70 cases (17 %) where compliance officers identified hazards as “corrected during inspection”, the inspection files did not sufficiently document

whether there was evidence of a continuing violative practice for serious hazards.

**Federal Monitoring Plan FY 2019-OB-04:** The OSHA Regional Office will monitor the State Plan's performance in this area during quarterly meetings throughout FY 2020.

**Status FY 2019-OB-04:** This observation is new.

The State Plan did, however, establish appropriate time periods for abatement. UOSH uses penalty reduction agreements (PRAs), and as part of this process, the employer is required to provide abatement. In addition, since the State Plan frequently allows employers to correct hazards during inspections, CSHOs did not have to do as many follow-up inspections, other than for fatalities. According to the Inspection Summary Report, UOSH conducted seven follow-up inspections in FY 2019, and with 1,120 total inspections, the rate of follow-up inspections was 0.63%. The follow-up rate would have been higher if the State Plan had conducted follow-up inspections for fatalities as discussed earlier.

#### f) Worker and Union Involvement

According to the SAMM Report, UOSH included workers or worker representatives in initial inspections in FY 2019. SAMM 13 calculates the percent of initial inspections with worker walk around representation or worker interview. The FRL of 100% is fixed for all State Plans. The SAMM data shows that UOSH met the FRL in both FY 2019 and FY 2018.

However, the case file documentation of worker participation in the inspection process, including interviews, is a continuing issue for the State Plan. OSHA found that there was no documentation of non-managerial worker contact in 11 of 102 (10.8%) safety and health inspection case files. OSHA also found that there was no documentation of worker interviews in 19 of 102 (18.6%) safety and health inspection case files. This was consistent with the case file reviews in FY 2017, where 20% of the case files did not contain documentation of worker interviews, and in FY 2015, where 17% of the case files did not contain documentation of worker interviews.

The Utah Code provides in Section 34A-6-301(5): "A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the division's authorized representative during the physical inspection of any workplace. If there is no authorized employee representative, the division's authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace." The Utah FOM Chapter 3.VI.A.2 also provides for non-managerial employee participation in the inspection process. Since this condition has been in place for more than three years, the lack of documentation of non-managerial worker participation is elevated to a finding:

**Finding FY 2019-01 (previously FY 2018-OB-02, FY 2017-OB-03, FY 2016-OB-07, and FY 2015-OB-08):** In FY 2019, UOSH did not ensure that non-management employees were provided an opportunity to participate in the inspection process, through interviews or other means, in 11 of the 102 (10.8%) case files.

**Recommendation FY 2019-01 (previously FY 2018-OB-02, FY 2017-OB-03, FY 2016-OB-07, and FY 2015-OB-08):** UOSH should ensure that each inspection case file includes documentation of how UOSH provided opportunities for non-management workers to participate in the inspection process.

**Status FY 2019-01 (previously FY 2018-OB-02, FY 2017-OB-03, FY 2016-OB-07, and FY 2015-OB-08):** This finding is converted from an observation.

Next, OSHA encountered only two case files for inspections involving unions. Both inspections were in compliance, and UOSH followed its policies in these circumstances.

### **3. REVIEW PROCEDURES**

#### **a) Informal Conferences**

Of the 102 case files reviewed, UOSH conducted an informal conference on only three occasions. UOSH followed procedures when conducting these informal conferences. If an informal conference is to be conducted, the employer must submit a request for an informal conference within 30 days of receipt of the citations. However, UOSH can hold the informal conference after the 30-day time period. The last date to contest is 30 days after the receipt of the citation.

UOSH relies heavily upon PRAs as part of their case settlement process. Of the safety and health case files with citations, UOSH concluded most inspections via the PRA. The PRA allows an employer to receive up to a 50% penalty reduction as long as the employer provides all abatement and accepts the citation classification(s). The employer is not eligible to receive a PRA if the inspection resulted from a fatality or catastrophe. An employer is also not eligible for the PRA if the current citation is due to a willful, repeat, or failure-to-abate violation. Employers who have received a willful, serious, repeat, or failure-to-abate violation in the three years prior to the current inspection date are also exempt from the PRA. OSHA encourages the use of the PRA, but believes UOSH should revisit the criteria for which employers are eligible. OSHA also suggests that UOSH consider not offering the PRA to large employers, employers with high injury or illness rates, or for those inspections where a workplace accident occurred. Due to the extensive use of the PRA, OSHA did not observe a pattern of settlement.

The State Plan had a satisfactory penalty retention rate in FY 2019. SAMM 12 calculates the percent penalty retained, and the FRL range was from 56.42% to 76.33% in FY 2019. UOSH met the FRL with a penalty retention rate of 73.60% in FY 2019. By comparison, in FY 2018, UOSH had a penalty retention rate of 71.06%, which was within the FRL range of 56.79% to 76.83%.

b) Formal Review of Citations

The State Plan assigns contested cases to an administrative law judge (ALJ) for a hearing. Appealed decisions of the ALJ automatically move forward to the Labor Commissioner, unless the appeal goes to the Labor Commission Appeals Board. The Appeals Board is composed of three members: one employer, one worker, and one other member. The governor selects each board member, and each member serves a six-year term. No more than two members can be of the same political affiliation. Decisions by the board are majority decisions. An employer can appeal decisions of the Labor Commissioner or the Appeals Board to the Utah Court of Appeals.

According to the Inspection Summary Report, the State Plan had 15 contested cases, resulting in a contest rate of 2.4% for cases that were not in compliance. The SIR shows that of these 15 cases, only two had reclassified violations. The SIR also shows a penalty retention rate of 106.49% after contest for private sector inspections. There were no contested cases appealed beyond the ALJ decision.

There were no findings or observations related to contested cases.

**4. STANDARDS AND FEDERAL PROGRAM CHANGE 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. UOSH has six months to incorporate a final rule by reference. In order to incorporate a rule, UOSH notifies the Labor Commission General Counsel of the needed rule adoption. The General Counsel staff then initiates the change process. At this point, an open meeting is scheduled, and the state presents the rule. The state forwards the rule to the Utah Administrative Rules Division for publication in the bi-weekly *Utah State Bulletin*, and the state requests public comment. The state forwards public comments to UOSH. Thirty days after the state publishes the rule in the *Utah State Bulletin*, the rule becomes effective. The reference to the *Federal Register*, where OSHA initially published the rule, then appears in the Utah Administrative Code R614-1-4 (Incorporation of Federal Standards).

The following federal standards, including any delinquent standards, were due during the evaluation period.

<b>Standard Number</b>	<b>Standard Title</b>	<b>Adoption Status</b>
29 CFR Part 1926	Final Rule on Crane Operator Certification Requirements	UOSH adopted identically on 05/09/2019.
29 CFR Part 1904, 1910, 1915, 1926	Final Rule on the Standards Improvement Project – Phase IV	Due date was 11/14/2019; UOSH provided a notice of intent to adopt identically on 02/11/2020.
29 CFR Part 1902, 1903	Final Rule on the Implementation of the 2019 Annual Adjustment to Civil	UOSH provided a notice of intent not to adopt on 02/11/2020.

	Penalties for Inflation	
29 CFR Part 1910, 1915, 1926	Final Rule on the Occupational Exposure to Beryllium	UOSH adopted on 11/15/2019; rule became effective on 12/23/2019.
29 CFR Part 1902, 1903	Interim Final Rule on 2018 Maximum Penalty Increases	UOSH has not adopted this standard.
29 CFR Part 1903.2560.2575	Final Rule on the Implementation of the 2017 Annual Adjustment to Civil Penalties for Inflation	UOSH has not adopted this standard.

As referenced above, the Utah State Plan has not yet completed the legislative changes to increase maximum penalties, nor have they increased penalties annually according to the consumer price index. UOSH has adopted the Final Rule on Crane Operator Certification Requirements, as well as the Final Rule on Occupational Exposure to Beryllium. The State Plan provided a late notice of intent to adopt the Final Rule on the Standards Improvement Project – Phase IV.

The following table shows the status of federal program changes (FPCs) due during evaluation period, as well as any delinquent FPCs from earlier.

<b>FPC Number</b>	<b>FPC Title</b>	<b>Adoption Status</b>
CPL-02-00-161	National Emphasis Program on Trenching and Excavation	UOSH adopted on 08/12/2019, but not identically. UOSH was timely in their response.
CPL-02-01-061	Confined Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment	UOSH does not intend to adopt because it does not apply to them. Response due date was 07/21/2019. UOSH provided notice of intent on 02/11/2020.
CPL-02-00-162	Shipyard Employment “Tool Bag” Directive	UOSH does not intend to adopt because it does not apply to them. Response due date was 07/21/2019. UOSH provided notice of intent on 02/11/2020.
CPL 02-01-060	Enforcement Guidance for Personal Protective Equipment (PPE) in Shipyard Employment	UOSH does not intend to adopt because it does not apply to them. Response due date was 07/21/2019. UOSH provided notice of intent on 02/11/2020.
CPL-02-00-163	Field Operations Manual	UOSH does not intend to adopt because they have their



		own FOM. UOSH was timely in their response.
CPL 02-18-01	Site-Specific Targeting 2016 (SST-16)	UOSH intends to adopt but not identically. UOSH was timely in their response.
CPL 02-03-008	Alternative Dispute Resolution for Whistleblower Protection Programs	UOSH does not intend to adopt. Response due date was 04/05/2019, UOSH provided notice of intent on 02/11/2020.

Three of the FPCs involve shipyard work and do not apply to UOSH. Of the others, UOSH was timely in its response for notice of intent for three out of four FPCs.

Although UOSH adopted the SST Directive (CPL 02-18-01) not identically on November 28, 2018, by integrating it into their Amputation LEP, inspections under the UOSH Amputation LEP are limited in scope and do not include comprehensive general industry inspections. This resulted in a new observation.

**Observation FY 2019-OB-05:** The State Plan adopted the SST Directive (CPL 02-18-01) not identically through the Amputation LEP, but the Amputation LEP does not provide for comprehensive general industry inspections.

**Federal Monitoring Plan FY 2019-OB-05:** The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.

**Status FY 2019-OB-05:** This observation is new.

**5. VARIANCES**

UOSH granted one permanent variance on July 23, 2019, to Northrup Grumman Innovation Systems for the spreader bar/lifting beam assemblies used with specified cranes. The employer requested a variance from 29 CFR 1910.179(n)(4)(i) related to testing an upper limit switch of specified hoists at the Orbital ATK Propulsion System. UOSH posted the notice of a public meeting scheduled for July 9, 2019. Next, the State Plan conducted a public meeting and did not receive any comments. UOSH inspected the facility on July 5, 2019, before approving the variance, and the State Plan deemed the alternative protections afforded to the workers to be adequate. The variance approval meets the requirement of the Utah code for variances, which appear to be at least as effective as federal requirements under 29 CFR 1905.

UOSH also has a permanent variance with the chimney construction company, Alberici Mid-Atlantic, L.L.C., which the State Plan granted on August 2, 2008.

## 6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

In FY 2019, UOSH exceeded expectations for inspections in state and local government workplaces. UOSH conducted 8.05% of its inspections in state and local government workplaces, exceeding the SAMM 6 FRL that ranged from 7.15% to 7.90%. This is also an increase over the FY 2018 rate of 7.59%.

The State Plan's performance for SAMM 6 is attributed to the successful implementation of the Public Sector LEP. Under this program, UOSH conducted 226 state and local government inspections, resulting in 513 hazards, with 2.3 violations per inspection, affecting 12,774 workers in FY 2019. For more information on the adequacy and impact of the Public Sector LEP, see the SOAR (Appendix E).

## 7. WHISTLEBLOWER PROGRAM

OSHA reviewed the UOSH Whistleblower Program electronically, focusing on policies, procedures, and investigative files. UOSH closed 59 whistleblower cases in FY 2019, and OSHA reviewed 25 of these cases. Of these 25 cases, UOSH administratively closed 16 cases and investigated 9 cases. Given the sample size, the ability to identify trends was limited.

The following table is a summary of whistleblower complaints during FY 2019.

Disposition	Totals
Total cases from FY 2019	59
Cases completed in FY 2019	9
Cases completed timely	0%
~ Withdrawn	1
~ Dismissed	5
~ Merit	1
~ Settled	2
~ Settled other	0
~ Litigated	0
Administratively closed	50
Investigator on staff	1

**Investigations:** In three of nine cases, OSHA was unable to verify if the supervisor was involved in the review and approval of the complaint intake process. In addition, OSHA noted that the assigned investigator signed the closing letter upon issuance of a determination in four of nine cases. The supervisor was supposed to sign the closing letters.

**Information Disclosure:** The State Plan seemed to have improved its processes with regard to information disclosure, which affected an observation that appeared in the FY 2018 FAME Report.

**Observation FY 2018-OB-04 (previously FY 2017-OB-05):** In FY 2017, it was determined that in five of the 21 (24%) docketed cases, UOSH shared information from case files without redacting non-management witness information and other third party privacy information.

**Status FY 2018-OB-04 (previously FY 2017-OB-05):** OSHA did not note any discrepancies in the redaction of non-management witness information and other third party privacy information. This observation is closed.

However, in FY 2019, in three of nine cases, OSHA was not able to verify if the State Plan shared the respondents' position statement with the complainant so that they could provide a rebuttal.

**Settlements:** UOSH has a history of either inaccurately or inconsistently documenting settlements. The FY 2018 FAME Report contained an observation related to the State Plan's handling of settled cases.

**Observation FY 2018-OB-03 (previously FY 2017-OB-04):** In FY 2017, it was determined that in three of nine (33%) settled cases which were reviewed, the WebIMIS summary sheet did not accurately reflect the settlement determination; and in each case, UOSH improperly recorded settled cases as withdrawn in WebIMIS.

**Status FY 2018-OB-03 (previously FY 2017-OB-04):** OSHA did not note any discrepancies in the WebIMIS summary. This observation is closed.

While that observation seems to be resolved, there was another issue involving settlements in FY 2019. UOSH typically allows the complainants and respondents to reach their own settlements without UOSH's aid. Eight whistleblower cases were settled in FY 2019. In two cases, OSHA was unable to determine if settlements provided appropriate relief because the settlements did not have supporting settlement documents. The case files did not contain information on the make-whole remedy and/or supporting documentation. In one case, OSHA was unable to locate a copy of the final signed agreement or a copy of the settlement check.

Although OSHA found a number of instances where the State Plan did not follow guidance in the UOSH Whistleblower Manual in FY 2019, since the sample size was so small, the ability to identify trends was limited. Also, while some issues regarding information disclosure and settlements were resolved, new ones arose. Therefore, OSHA will monitor these issues as a new observation.

**Observation FY 2019-OB-06:** In FY 2019, UOSH did not follow guidance in the UOSH Whistleblower Investigation Manual when processing and reviewing complaints (seven of nine or 78% of cases), when sharing the respondents' position statements with complainants (three of nine or 33% of cases), and when documenting settlements (two of eight or 25% of cases).

**Federal Monitoring Plan FY 2019-OB-06:** The OSHA Regional Office will monitor the State Plan's performance in this area during quarterly meetings throughout FY 2020.

**Status FY 2019-OB-06:** This observation is new.

Next, UOSH administratively closed 30 cases involving complaints of workplace injuries under the premise that UOSH's policy did not cover this as a protected activity. However, OSHA's Act provides that reporting an injury is a protected activity, and UOSH's policy did not provide due process and the same relief as OSHA's. The State Plan has since revised their policy to include reporting an injury as a protected activity. The State Plan reopened the 30 cases, and nine cases involved further investigation. Of these nine cases, four cases resulted in settlements, four cases were dismissal determinations, and one case resulted in a merit determination. The respondent in the merit determination case filed an appeal with the UOSH Division of Adjudication, asserting that UOSH did not have the authority to set aside their previous final order of dismissal. This decision is still pending before the Division of Adjudication. UOSH has kept the four remaining dismissed cases closed while waiting for a decision of the Division of Adjudication.

With the four dismissed cases that have not been re-opened and investigated, UOSH has not provided due process and a possible remedy for the complainants. This resulted in a new finding:

**Finding FY 2019-02:** The State Plan has denied due process and a possible remedy for complainants in four whistleblower cases who reported an injury as a protected activity. The State Plan has not pursued these investigations while waiting for the results of a case in the UOSH Division of Adjudication appealing UOSH's authority to reopen the case.

**Recommendation FY 2019-02:** To operate at least as effective as OSHA, the State Plan needs to have the authority to re-open final orders where the State Plan erred in closing the cases. UOSH should move forward with the investigation of these four whistleblower cases to provide due process and a remedy for these complainants.

**Status FY 2019-02:** This finding is new.

The turnover in staffing affected the timeframes in which UOSH was able to complete 11(c) investigations. SAMM 14 shows the percent of investigations completed within 90 days, with a fixed FRL of 100% for all State Plans. UOSH did not complete any investigations within 90 days in 2019, but the State Plan completed 31% of the 11(c) investigations within 90 days in 2018.

SAMM 15 shows the percent of 11(c) complaints that are meritorious, with an FRL range of 18.40% to 27.60% in FY 2019. In FY 2019, 33% of 11(c) cases were meritorious, which was a positive outcome. In FY 2018, when the FRL range was from 19.20% to 28.80%, UOSH met the FRL with 20%. The percent of meritorious 11(c) complaints varies from year to year based on the facts of each case.

Finally, SAMM 16 measures the average number of calendar days to complete an investigation, with a fixed FRL of 90 days for all State Plans. UOSH took an average of 245 calendar days to complete an 11(c) investigation in FY 2019, compared to an average of 116 calendar days in FY

2018.

UOSH had one dedicated whistleblower investigator who resigned in September 2018. From September 2018 until September 2019, UOSH temporarily filled this position with the compliance program manager and a staff member. In September 2019, UOSH filled this position with a staff member who is scheduled to take Course #1420, Whistleblower Investigation Fundamentals, at OTI in March 2020. OSHA believes since UOSH now has a permanent whistleblower investigator, significant improvements will become apparent over the coming evaluation period that will positively impact SAMM 14, 15, and 16 data. Therefore, OSHA did not propose any additional whistleblower observations.

## **8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)**

The State Plan did not receive any CASPAs in FY 2019.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

In years past, UOSH has been diligent about promoting VPP and state and local government Safety and Health Achievement Recognition Program (SHARP) activity, and FY 2019 was no exception. The State Plan increased VPP participation from six to seven sites and recertified two sites. The list of establishments participating in VPP is in the SOAR.

UOSH supports VPP by informing their own staff and the staff of the state consultation group of the methods used to identify potential future participants. They also provide presentations, use the Labor Commission's website, and participate in local conferences and associations to foster interest in VPP. UOSH continues to honor an agreement with OSHA to utilize "Special Government Employees" to support UOSH staff in the completion of VPP audits.

OSHA Directive CSP 03-01-003 provides guidance for the proper implementation of policies and procedures. UOSH did not report any changes to the voluntary compliance programs.

## **10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM**

As stated earlier, UOSH operates a Public Sector Consultation Program for state and local government workplaces. In FY 2019, this program conducted 76 visits statewide, exceeding their goal of 45. Of the 76 visits conducted, 57 were initial visits, 16 were training and education visits, and three were follow-up visits. As a result of these visits, the State Plan identified and abated 502 serious hazards.

The Public Sector Consultation Program also conducted 56 compliance assistance activities in FY 2019, exceeding their goal of 45. These activities involved safety- and health-related outreach, promotion, training, and education to a number of state agencies, county departments, cities, and special service districts.

UOSH had a goal to increase the number of state and local government SHARP participants from five to nine. The program met this goal, and UOSH provided a list of the participants in the SOAR.

#### **11. PRIVATE SECTOR 23(g) ON-SITE CONSULTATION PROGRAM**

The 21(d) program funds the private sector on-site consultations, and 21(d) evaluates this program apart from the 23(g) State Plan.

## Appendix A – New and Continued Findings and Recommendations

### FY 2019 UOSH Comprehensive FAME Report

FY 2019-#	Finding	Recommendation	FY 2018-# or FY 2018-OB-#
FY 2019-01	In FY 2019, UOSH did not ensure that non-management employees were provided an opportunity to participate in the inspection process, through interviews or other means, in 11 of the 102 (10.8%) case files.	UOSH should ensure that each inspection case file includes documentation of how UOSH provided opportunities for non-management workers to participate in the inspection process.	FY 2018-OB-02 FY 2017-OB-03 FY 2016-OB-07 FY 2015-OB-08
FY 2019-02	The State Plan has denied due process and a possible remedy for complainants in four whistleblower cases who reported an injury as a protected activity. The State Plan has not pursued these investigations while waiting for the results of a case in the UOSH Division of Adjudication appealing UOSH’s authority to reopen the case.	To operate at least as effective as OSHA, the State Plan needs to have the authority to reopen final orders where the State Plan erred in closing the cases. UOSH should move forward with the investigation of these four whistleblower cases to provide due process and a remedy for these complainants.	

## Appendix B – Observations Subject to New and Continued Monitoring

### FY 2019 UOSH Comprehensive FAME Report

Observation # FY 2019-OB-#	Observation# FY 2018-OB-# or FY 2018-#	Observation	Federal Monitoring Plan	Current Status
FY 2019-OB-01		In FY 2019, seven of the 40 unprogrammed activities (complaints/referrals/accidents) files reviewed had areas of concern: two (5%) complaint files lacked abatement documentation; two complaints (5%) in OIS did not include all of the hazards originally complained about; and three (7.5%) complaints included references to whistleblower concerns, but the files did not include documentation of referrals to a whistleblower investigator.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.	New
FY 2019-OB-02		UOSH obtained a warrant for an inspection, then suspended and closed the inspection without completing the inspection process.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.	New
FY 2019-OB-03		The State Plan did not conduct follow-up inspections for fatality inspections that included serious citations.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.	New
FY 2019-OB-04		In 12 of 70 cases where compliance officers identified hazards as “corrected during inspection,” the inspection files did not sufficiently document whether there was evidence of a continuing violative practice for serious hazards.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.	New
FY 2019-OB-05		The State Plan adopted the SST Directive (CPL 02-18-01) through the Amputation LEP, but the Amputation LEP does not provide for	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY	New



## Appendix B – Observations Subject to New and Continued Monitoring

### FY 2019 UOSH Comprehensive FAME Report

		comprehensive general industry inspections.	2020.	
FY 2019-OB-06		In FY 2019, UOSH did not follow guidance in the UOSH Whistleblower Investigation Manual when processing and reviewing complaints (seven of nine or 78% of cases), when sharing the respondents' position statements with complainants (three of nine or 33% of cases), and when documenting settlements (two of eight or 25% of cases).	The OSHA Regional Office will monitor the State Plan's performance in this area during quarterly meetings throughout FY 2020.	New
	FY 2018-OB-01 FY 2017-OB-01 FY 2016-OB-01 FY 2015-OB-01	Through the review of non-formal complaint files, it was determined that in 14 of the 40 (35%) non-formal complaint cases, UOSH did not document any initial contact with the employers prior to sending the complaint notices. Therefore, the employers may have received the complaint notices without any explanation of the process from the State Plan. It was also determined that six of the 40 (15%) non-formal complaint files which required employer responses lacked sufficient information to justify closing the complaint.		Closed
	FY 2018-OB-02 FY 2017-OB-03 FY 2016-OB-07 FY 2015-OB-08	In FY 2017, it was determined that 16 of 80 (20%) case files lacked documentation that worker interviews were conducted as part of the investigative process.		Converted to Finding
	FY 2018-OB-03	In FY 2017, it was determined that in three of nine (33%) settled cases which were reviewed, the WebIMIS summary sheets did not accurately reflect the settlement determination; and in each case, UOSH improperly recorded settled cases as withdrawn in WebIMIS.		Closed
	FY 2018-OB-04	In FY 2017, it was determined that in five of the 21 (24%) docketed cases, UOSH shared		Closed

## Appendix B – Observations Subject to New and Continued Monitoring

FY 2019 UOSH Comprehensive FAME Report

		information from case files without redacting non-management witness information and other third party privacy information.		
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## Appendix C - Status of FY 2018 Findings and Recommendations

### FY 2019 Utah Comprehensive FAME Report

FY 2018-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2018-01	In FY 2017, it was determined that UOSH may not be identifying and addressing all potential apparent violations when closing cases (eight of 80 or 10% of cases), verifying adequate evidence to support violations (10 of 37 or 27% of cases), and justifying the severity and probability of the violations (eight of 39 or 21% of cases).	UOSH should provide additional training for compliance officers and management staff in the recognition and documentation of violations. Management staff should also receive training specific to case review methods. Corrective action is completed; awaiting verification.	During the course of FY 2018, the State Plan provided training for their field and management staff. The training topics included hazard recognition, multi-employer issues, proper citation methods, and citation probability and severity. The State Plan also provided training in FY 2019, including additional health and construction classes. UOSH has improved their process for identifying and documenting hazards (seven of 102 cases or 7%), verifying evidence to support violations (three of 102 cases or 3%), and for justifying the severity and probability (three of 102 cases or 3%).	September 30, 2019	Completed February 5, 2020

**Appendix D – FY 2019 State Activity Mandated Measures (SAMM) Report**  
 FY 2019 UOSH Comprehensive FAME Report

<b>U.S. Department of Labor</b>				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Utah – UOSH			FY 2019	
<b>SAMM Number</b>	<b>SAMM Name</b>	<b>State Plan Data</b>	<b>Further Review Level</b>	<b>Notes</b>
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	4.73	5	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	2.37	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	0.89	3	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	0.22	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.

## Appendix D – FY 2019 State Activity Mandated Measures (SAMM) Report

### FY 2019 UOSH Comprehensive FAME Report

<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 1.37	+/- 20% of SWRU: 1.79	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.43 to 2.15 for SWRU and from 0.78 to 1.16 for OTS.
		Other: 0.30	+/- 20% of Other: 0.97	
<b>6</b>	Percent of total inspections in state and local government workplaces	8.05%	+/- 5% of 7.53%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 7.15% to 7.90%.
<b>7</b>	Planned v. actual inspections – safety/health	S: 955	+/- 5% of S: 804	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 763.80 to 844.20 for safety and from 119.70 to 132.30 for health.
		H: 163	+/- 5% of H: 126	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,249.56	+/- 25% of \$2,871.96	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,153.97 to \$3,589.95.
	<b>a.</b> Average current serious penalty in private sector (1-25 workers)	\$897.62	+/- 25% of \$1,915.86	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,436.89 to \$2,394.82.
	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	\$1,462.98	+/- 25% of \$3,390.30	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,542.73 to \$4,237.88.
	<b>c.</b> Average current serious penalty in private sector (101-250 workers)	\$2,183.10	+/- 25% of \$4,803.09	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,602.31 to \$6,003.86.
	<b>d.</b> Average current serious penalty in private sector (greater than 250 workers)	\$3,018.66	+/- 25% of \$5,938.59	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,453.94 to \$7,423.23.

**Appendix D – FY 2019 State Activity Mandated Measures (SAMM) Report**  
 FY 2019 UOSH Comprehensive FAME Report

<b>9</b>	Percent in compliance	S: 42.08%	+/- 20% of S: 30.30%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 24.24% to 36.36% for safety and from 28.90% to 43.35% for health.
		H: 46.45%	+/- 20% of H: 36.12%	
<b>10</b>	Percent of work-related fatalities responded to in one workday	90.91%	100%	The further review level is fixed for all State Plans.
<b>11</b>	Average lapse time	S: 19.26	+/- 20% of S: 47.61	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 38.08 to 57.13 for safety and from 45.78 to 68.68 for health.
		H: 33.47	+/- 20% of H: 57.23	
<b>12</b>	Percent penalty retained	73.60%	+/- 15% of 66.38%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 56.42% to 76.33%.
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	0%	100%	The further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	33%	+/- 20% of 23%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 18.40% to 27.60%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	245	90	The further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	1.85%	+/- 25% of 1.23%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.92% to 1.54%.

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this

**Appendix D – FY 2019 State Activity Mandated Measures (SAMM) Report**  
FY 2019 UOSH Comprehensive FAME Report

Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 12, 2019, as part of OSHA’s official end-of-year data run.

**STATE OF UTAH**

**STATE OPERATIONS**

**ANNUAL REPORT**

**(SOAR)**

**FY 2019**

**01/03/2020**



**UTAH LABOR COMMISSION**

**UTAH OCCUPATIONAL SAFETY AND HEALTH DIVISION**  
**(UOSH)**



## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

#### Table of Contents

<b>Title</b>	<b>Page</b>
<b>Introduction</b>	<b>E-3</b>
<b>UOSH Compliance Performance Summary</b>	<b>E-3</b>
Compliance Activity	E-4
<b>Compliance Outreach Presentations</b>	<b>E-6</b>
<b>Public Sector Consultation Activities</b>	E-7
Public Sector Consultation Activity Table	E-7
<b>Safety and Health Recognition Program (SHARP)</b>	<b>E-8</b>
Public Sector SHARP Participants Table	E-8
<b>Voluntary Protection Program (VPP) and Current Status of Program</b>	<b>E-8</b>
VPP Participants Table	E-9
<b>Local Emphasis Programs (LEP)</b>	<b>E-9</b>
Construction Industry	E-9
Amputations	E-11
Public Sector	E-12
<b>Staff Training Activity</b>	<b>E-15</b>
Staff Training Cost Saving	E-16
<b>Federal Guidance Adopted</b>	<b>E-16</b>
<b>State Internal Evaluation Program (SIEP)</b>	E-16
<b>Occupational Medicine Residency with University of Utah</b>	<b>E-17</b>
<b>General Organizational Information</b>	<b>E-17</b>
UOSH Staff Changes	E-17
Program Changes	E-17
Compensation Level and Recruitment Challenges	E-18
UOSH and Compliance Staff Meetings	E-18
<b>Annual Performance Goals and Results</b>	<b>E-18</b>
Annual Performance Goal USG 1 Results Table	E-19
Annual Performance Goal USG 2 Results Table	E-20
Annual Performance Goal USG 3 Results Table	E-21

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

#### **Introduction**

Helping to ensure a safe and healthy workplace for every worker in the State of Utah is a joint effort by both the UOSH Compliance program (Compliance) and the UOSH Consultation and Education Services program (Consultation).

This introduction is common for both the State Operations Annual Report (SOAR) and the Consultation Annual Project Report (CAPR) because the Utah State Plan is a joint Compliance/Consultation effort to provide a safe and healthy workplace for every worker in the State of Utah through either the enforcement of the UOSH standards by Compliance and/or the assistance to employers through Consultation.

UOSH has developed a 5-year Strategic Performance Plan that was in effect from FY 2015 through FY 2019. This five-year Strategic Performance Plan was developed on the basis that occupational safety and health in Utah is an integrated process with Compliance and Consultation working together to accomplish a common goal.

Utah operates a state plan occupational safety and health program under Section 18 of the federal Occupational Safety and Health Act of 1970 (the Act). Funding for this program is provided in accordance with Section 23 of the Act. Establishment and enforcement of state occupational safety and health standards form the core of this program. Utah provides a Consultation program in accordance with 29 CFR 1908 and the Consultation Policies and Procedures Manual (CSP 02-00-003). This program is designed to operate within the requirements established in Section 21 of the Act.

This report is a performance report of UOSH Compliance activities accomplished for the fulfillment of requirements included in the Strategic Plan (FY 2015 - 2019) and identified in the FY 2019 23(g) Grant Application.

#### **UOSH Compliance Performance Summary**

The UOSH program mirrors the federal program as closely as possible while still recognizing the autonomy and unique characteristics of the state.

During FY 2019, UOSH Compliance performed a total of 1,438 Compliance Interventions (Inspections, Public Sector Visits and Compliance Assistance Activities). The total UOSH interventions include 1,118 inspections, 76 visits, and 244 compliance assistance (CA) in the public and private sectors. This is an increase of 13.6% from FY 2018. These interventions removed approximately 195,726 employees from 1,839 identified and corrected hazards and violations.

UOSH, in line with its strategic and performance plans, emphasized the prevention of fatalities and the reduction of the Utah fatality rate for industries under UOSH's jurisdiction. UOSH also made a concerted effort to reduce the Utah Annual Recordable Case Rate in Construction and General Industry. UOSH promoted a safety and health culture through participation in Compliance interventions, presentations and the Voluntary Protection Program (VPP).

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

#### Compliance Activity

<b>1. Compliance Activities</b>	<b># of</b>
Compliance Activities	<b>1,438</b>
Inspections	1,118
Visits (Public Sector)	76
Compliance Assistance (CA)	244
<b>2. Emphasis Initiatives - Inspections</b>	<b># of</b>
Construction LEP	213
Amputation LEP	226
Public Sector LEP	75
<b>3. Fatality Cases Reported to UOSH</b>	<b># of</b>
Reported to UOSH	<b>34</b>
Inspections accomplished	15
Investigations accomplished	19
<b>4. Serious Injury Cases Reported to UOSH</b>	<b># of</b>
Reported to UOSH	<b>624</b>
Inspections accomplished	225
Investigations accomplished	373
Non-UOSH Cases	26
<b>5. Safety and Health Complaints</b>	<b># of</b>
Safety and Health complaints received	530
Inspections accomplished	271
Investigations (Phone/Fax) accomplished	73
Referred to other agencies	14
Invalid	172
<b>6. General Industry Activities</b>	<b># of</b>
Total General Industry	<b>576</b>
Inspections accomplished	532
CA accomplished	44
<b>7. Construction Activities</b>	<b># of</b>
Total Construction	<b>613</b>

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

Inspections accomplished	496
CA accomplished	117
<b>8. Public Sector Activities</b>	<b># of</b>
Total Public Sector	<b>249</b>
Public Sector Inspections	90
Public Sector Consultation Visits	76
Public Sector Compliance Assistance	83
<b>9. Whistleblower Complaints</b>	<b># of</b>
Whistleblower complaints received	84
Total Investigations completed in FY2019	59
Investigations opened in FY2019 and not completed	30
Merit Determinations in FY2019	3
Non-Merit Determinations in FY2019	5
Cases settled	2
Administratively closed	51
<b>10. VPP Applications Activities</b>	<b># of</b>
Total Participants	7
Applications received	0
Presentations accomplished	7
Pre-audits accomplished	0
Recertification audits accomplished	2
<b>11. Compliance Outreach Presentations</b>	<b># affected</b>
Associated Builders & Contractors (ABC) Trench Safety	200
Associated General Contractors (AGC) of Utah Conference	300
AGC Lunch & Learn Presentation	500
Governor's Office of Management and Budget	1,200
Mexican Consulate Labor Rights Week	35
Utah Facilities Operation & Management Association	500
Utah Green Industry Conference	125
Utah Petroleum Association Annual Conference	500
Utah Service, Transmission, Exploration & Production (STEPS)	2,000
Utah Safety Council Annual Meeting and Awards Luncheon	150
Utah School Boards Indemnity Board.	250

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

Workplace Safety Grants Committee	2,000
<b>Total Outreach Activities Accomplished</b>	<b>7,760</b>

### **Compliance Outreach Presentations**

UOSH continually provides outreach to employers on construction and general industry standards. Management staff is working with members of the construction industry, general industry, construction trade associations and manufacturing to keep them informed of changing UOSH requirements. Many opportunities to share the safety message were made available this year.

Presentations were conducted at:

- Associated Builders & Contractors (ABC) Safety Awards
- Associated General Contractors (AGC) of Utah Conference
- AGC Lunch & Learn Presentation
- Governor's Office of Management and Budget
- Mexican Consulate Labor Rights Week
- University of Utah Industrial Hygiene Conference
- Utah Council for Citizen Diplomacy
- Utah Facilities Operation and Management Association
- Utah Manufacturer's Association Conference
- Utah Green Industry Conference
- Utah Petroleum Association Annual Conference
- Utah Service, Transmission, Exploration & Production (STEPS)
- Utah Safety Council Annual Meeting and Awards Luncheon
- Utah State Risk Management Symposium
- Utah School Boards Indemnity Board.
- Workplace Safety Grants Committee

The UOSH Advisory Council continued to promote and improve occupational health and safety conditions for employers and employees in Utah. The UOSH Advisory Council functions by providing information, advice and assistance regarding issues, programs and activities related to occupational safety and health in Utah.

The Local Emphasis Program (LEP) for the public sector was recognized by the Governor's Office of Management and Budget as part of the SUCCESS Plus initiative. This has been seen by thousands of public sector employees and emergency services personnel, and has raised awareness on hazards found in public sector workplaces.

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

#### **Public Sector Consultation Activities**

The Public Sector Consultation Program conducted 76 visits statewide. Of the 76 visits conducted, 57 were initial visits, 16 were training and education visits and 3 were follow-up visits.

As a result of the 76 visits conducted, 781 serious hazards were identified and abated, removing over 18,062 employees from exposure to serious hazards.

The Public Sector Consultation Program conducted 56 Compliance Assistance (CA) activities which involved outreach, promotion, presentations, training and education with both safety and health related aspects. These activities affected over 39,000 employees.

Many cities were visited in Salt Lake and Utah counties as an ongoing outreach effort to promote Public 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 promotions of Public Sector Consultation previously or from the outreach activities from the current and prior years.

#### **Public Sector Consultation Activity Table**

<b>Visits</b>	<b>Type</b>
57	Initial visits
16	Training & Education Visits
3	Follow-up
<b>76</b>	<b>Total Public Sector Consultation</b>

<b>Public Sector Compliance Assistance</b>	
<b>56</b>	Outreach, Promotions and Training & Education

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

#### **Safety and Health Achievement Recognition Program (SHARP)**

Public Sector Consultation continues to promote the Safety and Health Achievement Recognition Program (SHARP). An integral part of each Consultation visit is an evaluation of the employer for SHARP potential. If the employer is eligible for SHARP information is presented at the closing conference. Consultation has an informational brochure which includes information on SHARP.

During FY 2019, there were five companies that renewed SHARP entities. There are currently nine Public Sector SHARP entities.

#### **Public Sector SHARP Participants Table**

<b>Company Name</b>	<b>Initial SHARP Date</b>	<b>Status</b>	<b>Latest Recertification</b>	<b>Expiration</b>	<b>Employees</b>
Lehi City FD #81	04/09/2012	Current	07/06/2018	07/06/2021	90
Lehi City FD #82	04/09/2012	Current	07/06/2018	07/06/2021	90
Lehi City FD #83	07/06/2018	Current	07/06/2018	07/06/2020	90
North Davis Sewer	04/11/2016	Current	07/10/2018	07/10/2021	42
Sandy City FD #31	09/03/2013	Renewed	10/25/2018	10/25/2021	76
Sandy City FD #32	09/03/2013	Renewed	10/25/2018	10/25/2021	76
Sandy City FD #33	09/03/2013	Renewed	10/25/2018	10/25/2021	76
Sandy City FD #34	09/03/2013	Renewed	10/25/2018	10/25/2021	76
Sandy City FD #35	09/03/2013	Renewed	10/25/2018	10/25/2021	76

#### **Voluntary Protection Participants & Current Status**

UOSH continues to promote VPP through presentations with the assistance of existing VPP members and employees. UOSH will increase awareness in the Compliance and Consultation staff to assist in identifying potential candidates. Other means available to promote VPP in Utah are the Labor Commission website, participation at conferences; such as the Voluntary Protection Programs Participants' Association National and Regional Conferences, the Annual Safety and Industrial Hygiene Conference, and through other professional associations. UOSH has continued the agreement with OSHA to utilize the use of Federal "Special Government Employees" (SGEs) to assist the Compliance staff in VPP audits.

Currently, there are seven companies participating in the VPP program, with two of those being audited for recertification. Three companies withdrew in the last year,

Current VPP sites are listed in the next table.

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

#### Voluntary Protection Participants Table

Voluntary Protection Participants						
	Company Name	Since	Status	Latest Recertification	Expiration	Employees
1	Morton Salt	06/29/2004	Star	12/22/2016	12/22/2021	135
2	Frito Lay	07/20/2004	Star	01/29/2019	01/29/2024	275
3	Firestone Building Products	10/20/2009	Star	01/29/2019	01/29/2024	34
4	Phillips 66 NSL Terminal	01/06/2010	Star	06/19/2019	06/19/2024	12
5	McWane Ductile Inc.	05/15/2015	Star	07/21/2017	07/21/2021	220
6	Smithfield Foods	12/07/2016	Star	n/a	12/07/2019	270
7	Energy Solutions	03/21/2018	Star	n/a	03/21/2021	112

#### Local Emphasis Programs

##### Construction Industry

UOSH has focused on construction worksites by developing and implementing a Local Emphasis Program (LEP) for Construction Industry, Directive number 2014-001, which became effective August 1, 2014. On July 31, 2019 it ended and UOSH revised and renewed it as of August 1, 2019 as Directive 2019-001. The Directive was established to help reduce the incidence of injury, illness and fatality among workers in the construction industry by focusing on the “Big 4” construction hazards: falls from elevation, caught-in or between, struck-by and electrocution. For the renewed 2019 edition, trenching was added to the focus hazards. UOSH will continue to work in cooperation with the construction industry to help achieve effective safety and health management systems.

**LEP effectiveness:** Some of the data UOSH used to evaluate the effectiveness of the Construction LEP were the number of inspections and compliance assistance activities conducted, the number and types of violations cited as a result of the LEP, the number of employees removed from hazards and the number of injuries in the construction industry compared to previous fiscal years. By evaluating the information gathered, the effectiveness of the program can be determined as a result of compliance activity at construction sites throughout Utah as covered by the LEP.

**Number of Construction LEP inspections and violations:** Using LEP inspection criteria, data was gathered for Construction inspections conducted from October 1, 2018 through September 30, 2019. There were 213 inspections conducted (affecting 1,613 employees) during the time period with 352 violations identified and eliminated, which is approximately 1.7 violations per inspection. There were 19 repeat violations, 308 serious violations and 25 other-than-serious violations. There were three inspections that were contested.



## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

The data gathered from the OSHA Information System (OIS) indicates that of the 352 violations, the most frequently cited standards were related to fall protection (Subpart M of 29 CFR1926) (178 violations) and scaffolds (87 violations).

The following are the top five standards most frequently cited by UOSH as a result of the Construction LEP inspections:

1. Fall Protection (178 violations)
2. Scaffolds (87 violations)
3. Ladders (29 violations)
4. Excavations (20 violations)
5. Electrical (12 violations)

The standards most frequently cited by UOSH from the Construction LEP inspections (fall protection, scaffold, ladders, excavations and electrical) show that the focus of this LEP is in-line with the “Big 4” hazards and Trenching observed at the worksites.

The total number of inspections conducted by UOSH during this period was 1,118, meaning the Construction LEP inspections (213) accounted for 19% of the inspections. The total number of violations cited by UOSH during this time was 1,747 meaning the violations cited as a result of the Construction LEP (352) accounted for 20% of the violations.

CSHOs conducted 80 Compliance Assistance (CA) activities under the Construction LEP affecting 4,813 employees in Utah.

The number of accidents in the construction sector reported to UOSH during the last four years has been rather consistent with 104 in FY16, 118 in FY17, 94 in FY18 and 107 in FY19. At the same time the average number of employees within this sector has increased from 92,756 in FY16 to 103,819 in FY19, a 12% increase. In addition the BLS Injury & Illness Rate has decreased 18% since FY16.

Results gathered from Construction LEP inspections conducted during FY19, as well as accident data from the Industrial Accident’s database, were compared to the results from the analysis conducted in previous years. See the table below for a comparison of some of the data.

#### Construction LEP Analysis - FY16, FY17, FY18 and FY19

<b>Construction Industry (LEP)</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
Inspections Conducted - LEP	182	192	195	213
Hazards Identified - LEP	453	409	458	352
Violations per Inspection	2.4	2.1	2.3	1.7
Compliance Activities - LEP	134	80	103	80
Employees Affected	2,766	2,170	2,267	1,613

<b>Construction Industry (Total)</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
Accidents Reported to UOSH in Construction	104	118	94	107

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

Avg Number of Employees in Construction NAICS	92,756	98,686	100,413	103,819
Injury & Illness Rate (BLS) (Latest Posted Results)	4.0	3.3	3.3	3.3

The above information shows that the Construction LEP has had a positive impact on the construction industry, mainly by the decrease in the number of injuries to employees in this sector.

UOSH will continue to provide education and compliance assistance to employers, as well as enforce regulations where hazards are observed, to ensure employers and contractors in the construction industry are aware of the hazards and take appropriate steps to eliminate employee exposure to those hazards.

With the continuance of the Construction LEP and targeting the “Big 4” hazards and trenching, UOSH believes the incidence of injury, illness and fatality among workers in construction will be further reduced.

### Amputations LEP

UOSH’s inspection history and employers’ accident reporting trends indicate that employee exposures to unguarded or inadequately guarded machinery and equipment, together with associated hazardous energy exposures during servicing and maintenance activities, occur in many workplaces. Based on this information, UOSH recognized the need to develop an LEP, implemented on November 1, 2014, designed to identify and reduce workplace hazards due to machinery and equipment which are causing or are likely to cause amputations in general industry.

**LEP effectiveness:** Some of the data that UOSH used to evaluate the effectiveness of the Amputation LEP were the number of inspections and compliance assistance activities conducted by UOSH, the number and types of violations cited as a result of the LEP, the number of employees removed from the hazards, the number of injuries classified as amputations where machines are present that could likely cause such injury as compared to the previous federal fiscal years. By evaluating the information gathered, the effectiveness of the program can be determined as a result of compliance activity throughout the State of Utah that is covered by this LEP.

**Number of Amputation LEP inspections and violations:** Using LEP inspection criteria, data was gathered for the Amputation LEP inspections conducted from October 1, 2018 through September 30, 2019. During this time, Compliance Safety and Health Officers (CSHOs) conducted 226 inspections under the Amputation LEP (affecting 12,747 employees) with 513 hazards identified and eliminated, averaging approximately 2.3 violations per inspection. There were 477 serious violations and 36 other-than-serious violations cited.

The data gathered from OIS indicates that of the 513 violations, the most frequently cited standards were those related to machine guarding (335 violations) and lockout/tagout (57 violations).

The following are the top four standards most frequently cited by UOSH as a result of the Amputation LEP inspections:

1. Machine/Equipment guarding (335 violations)
2. Lockout/Tagout (57 violations)
3. Electrical (36 violations)
4. Personal Protective Equipment (26 violations)

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

The standards most frequently cited by UOSH as a result of the Amputation LEP inspections show that the focus of this LEP is in-line with the hazards observed at the worksites.

Although the data shows the number of work-related amputations in the manufacturing sector reported to UOSH has stayed about the same, FY16 had 19, FY17 had 22, FY18 had 21 and FY19 had 21, the average number of employees within this sector has had significant increases, from 125,324 in FY16 to 136,109 in FY 19, a 9% increase. This shows that although the number of amputations has been consistent, the rate per employee has decreased.

Results gathered from LEP inspections conducted during FY19 were compared to the results from the analysis conducted in previous years. The amount of inspection activities under this LEP has led to the identification and elimination of hazards from the workplace thereby helping to create a safer working environment. See the table below for a comparison of some of the data.

#### Amputation LEP Analysis - FY16, FY17, FY18 and FY19

Amputation LEP Inspections	FY16	FY17	FY18	FY19
Inspections Conducted	119	213	202	226
Hazards Identified	311	524	552	513
Violations per Inspection	2.6	2.5	2.7	2.3
Employees Affected	4,351	5,878	8,676	12,747
Amputation Injuries (Manufacturing) reported	19	22	21	21
Average Number of Employees (Manufacturing)	125,324	129,231	131,218	136,109

The above information shows that the Amputation LEP has a positive impact on places of employment where amputation hazards exist.

UOSH will continue to provide education and compliance assistance to employers, as well as enforce regulations where hazards are observed, to ensure employers who have equipment and/or machinery that are known to cause serious injury, including amputations, are aware of the hazards and take appropriate steps to eliminate employee exposure to those hazards.

With the continuance of the Amputation LEP, UOSH believes the incidents of amputations and fatalities will be reduced where machines are present that would likely cause such occurrences.

#### Public Sector LEP

UOSH has implemented a Public Sector Emphasis Program (LEP) that focuses on public sector employers which are comprised of counties, cities, school districts, colleges, technical schools, fire departments, police departments, correctional facilities, special service districts and Utah state agencies, Directive number 2017-001, which became effective November 20, 2017. The Directive was established to enforce initiatives to remove workplace hazards and reduce the incidents of

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

injury, illness and fatality among workers in the public sector by focusing on worksites where serious hazards with a substantial probability that death or serious injury could result and to increase awareness of UOSH throughout the state.

Although public sector employees account for more than 15% of the workforce in Utah, a much smaller percentage of occupational safety and health inspections have been conducted by UOSH at public sector worksites historically.

**LEP effectiveness:** Some of the data UOSH used to evaluate the effectiveness of this LEP will be the number of inspections and compliance assistance activities conducted, the number of violations cited as a result of the LEP, the number of employees removed from hazards and the number of reported accidents compared to previous fiscal years. By evaluating the information gathered, the effectiveness of the program can be determined as a result of compliance activity at public sector sites throughout Utah as covered by the LEP.

**Number of Public Sector LEP inspections and violations:** Using LEP inspection criteria, data was gathered for Public Sector inspections conducted from October 1, 2018 through September 30, 2019. The LEP accounted for 75 inspections conducted (affecting 12,627 employees), with 200 violations identified and eliminated, which is approximately 2.7 violations per inspection. There were 146 serious violations and 54 other-than-serious violations.

The total number of inspections conducted by UOSH during this period was 1,118, meaning the Public Sector LEP inspections (75) accounted for 6.7% of the inspections. The total number of violations cited by UOSH during this time was 1,747, meaning the violations cited as a result of the Public Sector LEP (200) accounted for 11.4% of the violations.

CSHOs conducted ten Compliance Assistance (CA) activities under the Public Sector LEP affecting 587 employees in Utah.

Implementing the Public Sector LEP has significantly increased the total number of Public Sector inspections. In FY16, UOSH conducted 17 public sector inspections, in FY17 the total was 16. However, in FY18 with the addition of the Public Sector LEP, inspections totaled 74 and in FY19 the total increased to 90. This LEP gives UOSH a much needed presence in an under-served sector of the state that represents about 15% of the workforce.

#### Public Sector Inspections Analysis - FY16, FY17, FY18 and FY19

Public Sector Industry	FY16	FY17	FY18	FY19
Inspections Conducted Public Sector	17	16	74	90
Hazards Identified	61	41	278	225
Violations per Inspection	3.5	2.6	3.7	2.5
Compliance Assistance Activities	0	3	12	26
Avg Number of Employees in Public Sector	203,302	208,268	212,729	216,525

The above information shows that the Public Sector LEP has had a positive impact on the industry, mainly by the increase in hazards identified and eliminated.

## **Appendix E – FY 2019 State OSHA Annual Report (SOAR)**

### **UOSH - SOAR Report - FY 2019**

UOSH will continue to provide education and compliance assistance to employers, as well as enforce regulations where hazards are observed, to ensure employers in the public sector industry are aware of the hazards and take appropriate steps to eliminate exposure to those hazards.

With the continuance of the Public Sector LEP, UOSH believes the incidents of injury, illness and fatality among workers in the public sector will be further reduced.

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

#### **Staff Training Activity**

The following training was provided to CSHOs during FY 2019:

##### **OSHA Webinar**

Combustible Dust Hazard Awareness,  
Reaching Temporary Workers,  
Trenching/Excavation

##### **OTI Training**

Hazard Analysis in the Chemical Processing Industries  
Advanced PSM in the Chemical Industries  
Introduction to Health Standards for Industrial Hygienists  
Industrial Hygiene Chemistry  
Construction Standards  
Whistleblower Investigation Fundamentals

##### **Rocky Mountain Center for Occupational and Environmental Health Facility**

Asbestos Contractor/Supervisor Training  
Asbestos Contractor/Supervisor Refresher  
Annual Conference on Safety and Industrial Hygiene (assorted workshop and classes)

##### **Utah Safety Council**

Electrical Safety: OSHA Compliance  
Fundamentals of Industrial Hygiene

##### **Other Training**

10 Hour Outreach Course General Industry  
10 Hour Outreach Course Construction  
Legal Aspects Training  
Respiratory Protection Training  
Governor’s Conference of Management and Budget (GOMB) - “Building on Success”

##### **OSHAcademy**

Employees continue on-line courses through the OSHAcademy. Each course was a minimum of two hours of training. The OSHAcademy provides online courses and programs to provide knowledge level safety and health training.

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

#### Staff Training Cost Saving

Although training is a significant expense for the division, 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 OSHA Training Institute (OTI) Education Centers. Compliance Managers have attended training at the OTI to obtain tools and information that will assist with helping CSHOs succeed at ensuring employees are provided a workplace free from recognized hazards.

UOSH's Whistleblower Investigator participated in whistleblower investigation training held at the OTI and a CSHO traveled out-of-state to participate in a VPP audit with Federal 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 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 our mission.

#### **Federal Guidance Adopted**

CFR 02-00-161 2019-1250	National Emphasis Program on Trenching and Excavation	UOSH adopted in FY 2019
CPL 02-2019-1266	Site-Specific Targeting 2016 (SST-16)	UOSH adopted in FY 2019
29 CFR Part 1904-2019-807	Final Rule on the Tracking of Workplace Injuries and Illnesses	UOSH plans to adopt identical in FY 2020
29 CFR Part 1926-2019-646	Final Rule on Crane Operator Certification Requirements	UOSH plans to adopt identical in FY 2020

#### **State Internal Evaluation Program (SIEP)**

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

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

#### Areas of Emphasis SIEP program

Inspection Scheduling	Utah Adjudication Process
Accident Referral Investigations	Contested Cases
Fatality/Catastrophe Investigations	Informal Conference
Complaint Investigations	Data Entry for Contested Cases
Case File Documentation	Data Entry for Informal Conference
Case File Data Entry	Settlement of Cases
Case File Review and Approval	Data Entry of Settlement Cases
Citation Processing	Data Quality – SAMM Report
Assurance of Abatement	CSHO Training
Petition for Abatement Modification	Industrial Hygiene Process
Denial of Entry Warrant	Review of CA files

During FY 2019, UOSH performed quarterly reviews of a random sample of Compliance safety and health cases to ensure the quality and efficiency of the process.

#### Occupational Medicine Residency Program with University of Utah

During FY 2019, three physicians from the Occupational Medicine Program of the University of Utah Department of Family and Preventive Medicine Division of Public Health served residency training with UOSH staff.

UOSH provides this training as part of a cooperative effort with the University of Utah. This training allows the residents to gain exposure to the administrative and regulatory aspects of UOSH with respect to health and safety in the workplace. Also, it increases their knowledge and familiarity regarding worker's compensation and employment law in the State of Utah.

#### General Organizational Information

##### **UOSH Staff Changes**

During FY 2019, one Compliance Supervisor retired and the position was eliminated. The Whistleblower Investigator left and the position was filled on 9/30/19. In addition, there were five CSHOs who left the Compliance section, either by retirement or leaving UOSH for other employment opportunities. Four of those positions were filled throughout the year, leaving one CSHO position vacant at the end of FY19.

##### **Program Changes**

During FY 2019, UOSH Compliance has continued to implement a new paperless process for case files. This has enabled cases to be processed more efficiently. With additional technology that will soon be implemented, this change will also enable CSHOs to be productive while away from the office, not having to travel back to the main office. This allows UOSH Compliance to be better equipped to respond to issues without the constraints of infrastructure. This change has been positive for the tax payers of Utah, driving efficiency within UOSH Compliance.



## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

#### **Compensation Level and Recruitment Challenges**

Limited compensation levels for personnel continue to be a tremendous challenge to UOSH for the type of professional level, technical knowledge, education, experience and expertise needed to perform complex occupational safety and health inspections. This continues to be a critical challenge for UOSH, limiting the ability to recruit candidates with the expertise and talent needed to accomplish UOSH's mission. This is evident by the difficulty in recruiting individuals with experience and expertise in engineering, chemistry and industrial hygiene.

Infrequent and limited pay increases, due to unstable/limited funding, result in trained and experienced employees leaving state jobs and going to the private sector for better pay and benefits after the state has invested an estimated \$50,000.00 in training for those individuals. Based on current economic forecasts, UOSH does not expect this situation to improve in the near future.

#### **UOSH and Compliance Staff Meetings**

UOSH staff meetings are held quarterly to discuss current information, federal and state changes and provide staff training. In addition, to making improvements to processes, procedures and discuss program changes.

#### **2019 Annual Performance Goals and Results**

UOSH's performance plan includes a goal directed towards the reduction of fatalities, injuries, and illnesses. The change in the State's injury/illness/fatality rates will be included in UOSH's assessment of the achievement of the national goal(s).

As a performance measure, UOSH has had a decrease in the fatality rate for industries that are under UOSH's jurisdiction with a rate of 1.00, a 5% rate decrease from the State of Utah Fatality rate average for 2013-2015 baseline of 1.05. UOSH's fatality rate is below the average of the national BLS rate (2013-2015) of the all-worker fatal injury rate of 3.0.

The Utah fatality rate for FY19 is based on the 15 fatalities for the year and an employee total of 1,499,624 under UOSH jurisdiction. The employee total is from the Utah Department of Workforce Services.

CA and outreach conducted by UOSH has contributed to the reduction of the Utah total recordable injury and illness case rate from 3.4, which is the average of the 2013 - 2015 BLS data for Utah, to the currently published 2018 rate of 2.9.

UOSH works to promote a safety and health culture through participation with Consultation, VPP, SHARP and other CA. UOSH has continued its commitment to VPP with a designated Compliance Assistance Specialist (CAS) for the administration of VPP. This CAS was sent to the Region VIII VPPPA Conference, as well as participating in a Federal OSHA VPP site visit in another state. In addition, this CAS attended the VPPPA National Conference.

**Appendix E – FY 2019 State OSHA Annual Report (SOAR)**

**UOSH - SOAR Report - FY 2019**

**Annual Goal Tables on next 3 pages**

**Annual Performance Goal USG 1 Results Table**

<b>Annual Performance Goal USG1 – Reduce Fatalities (Mandatory Goal)</b>					
<b>Goal</b>	Achieve an effective impact in the reduction of the Utah fatality rate for industries that are under UOSH jurisdiction in 2019, measured by the most current averages of BLS fatality data available from 2013-2015.				
<b>Outcome</b>	Reduce the rate of workplace fatalities.				
<b>Annual Performance</b>	<i><b>USG1 Strategy</b></i>	<i><b>Industry</b></i>	<i><b>Baseline</b></i>	<i><b>2019 Goal</b></i>	<i><b>2019 Result</b></i>
	<i>Change in Utah Fatality Rate (Baseline, 3 year average of Utah’s fatality rates, FY 2013-2015)</i>	<i>All Combined</i>	<i>1.05</i>	<i>&lt;1.05</i>	<i>1.00</i>
<b>Strategy</b>	<ol style="list-style-type: none"> <li>1. Focus UOSH inspections, compliance assistance and outreach activities on industry sectors with the highest injury incident rates related to the leading causes of fatalities in Utah.</li> <li>2. Review YTD fatalities reported to UOSH to identify specific areas of emphasis for the development and implementation of Local Emphasis Programs.</li> <li>3. Adopt Emphasis Programs, as appropriate, for high risk industries.</li> </ol>				
<b>Outcome Indicator(s)</b>	Change in fatality rates based on State annual data and BLS.				
<b>Results (2019)</b>	<p>Number of Fatalities: 15                      Number of employees under UOSH Jurisdiction: 1,499,624                      2019 Fatality Rate: 1.00                      Change from baseline: 5% decrease                      Special Areas of Emphasis: 7 Fatalities in General Industry                        7 Fatalities in Construction                        1 Fatality in Public Sector</p> <p>Primary causes of fatality: Fall from Elevation (5 cases), Struck-By (4 cases), Electric Shock (4 cases), Caught-in-Between (1 case), Burns (1 case).</p>				
<b>Data Source(s)</b>	Fatality rates from Utah employment under UOSH jurisdiction and BLS data, FY 2013 - 2015.				
<b>Baseline</b>	Rate of 1.05 from the average of FY2013 - 2015 UOSH data.				

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

#### Annual Performance Goal USG 2 Results Table

<b>Annual Performance Goal USG2 – Reduce Injuries and Illnesses (Mandatory)</b>					
<b>Goal</b>	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 <b>total recordable cases rate</b> (TRC).				
<b>Outcome</b>	Reduce the rate of workplace injuries and illnesses.				
<b>Annual Performance</b>	Annual reduction in total workplace injuries and illnesses rate for all industries.				
	<i><b>USG2 Strategy</b></i>	<i><b>Industry</b></i>	<i><b>Baseline</b></i>	<i><b>2019 Goal</b></i>	<i><b>2018 Result *</b></i>
	<i>Change in Utah Total Annual Recordable Case Rate (Baseline BLS 3 year average TRC rate FY 2013-2015)</i>	<i>All Combined</i>	<i>3.40</i>	<i>&lt;3.4</i>	<i>2.9</i>
	<b>* BLS current published rate for 2018 for Utah.</b>				
<b>Strategy</b>	<ol style="list-style-type: none"> <li>1. Focus UOSH inspections, compliance assistance and outreach activities on industry sectors with the highest injury incident rates related to the leading causes of injuries and illnesses in Utah.</li> <li>2. Review YTD injuries and illnesses reported to UOSH to identify specific areas of emphasis for the development and implementation of Local Emphasis Programs.</li> <li>3. Adopt Emphasis Programs, as appropriate, for high risk industries.</li> </ol>				
<b>Outcome Indicator(s)</b>	<ol style="list-style-type: none"> <li>1. Reduction in total annual recordable case rates in industries under UOSH jurisdiction.</li> <li>2. Number of compliance inspections in general industry and construction.</li> <li>3. Number of compliance assistance conducted in general industry and construction.</li> <li>4. Number of 23(g) public sector consultation interventions conducted in general industry and construction.</li> <li>5. Number of outreach activities.</li> </ol>				
<b>Results (2019)</b>	<b>Compliance</b>	<b>Inspections</b>	<b>CA</b>	<b>Total</b>	
	General Industry	532	44	576	
	Construction	496	117	613	
	Public Sector	90	27	117	
	<b>Total</b>	<b>1,118</b>	<b>188</b>	<b>1,306</b>	
	<b>Public Sector</b>	<b>Visits</b>	<b>CA</b>	<b>Total</b>	
	<b>Total</b>	<b>76</b>	<b>56</b>	<b>132</b>	
	<b>Total UOSH</b>	<b>Inspections/Visits</b>	<b>CA</b>	<b>Total</b>	
	<b>1,194</b>	<b>244</b>	<b>1,438</b>		

## Appendix E – FY 2019 State OSHA Annual Report (SOAR)

### UOSH - SOAR Report - FY 2019

<b>Baseline</b>	Baseline rates from the average of 2013 - 2015 BLS data
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### Annual Performance Goal USG 3 Results Table

<b>Annual Performance Goal USG3 – Safety and Health Culture (Non-mandatory)</b>				
<b>Goal</b>	Increase participation in Recognition Programs and Compliance Assistance, as well as more Visits to encourage and promote workplace safety and health.			
<b>Outcome</b>	Increase the number of public sector consultation visits, compliance assistance and recognition program applicants and participants. Conduct presentations to promote Recognition program applications.			
<b>Annual Activity</b>	<b>Interventions</b>	<b>Baseline</b>	<b>2019 Goal</b>	<b>2019 Results</b>
	Public Sector Consultation Visits	25	45	<b>76</b>
	Compliance Assistance, Private Sector	110	200	<b>188</b>
	Compliance Assistance, Public Sector	30	45	<b>56</b>
	VPP Applications	1	2	<b>0</b>
	VPP Participants	6	10	<b>7</b>
	Public Sector SHARP Participants	5	9	<b>9</b>
	<b>Strategy</b>	<ol style="list-style-type: none"> <li>1. Promote Public Sector-Consultation Services to increase the number of requests.</li> <li>2. Promote VPP and partnerships to increase the number of applications and participants.</li> <li>3. Promote Compliance Assistance.</li> </ol>		
<b>Outcome Indicator(s)</b>	<ol style="list-style-type: none"> <li>1. Number of 23(g) Public Sector-Consultation visits</li> <li>2. Number of Compliance Assistance activities</li> <li>3. Number of VPP participants.</li> <li>4. Number of VPP new applications</li> <li>5. Number of Public Sector SHARP participants</li> </ol>			
<b>Data Source(s)</b>	OIS for visit and Compliance Assistance (CA) data. State data for VPP and SHARP.			
<b>Baseline</b>	Baselines are determined by previous performance (FY13-FY15 average), staffing, resources, focus and emphasis.			