

**FY 2021 Comprehensive
Federal Annual Monitoring Evaluation (FAME) Report**

Utah Occupational Safety and Health Division
(UOSH)



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I. Executive Summary

The purpose of this report is to assess the Utah State Plan's performance for Fiscal Year (FY) 2021 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 2021, four CSHOs left the State Plan due to retirement, promotion, or jobs in the private sector. In addition, a new whistleblower investigator joined the UOSH staff in FY 2021. The State Plan overcame challenges that included training new CSHOs during the pandemic; handling the significant influx of COVID-19 mask complaints resulting from UOSH's Emergency Temporary Standard (ETS); and managing inspections, case files, and abatement while maintaining a socially distanced workplace to reduce the potential of staff members becoming infected or ill. Despite the staffing challenges and the impact of the COVID-19 pandemic upon State Plan activity, UOSH maintained a high level of performance.

The COVID-19 pandemic created a new work environment for the State Plan with all staff working remotely. This resulted in an unexpected benefit where staff were able to cover the state more efficiently. Hence, UOSH increased its coverage in underserved areas, such as far Southwestern Utah. Additionally, the pandemic reinforced the State Plan's utilization of electronic case files, increasing efficiency and enabling social distancing.

This FAME Report has one new observation related to the penalty amounts for failure-to-abate (FTA) violations, and two of the observations from the FY 2020 Follow-up FAME Report will continue to be monitored. Those observations involve conducting follow-up inspections for fatality inspections with serious violations and ensuring that the intake and evaluation of whistleblower complaints follow the guidelines presented in UOSH's Whistleblower Investigations Manual.

The State Plan successfully completed the one outstanding finding related to the participation of non-management workers in the inspection process. UOSH also resolved three of the five observations from the FY 2020 FAME Report. The closed observations involved the adoption of the Site-Specific Targeting (SST) Directive, hazard abatement documentation, and complaint processing and resolution. In order to address the finding and observations, the State Plan provided training to staff, thoroughly reviewed case files, and updated protocols.

Appendix A describes new and continued findings and recommendations and is blank. Appendix B describes observations and the related federal monitoring plans. Appendix C describes the status of the FY 2020 FAME finding with the associated completed corrective action.

II. State Plan Background

A. Background

The State Plan is housed within the UOSH Division of the Utah Labor Commission. The State Plan designee is Labor Commissioner Jaceson R. Maughan. Cameron S. Ruppe is the UOSH Division Director. The main office is located in Salt Lake City.

The program, funded through the 23(g) grant, consists of the enforcement, whistleblower, and cooperative programs (including the Voluntary Protection Program (VPP) and Partnerships), as well as state and local government consultation. A separate 21(d) cooperative agreement funds the private sector consultation program. UOSH closely mirrors the federal program with some differences that allow for the accommodation of unique state demands and issues. The enforcement program maintains jurisdiction over safety and health issues for workers in the private sector, as well as for those in state and local government workplaces. The State Plan enforces unique regulatory standards in the areas of general industry, construction, and agriculture.

At the end of FY 2021, UOSH employed 27 full-time positions in the Compliance Section. The staff included nine safety and eight health compliance officers, one full-time whistleblower investigator, one compliance assistance specialist, one state and local government consultant, a senior business analyst, and one program support position. In addition to the director, management consisted of a field operations manager, a standards and technical assistance manager, and two safety and health supervisors.

UOSH's federal funding award in FY 2021 was \$1,675,100, which the State Plan matched. The State Plan contributed an additional \$31,222, bringing the total funding amount to \$3,381,422. UOSH's total contribution of 50.46 percent was similar to that of FY 2020, when the State Plan's contribution was 50.26 percent.

Even though the COVID-19 pandemic continued to impact compliance activity, UOSH performed at a high level in FY 2021. The State Plan exceeded its inspection goal of 900 inspections by approximately 1.7 percent. The inspection total, 916 inspections, consisted of 615 safety inspections and 301 health inspections. COVID-19-related inspections drove the significant increase of health inspections beyond its goal of 95 inspections. In total, 1,133 compliance interventions, including the 916 inspections, 39 consultation visits, and 178 compliance assistance activities in the private sector and state and local government workplaces, took place during FY 2021. These interventions identified and abated 1,873 hazards and removed approximately 136,396 workers from exposure to these hazards.

UOSH continued to manage inspection timelines effectively. Lapse time is the number of calendar days from the opening conference date to the citation issuance date. The State Plan's lapse time for safety inspections was 23.14 days, compared to a national average of 52.42 days. UOSH's lapse time for health inspections was 23.95 days, which was far less than the national average of 66.10 days. Both results were positive and demonstrate the State Plan's efficiency in time management.

UOSH did not adopt the COVID-19 ETS until November 2021. However, the State Plan did enact a Special Rule for Mask Wearing in Workplaces from November 6, 2020, to March 6, 2021, which resulted in the receipt of over 1,230 complaints. These complaints brought about 182 inspections.

B. New Issues

None.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA has established a two-year cycle for the FAME process. The two-year cycle consists of a comprehensive FAME in the first year with a subsequent follow-up FAME in the second year. The comprehensive FAME examines elements of the State Plan program, including but not limited to program administration, standards adoption, enforcement programs, the whistleblower program, CASPAs, and consultation programs. The follow-up evaluation focuses on correcting deficiencies identified in the most recent comprehensive FAME. FY 2021 was a comprehensive evaluation year, and as such, OSHA was required to conduct an on-site evaluation and case file review. OSHA assembled a six-person team, including a whistleblower investigator, to conduct the case file review. With the ongoing COVID-19 pandemic concerns, as well as UOSH having converted to paperless case files, the team conducted the case file review remotely from December 6, 2021, through December 23, 2021. Interviews of management and workers also occurred remotely during that period. A total of 223 case files for fatalities, safety and health inspections, complaint investigations, and whistleblower investigations were reviewed. The complaint investigation case files and safety and health inspection case files were randomly selected from closed inspections conducted during the evaluation period (October 1, 2020, through September 30, 2021). The fatality case files included all fatalities investigated and closed during FY 2021. The selected population consisted of:

- Thirteen (13) fatality case files
- One hundred (100) complaint case files
- Fifty (50) safety case files
- Thirty (30) health case files
- Thirty (30) closed whistleblower case files

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

- State Activity Mandated Measures (SAMM) Report (Appendix D)
- State Information Report (SIR)
- Mandated Activities Report for Consultation
- State OSHA Annual Report (SOAR)
- OSHA Information System (OIS) Inspection Summary Reports
- 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 UOSH's FY 2021 SAMM Report and includes the FRL for each measure.

B. Review of State Plan Performance

1. Program Administration

a. Training

Due to the COVID-19 pandemic, many out-of-state and in-state training opportunities were cancelled, so UOSH relied upon online training and its own experienced staff to train consultants and CSHOs. During FY 2021, CSHOs received virtual training from the OSHA Training Institute (OTI) Education Centers. In addition, UOSH's staff received training at the local level from the Utah Labor Commission, the Attorney General's Office, other State Plan professionals, webinars, OSHAcademy, and courses taken locally. OSHAcademy provided online access to occupational safety and health training, which included courses in construction, oil and gas, healthcare, HAZWOPER, general industry, and state and local government. Each course consisted of a minimum of two hours of training to provide knowledge level safety and health training.

b. OSHA Information System

UOSH has a contract with OSHA for the use of the OIS as its primary inspection database. The use of OIS contributes to the efficiency of the program by standardizing input, processing, and reporting. The State Plan also uses OIS for monitoring its operations.

c. State Internal Evaluation Program Report

During FY 2021, UOSH performed quarterly reviews of a random sample of safety and health inspection case files through its SIEP. The State Plan used the SIEP to ensure quality and efficiency of the case file development process and to make certain that mandates were met. UOSH included the following elements in their SIEP as areas of emphasis: inspection scheduling; investigations for accident referrals, fatalities/catastrophes, and complaints; case file documentation and data entry; case file review and approval; citation processing; assurance of abatement; petition of abatement modification; denial of entry warrants, the Utah adjudication process; contested cases; informal conferences; settlement of cases; data entry for contested cases, informal conferences, and settlement cases; data quality (SAMM Report); the industrial hygiene process; and the review of compliance assistance files. The State Plan did not provide a copy of the SIEP to OSHA.

d. Staffing

During FY 2021, four CSHOs left the Compliance Section due to either retirement or other employment opportunities. Those four positions were filled during the year, making the State Plan fully staffed by the end of FY 2021. The whistleblower investigator left UOSH during FY 2021; however, the position was filled in December 2021.

2. Enforcement

a. Complaints

The State Plan received 1,324 complaints during FY 2021. The number was significantly driven by COVID-19-related complaints. In 298 cases, the complaints did not fall within the jurisdiction of the State Plan and were referred to other agencies, including public health agencies. UOSH conducted

348 complaint inspections and 248 complaint investigations during FY 2021, compared to 99 complaint inspections and 202 complaint investigations in FY 2020.

As a matter of policy, the State Plan considers formal complaints to be those 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 did not sign the complaint. A referral addresses an allegation made by a CSHO, a safety and health agency, a whistleblower investigator, the media, another government agency, or an employer reporting a non-fatal accident. UOSH also conducts a complaint or referral inspection when the complaint alleges any of the following conditions:

- a permanent and disabling injury or illness has occurred, and the condition still exists;
- an imminent danger situation exists;
- a hazard or industry related to an emphasis program; or
- the establishment has a history with the State Plan that involves egregious, willful, FTA, or repeated citations in the last three years.

UOSH's protocol for both formal and non-formal complaints is to send the complainant a letter acknowledging receipt of the complaint. Non-formal complaints are typically processed as phone/fax investigations unless the complaint allegation involves an emphasis program, such as respirable crystalline silica. Additionally, non-formal complaint investigations become inspections when an employer does not respond to the State Plan inquiry. For non-formal complaints, UOSH does not provide the complainant with a letter conveying the results of the inquiry. For formal complaints which result in an inspection, the State Plan's protocol, per Chapter 9, Section I.G.3. of UOSH's Field Operations Manual (FOM), is to send the complainant a letter conveying the results of the inspection. The review team found documentation of complaint acknowledgement letters and inspection result letters in formal complaint inspection case files.

OSHA and UOSH negotiated the respective FRLs for SAMMs 1A and 2A. SAMM 1A measured the average number of workdays to initiate a complaint inspection, and the FRL was five days. In FY 2021, the State Plan took an average of 6.10 days to initiate a complaint inspection; the State Plan did not meet the FRL. SAMM 2A measured the average number of workdays to initiate a complaint investigation; the FRL was three days. In FY 2021, UOSH took an average of 3.05 days to initiate a complaint investigation. Although the State Plan met the FRL, the time to initiate a complaint investigation was longer than in previous years. The results for SAMMs 1A and 2A were likely an effect of the influx of complaints related to the state mask mandate. UOSH also had significant staff turnover during FY 2021 which impacted its ability to respond to complaints. SAMM 3 measured 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 FY 2021.

SAMM 4 measured the number of inspections where employers denied entry and the State Plan did not gain access to the worksite. UOSH met the fixed FRL of zero in FY 2021. Although SAMM 4 data showed that the State Plan did not experience any denials of entry in FY 2021, the inspection case file review showed that for one inspection, the employer refused entry. After the CSHO obtained a warrant to perform the inspection, UOSH closed the inspection because the CSHO determined that the employer did not fall under the State Plan's jurisdiction.

Observation FY 2020-OB-01 (Previously FY 2019-OB-01): In FY 2019, seven of the 40 (18%) unprogrammed activities (complaints/referrals/accidents) files reviewed had areas of concern: two (5%) complaint files lacked abatement documentation; two (5%) complaints 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.

Status FY 2020-OB-01 (Previously FY 2019-OB-01): The FY 2021 review team evaluated 41 safety and 28 health unprogrammed activity inspection case files. Only one (1.4%) lacked adequate abatement documentation. All 59 (100%) of the complaints that resulted in investigations addressed all the original complaint allegations. The review team did not find any references to whistleblower concerns in the 69 case files for unprogrammed activity inspections. This observation is closed.

b. Fatalities

During the evaluation period, UOSH investigated 15 workplace fatalities. Each of the reported fatalities resulted in an inspection. Of these 15 fatalities, two involved struck-by hazards, three involved caught-between hazards, six involved falls from height, two involved excavations, one fatality was due to an electrocution, and one involved a caught-in hazard. Eight fatalities involved construction work, whereas seven occurred within general industry workplaces.

SAMM 10 measured the percent of work-related fatalities responded to within one workday. All State Plans had a fixed FRL of 100% for this measure. For FY 2021, UOSH responded to all fatalities within one day. The State Plan met the FRL.

The review team examined 13 fatality inspection case files that were closed during FY 2021. The evaluation showed that UOSH conducted fatality inspections in accordance with established policies and procedures, except for not conducting follow-up inspections. For the seven fatality inspections that resulted in issuance of citations with serious violations, the State Plan did not conduct follow-up inspections. However, UOSH did perform a comprehensive inspection of one of the employers following the fatality due to other accidents occurring at the facility but did not code the comprehensive inspection in OIS as a follow-up inspection. Chapter 11, Section II.L.3. of the State Plan's FOM directed that "[w]here the worksite continues to exist, the State Plan will normally conduct a follow-up inspection if serious citations have been issued."

Observation FY 2021-OB-01 (Previously FY 2020-OB-02 and FY 2019-OB-03): The State Plan did not conduct follow-up inspections for fatality inspections that included serious citations.

Federal Monitoring Plan FY 2021-OB-01 (Previously FY 2020-OB-02 and FY 2019-OB-03): The OSHA Regional Office will monitor the State Plan's performance in this area during quarterly meetings throughout FY 2022.

Status FY 2021-OB-01 (Previously FY 2020-OB-02 and FY 2019-OB-03): OIS reports showed that the State Plan conducted 13 follow-up inspections in FY 2021; however, none of those 13 follow-up inspections were follow-ups of fatality inspections that were closed in FY 2021 or preceding years. While consideration must be given for the impact upon resources during the COVID-19 pandemic, UOSH should have conducted follow-up inspections for fatalities, especially given that UOSH conducted follow-up inspections for non-fatality health and safety inspections during FY 2021. This observation is continued.

Also, of the 13 fatality inspection case files closed during FY 2021, one case did not have the initial next-of-kin notification letter in the case file. The review team discussed this issue with the State Plan but did not elevate this to an observation.

The 15 FY 2021 fatalities resulted in a fatality rate of 0.97 fatalities per 100,000 workers for industries that were under the State Plan's jurisdiction. Utah's fatality rate was below the Bureau of Labor Statistics (2017-2020) all-worker fatality rate of 3.48 fatalities per 100,000 workers.

c. Targeting and Programmed Inspection

SAMM 7 measured the number of inspections conducted during the fiscal year. UOSH and OSHA negotiated the FRL through the grant application. For FY 2021, the FRL range for safety inspections was 764.75 to 845.25, and the FRL range for health inspections was 90.25 to 99.75. The State Plan conducted 615 safety inspections and 301 health inspections. While the number of safety inspections was below the FRL, the number of health inspections greatly exceeded the FRL. Due to the high number of COVID-19 related complaints resulting in inspections, safety CSHOs performed health inspections to address the inundation of COVID-19 mask complaints, which impacted the safety CSHOs' ability to perform safety inspections.

SAMM 9 calculated the State Plan's in-compliance rate for safety and health inspections. For FY 2021, the in-compliance rate for safety inspections was 30.00% while the in-compliance rate for health inspections was 67.35%. The safety inspection in-compliance percentage was within the FRL range of 25.32% to 37.98%, but the health inspection in-compliance percentage exceeded the FRL range of 32.51% to 48.77%. The high health inspection in-compliance rate was catalyzed by the State Plan's COVID-19 mask rule. UOSH received a great number of mask complaints from the public, customers of businesses, and workers, which resulted in health inspections that did not have a citation for violation of the mask rule frequently issued. The health in-compliance percentage for FY 2021 was a cause for concern, but it was not at a level where it would compromise the performance of the State Plan.

SAMM 17 calculated the percentage of enforcement presence in the state. The FRL range was between 0.74% and 1.24%. UOSH exceeded the FRL range with a rate of 1.44%.

The local emphasis programs (LEPs) that the State Plan developed for construction hazards, amputation hazards, respirable crystalline silica hazards, and state and local government workplaces (UOSH refers to this as the Public Sector LEP) contributed to the State Plan's enforcement presence as these programs accounted for 34.4% of their inspection total.

UOSH established the Construction LEP to help reduce the incidence of injury, illness, and fatality among workers in the construction industry by focusing on falls from elevation, caught-in or between, struck-by, trench, and electrocution hazards. According to the FY 2021 SOAR, the Construction LEP contributed 146 inspections with 348 hazards identified and abated and 4,535 workers affected. The Construction LEP inspections also resulted in the issuance of two willful violations, 23 repeat violations, 269 serious violations, and 52 other-than-serious (OTS) violations. Of the violations, 145 were violations of the Fall Protection Standard.

The Amputation LEP was designed to identify and reduce workplace hazards due to machinery and equipment which cause or are likely to cause amputations in general industry. The Amputation LEP

contributed 130 inspections, with 277 hazards identified and abated, affecting 17,506 workers. Of these 277 hazards, 220 were serious violations, and 57 were OTS violations. Of the violations, 92 were violations of the Machinery and Machine Guarding Standard.

The Respirable Crystalline Silica LEP was developed to address worker exposure to respirable crystalline silica in both construction and general industry workplaces. The Respirable Crystalline Silica LEP contributed 11 inspections, with 51 hazards identified and abated, affecting 322 workers. Of the violations identified, UOSH issued serious violations for overexposure to respirable crystalline silica, as well as FTA citations for violations of the Respirable Crystalline Silica Standard.

The Public Sector LEP was established to enforce initiatives to remove workplace hazards and reduce the incidents of injury, illness, and fatality among workers in state and local government workplaces by focusing on worksites where serious hazards with a substantial probability that death or serious injury could result and to increase awareness of the State Plan program throughout the state. State and local government workplaces were historically under-represented in inspections. The Public Sector LEP contributed 28 inspections, with 91 violations identified and abated, affecting 4,535 workers.

d. Citations and Penalties

The review team found that UOSH typically classified violations appropriately. The field operations manager reviewed cases for appropriateness of standards cited and penalty amounts. The field operations manager also reviewed cases for willful, repeat, and FTA violations and penalty amounts. The gravity (severity and probability) of the hazard was also incorporated in the penalty calculation. The review team agreed with the State Plan's assessment of the gravity of hazards.

For the most part, UOSH supported violations with adequate evidence, including employer knowledge and worker statements. Using course materials provided by the OTI, the field operations manager delivered Legal Aspects training to all new CSHOs. This training may have helped CSHOs bolster the evidence to support violations, as well as determine the severity and probability of violations.

The OIS Inspection Summary Report run for the period October 1, 2020, to September 30, 2021, showed that UOSH issued a total of 1,023 violations during FY 2021. Of those violations, 680 (66.47%) were serious, 306 (29.91%) were OTS, 16 (1.56%) were repeat, 15 (1.47%) were FTA, and six (0.59%) were willful.

When comparing FY 2021 to the two previous fiscal years, a review of the Inspection Summary Reports showed that during FY 2021, UOSH issued more willful and FTA violations than in the previous two fiscal years combined. During the review team's discussions with the State Plan, the team learned that the State Plan had pursued willful and FTA violations vigorously in FY 2021. Additionally, while the COVID-19 pandemic affected UOSH, their FY 2021 total number of violations was similar to that of the previous two fiscal years.

SAMM 5 data showed that the State Plan was slightly below the FRL range for the average number of serious, willful, repeat, and unclassified (SWRU) violations per inspection in FY 2021. The average number of SWRU violations per inspection was 1.36 while the FRL range was from 1.42 to 2.14. However, this reflects an improvement from FY 2020 and a return to pre-pandemic performance levels.

SAMM 5 data also showed that UOSH was slightly below the FRL range for the average number of OTS violations per inspection in FY 2021. The average number of OTS violations per inspection was 0.58 while the FRL range was from 0.73 to 1.09. The average was similar to their performance in FY 2020 and reflects a significant increase from previous years.

The State Plan performed consistently and was only marginally outside the FRL range regarding the number of violations per inspection and, in fact, increased its issuance of willful and FTA violations. The review team did not consider these SAMM metrics to be a concern.

The amount of penalties continued to be an area of concern during the evaluation period. SAMM 8 calculated the average current serious penalty in the private sector, and the FY 2021 FRL range was from \$2,325.28 to \$3,875.46 for all employers. The State Plan was significantly below the FRL with an average serious penalty of \$1,509.88. Since UOSH did not take legislative steps to raise its maximum penalties until Spring 2022, it was difficult for the State Plan to meet the FRL.

There were also two instances in which the State Plan failed to assign appropriate penalty amounts for inspections that resulted in FTA violations. Chapter 6, Section VII.B.4. of UOSH's FOM directed that "the daily proposed penalty shall be multiplied by the number of calendar days [after the final order date] that the violation has continued unabated" up to 30 times the amount of the daily penalty. The review team discussed with the State Plan managers the penalty amount guidance found in UOSH's FOM.

Observation FY 2021-OB-03: In FY 2021, two of two (100%) closed inspections resulted in FTA violations, but the penalty amounts for both inspections were significantly below those outlined by the State Plan's FOM for FTA violations.

Federal Monitoring Plan FY 2021-OB-03: The OSHA Regional Office will monitor the State Plan's performance in this area during quarterly meetings throughout FY 2022.

Status FY 2021-OB-03: This is a new observation.

e. Abatement

UOSH applies extensive use of the "corrected during inspection" notation. The State Plan utilizes this practice in support of quick abatement of hazards while onsite.

UOSH established appropriate periods for abatement. They used penalty reduction agreements (PRAs), and as part of this process, the employer was required to provide abatement within 15 days of the final order date. In addition, CSHOs frequently allowed employers to correct hazards during inspections, particularly during inspections involving COVID-19 where the violation involved failure to ensure mask use. Documentation of abatement was found on the violation worksheet in the inspection case files. CSHOs were responsible for obtaining, reviewing, and documenting abatement for their inspections. Health or safety supervisors reviewed abatement prior to closure.

UOSH conducted follow-up inspections to determine that abatement of hazards had taken place. The OIS Inspection Summary Report indicated that 13 follow-up inspections took place in FY 2021, corresponding to 1.4% of all (916 total) inspections. The follow-up percentage could have been higher if the State Plan had conducted follow-up inspections for fatalities as discussed earlier.

The review of closed health inspection files found that one inspection with violations was closed prior to receiving complete abatement. The team spoke with the State Plan regarding this issue but did not include it as an observation in this report.

In most cases, employers provided abatement quickly. The team noted two follow-up inspections among the closed FY 2021 health and safety inspection files that were initiated because of the employer failing to provide abatement. Both follow-up inspections resulted in FTA citations.

Observation FY 2020-OB-03 (previously FY 2019-OB-04): In 12 of 70 (17%) cases where CSHOs 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.

Status FY 2020-OB-03 (previously FY 2019-OB-04): Documentation of hazard abatement was found in 15 of 17 (88.2%) case files with hazard abatement indicated as “corrected during inspection”. This observation is closed.

f. Worker and Union Involvement

According to the SAMM Report, UOSH included workers or worker representatives in initial inspections in FY 2021. SAMM 13 calculated the percent of initial inspections with worker walk around representation or worker interview. The FRL of 100% was fixed for all State Plans. UOSH met the FRL in FY 2021.

Although 100% of the inspection case files included coding to indicate worker involvement in the inspection process, documentation of worker participation, including interviews, was a continuing issue for the State Plan. The review team found that nine of 93 (9.7%) inspection case files did not contain documentation of contact with a non-managerial worker. This was a slight improvement as compared with the case file review in FY 2019, where 10.8% of the case files did not contain documentation of non-managerial worker contact. The review team also found that 12 of 93 (12.9%) inspection case files did not contain documentation of worker interviews. Again, this reflected an improvement from the 2019 FAME where 19 of 102 (18.6%) of the inspection case files did not contain documentation of worker interviews.

One of the four FY 2021 health inspection case files and two of the five safety inspection case files that had no documentation of non-managerial worker contact involved a general contractor. Similarly, one of the five health inspection case files that had no documentation of worker interviews and two of the seven safety inspection case files that had no documentation of worker interviews involved a general contractor. Inspections of a general contractor, where a site superintendent may be the only person employed by the general contractor on the site, typically will not have worker contact or worker interviews documented as the site superintendent is an employer representative. Removing these files from consideration results in the adjusted percentage of case files without documentation of non-managerial worker contact reduced to 6.5% (6 of 93) and the percentage of case files without documentation of worker interviews reduced to 9.7% (9 of 93).

The Utah Administrative Code stated 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.” Utah Administrative Code R614-1-6.H.1 requires a worker representative receive an opportunity to participate in the inspection. Chapter 3, Section III.D. of UOSH’s FOM also provides for non-managerial worker participation in the inspection process.

The State Plan provided training to compliance staff in July of 2020 regarding participation of non-management workers in inspections and documentation of worker interviews. The review of FY 2021 case files determined that UOSH made progress with this finding from previous FAMEs. The State Plan reduced the number of case files with no documentation of non-management worker contact by approximately 40% and reduced the number of case files with no documentation of worker interviews by approximately 25%.

Finding FY 2020-01 (previously FY 2019-01, FY 2018-OB-02, FY 2017-OB-03, FY 2016-OB-07, and FY 2015-OB-08): In FY 2019, the State Plan did not ensure that non-management workers were provided an opportunity to participate in the inspection process, through interviews or other means, in eleven of the 102 (10.8%) case files.

Status FY 2020-01 (previously FY 2019-01, FY 2018-OB-02, FY 2017-OB-03, FY 2016-OB-07, and FY 2015-OB-08): In July 2020, the State Plan provided training to CSHOs and management staff to ensure they provided and documented opportunities for non-management workers to participate in the inspection process. In FY 2021, the percentage of case files missing documentation of non-managerial worker contact was reduced to 6.5% (6 of 93). This finding is completed.

The review team encountered only one case file of an inspection involving a union. The inspection was in compliance, and UOSH followed its policy for union participation during the inspection.

3. Review Procedures

a. Informal Conferences

Of the 93 closed FY 2021 inspection case files reviewed, the State Plan did not conduct any informal conferences. If an informal conference is to be conducted, the employer is required to request the informal conference within 30 days of receipt of the citation. 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.

The State Plan relied heavily upon PRAs as part of their case settlement process. Of the safety and health inspection case files reviewed with citations, UOSH resolved most citations via a PRA. A 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). An employer is not eligible to receive a PRA if the inspection results from a fatality or catastrophe. An employer is also not eligible for the PRA if the current citation or any citations within the past three years are due to a willful, repeat, or FTA violation. Case files reviewed included documentation of PRAs, acceptance documentation, and abatement. The review team suggested that the State Plan consider not offering the PRA for those inspections where a workplace accident occurred. Due to the extensive use of the PRA, the review team did not observe a pattern of settlement.

UOSH had a satisfactory penalty retention percentage in FY 2021. SAMM 12 calculated the percent penalty retained, and the FRL range was from 58.72% to 79.44%. The State Plan met the FRL with a

penalty retention rate of 75.57% in FY 2021.

SIRs 5A and 6A showed that 0.90% of violations were vacated pre-contest, and 0.36% of violations were re-classified pre-contest for private sector inspections. UOSH's retention of violations and violation classifications was highly successful.

b. Formal Review of Citations

The Utah Labor Commission's Adjudication Division assigns contested cases to an administrative law judge (ALJ) for a hearing. ALJ decisions that are appealed automatically move forward to the Labor Commissioner unless a party to the case requests to have the Labor Commission Appeals Board hear the appeal. The Appeals Board is composed of three members: one member to represent employers, one member to represent workers, and one other member. The governor appoints each board member with the advice and consent of the Utah Senate, and each member serves a six-year term. No more than two members are of the same political affiliation. Decisions by the board are majority decisions. A party to the case may appeal decisions of the Labor Commissioner or the Appeals Board to the Utah Court of Appeals. ALJ decisions may be obtained through a Government Records Access Management Act request with the Labor Commission. At the time of the writing of this report, there were no FY 2021 contested cases appealed beyond the ALJ decision.

According to the OIS Inspection Summary Report run for the period October 1, 2020, to September 30, 2021, 17 cases were contested (3.24%). SIRs 5B and 6B show that of these contested cases, 54.75% of violations were vacated post-contest and 21.05% of violations were re-classified post-contest. SIR 7B also shows a penalty retention rate of 99.34% after contest. The State Plan successfully settled cases, preserving resources for inspection activity.

4. Standards and Federal Program Change Adoption

a. Standards Adoption

The Utah legislature limits the authority of the State Plan under the Utah OSHA Act. Certain elements, including penalty amounts, are outlined in Utah state statutes (not administrative rules, which fall under UOSH's authority). Changes to state statutes must be undertaken through a legislative process, not an administrative process. Generally, the adoption of standards falls under the statutory authority provided to the State Plan.

UOSH's policy is that whenever a new standard or final rule is promulgated by OSHA, the State Plan will generally adopt the standard or rule unless there was an existing State Plan standard or rule that is at least as effective. UOSH has six months to incorporate a final rule by reference and 30 days for an ETS. Generally, rule adoption occurs once per year. In order to incorporate a rule, the State Plan notifies the Labor Commission General Counsel of the needed rule adoption. The General Counsel staff then initiates the change process. 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 during a 30-day comment period. An open meeting is scheduled and held during the comment period. The state forwards public comments to UOSH, and the State Plan reviews the comments for no less than seven days following the 30-day comment period. At a minimum, 37 days after the state publishes the rule in the *Utah State Bulletin*, the rule becomes effective. The Utah Administrative Code R614-1-4 (Incorporation of Federal Standards) then refers to the section of 29 Code of Federal Regulations (CFR) that is adopted.

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum and minimum penalties. See 81 FR 43429. As required by law, OSHA then increased penalties annually, most recently on January 14, 2022, according to the consumer price index. See 2022 Annual Adjustments to OSHA Civil Penalties, available at <https://www.osha.gov/memos/2022-01-13/2022-annual-adjustments-osha-civil-penalties>; 87 FR 2328 (January 14, 2022).

OSHA-approved State Plans must have penalty levels that are at least as effective as federal OSHA's, per Section 18(c)(2) of the Occupational Safety and Health Act; 29 CFR 1902.37(b)(12). State Plans were required to adopt the initial maximum penalty level increase and the subsequent annual increases. State Plans were required to submit their initial intent to adopt by September 1, 2016. The first deadline for adoption of an annual increase was January 1, 2017. UOSH did not increase its penalties in 2017 or any other year.

UOSH was required to adopt maximum and minimum penalty increases that are at least as effective as OSHA's most recent increase issued in January 2022 without further delay. OSHA recognized that the state needed to implement legislative changes before this adoption can be completed. On September 7, 2021, OSHA sent UOSH a letter informing the State Plan that failure to adopt these increases would very likely result in a FAME finding and requesting that the State Plan respond with an action plan for completing the necessary legislative changes. UOSH responded on October 1, 2021, with a letter stating that they believed their current penalty levels were ALAE and indicating that they did not intend to take any immediate action on this issue. On November 19, 2021, OSHA sent a follow-up letter to the State Plan advising them that their response was unacceptable and without adopting increased penalty levels, OSHA could not consider UOSH to be operating in a manner at least as effective as OSHA. On December 1, 2021, the State Plan notified OSHA that they had developed a plan, with the support of the governor, to move forward with legislation to increase their penalties.

On March 24, 2022, UOSH informed OSHA that the governor had signed HB245 to adjust penalty maximums and minimums. The statute became effective on May 4, 2022.

Of the six standards promulgated by OSHA between September 14, 2020, and June 21, 2021, the State Plan entered its intent to adopt four of the six standards. Intent was registered within six months of federal promulgation for all standards in FY 2021. However only one standard, the COVID-19 ETS, went into effect during FY 2021.

Several standards, including the standards for beryllium in general industry and construction, were still not in effect one year past the adoption due dates. UOSH administratively adopted the entirety of the general industry, construction, and recordkeeping standards, rather than individual standards. The State of Utah administrative rule process requires that the entire general industry, construction, and recordkeeping standards be adopted. The State Plan informed the review team that individual standards could be adopted more frequently than the current once per year, but it would logistically be difficult given their resources. UOSH explained that this process led the State Plan to be one year behind in the adoption of standards. The State Plan does have a mechanism to quickly adopt ETS's without having to adopt the entirety of the general industry, construction, and recordkeeping standards. This mechanism was utilized when the State Plan adopted the COVID-19 ETS. The mechanism for promulgation and establishment of an effective date for enforcement of a standard positioned the State Plan to not be timely in response to development of new standards. The review

team did not elevate this concern to an observation at this time.

UOSH did not provide notice of their intent to adopt, nor did they adopt the Occupational Exposure to COVID-19 ETS in a timely manner. Notice of intent to adopt this ETS was required by July 6, 2021, and adoption was due by July 21, 2021. On August 27, 2021, the OSHA Regional Office sent a letter to the State Plan to inquire about the State Plan’s intent and status of adoption. UOSH responded on September 16, 2021, that they were waiting for a response from the Secretary of Labor to a letter sent by their governor, requesting that the agency withdraw the ETS. The State Plan advised the OSHA Regional Office that they did not intend to provide OSHA with notification on intent to adopt the ETS prior to receiving that response. On October 19, 2021, OSHA sent a follow-up letter to UOSH advising that the agency was initiating proceedings to reconsider the State Plan’s final approval status based on their failure to provide any response with respect to their intent to adopt the ETS. The State Plan adopted the ETS (not identically) on November 22, 2021.

The following table shows the status of federal standards, including any delinquent standards, due during the evaluation period.

Table A
Status of FY 2021 Federal Standards Adoption
(May include any delinquent standards from earlier fiscal years)

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	9/21/2020	Yes	Yes	1/14/2021	
Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records 29 CFR 1913 (7/30/2020)	9/28/2020	10/20/2020	No	N/A	1/26/2021	
Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1926 (2/24/2021)	10/30/2020	10/30/2020	Yes	Yes	2/27/2021	
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work 29 CFR 1926 (11/16/2020)	11/14/2020	11/2/2020	Yes	Yes	3/14/2021	
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/14/2021)	3/16/2021	1/25/2021	No	N/A	7/14/2021	
Occupational Exposure to COVID-19; Emergency Temporary Standard 29 CFR 1910	7/6/2021	11/22/2021	Yes	Yes	7/21/2021	11/22/2021

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
(6/21/2021)						

b. Federal Program Change Adoption

The Utah legislature limits the authority of the State Plan under the Utah OSHA Act. Generally, the adoption of directives, policies, and procedures falls under the statutory authority provided to the State Plan.

UOSH’s policy is that whenever a new directive is created by OSHA, the State Plan adopts the directive if required. UOSH may adopt a required directive identically, or where equivalency is permitted, the State Plan develops a directive that is at least as effective as the OSHA directive. UOSH’s directives and local emphasis programs may be found here:

[https://laborcommission.utah.gov/divisions/the State Plan/the State Plan-resources/](https://laborcommission.utah.gov/divisions/the%20State%20Plan/the%20State%20Plan-resources/).

Of the 13 directives created by OSHA between December 10, 2019, and July 7, 2021, the State Plan entered its intent to adopt seven directives. Of those seven, two were adopted identically. UOSH did not adopt the two directives related to COVID-19. With regard to the directive updating the OSHA FOM, UOSH did not adopt the directive because the State Plan has its own FOM and elected to not update it. Intent was registered within six months of creation of all federal directives in FY 2021. The adoption dates of the adopted directives were within two months of the adoption due dates.

Observation FY 2020-OB-04 (previously 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 comprehensive general industry inspections.

Status FY 2020-OB-04 (previously FY 2019-OB-05): The State Plan adopted the SST Directive (CPL 02-01-062) on June 14, 2021. This observation is closed.

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

Table B

Status of FY 2021 Federal Program Change Adoption
(May include any delinquent FPCs from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<i>Adoption Required</i>						
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	2/4/2020	Yes	No	6/10/2020	2/4/2020

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	2/11/2020	Yes	No	8/4/2020	8/4/2020
<i>Equivalency Required</i>						
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/13/2020	6/23/2020	No	N/A	10/14/2020	
Inspection Procedures for the Respirable Crystalline Silica Standard CPL 02-02-080 (6/25/2020)	8/24/2020	7/30/2020	Yes	No	12/25/2020	2/5/2021
Site-Specific Targeting CPL 02-01-062 (12/14/2020)	2/12/2021	5/14/2021	Yes	No	6/14/2021	6/14/2021
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	3/24/2021	Yes	Yes	9/19/2021	7/12/2021
Inspection Procedures for the COVID-19 Emergency Temporary Standard CPL 2021-02 (CPL 02) (6/28/2021)	7/13/2021	1/12/2022	No	N/A	12/28/2021	
Compliance Directive for the Excavation Standard CPL 02-00-165 (7/1/2021)	8/30/2021	8/30/2021	Yes	No	1/1/2022	1/20/2022
Revised National Emphasis Program-Coronavirus Disease 2019 (COVID-19) CPL 2021-03 (CPL 03) (7/7/2021)	7/22/2021	1/12/2022	No	N/A	1/7/2022	
<i>Adoption Encouraged</i>						
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	3/24/2020	Yes	Yes	n/a adoption not required	3/31/2020
Electronic Case File System Procedures for the Whistleblower Protection Program CPL 02-03-009 (6/18/2020)	8/18/2020	7/10/2020	No	N/A	n/a adoption not required	N/A
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	3/24/2021	No	N/A	n/a adoption not required	N/A

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Communicating OSHA Fatality Inspection Procedures to a Victim's Family CPL 02-00-166 (7/7/2021)	9/7/2021	8/30/2021	No	N/A	n/a adoption not required	N/A

5. Variances

The State Plan granted a permanent variance on July 23, 2019, to Northrup Grumman Innovation Systems. No new variances have been granted since 2019.

6. State and Local Government Worker Program

For FY 2021, 4.59% of UOSH's total inspections were in state or local government workplaces. The SAMM 6 FRL range was 3.91% to 4.32%, demonstrating that the State Plan exceeded its goal.

The State Plan implemented the Public Sector LEP in FY 2018, establishing a legal basis for conducting state and local government workplace inspections. Through the LEP, UOSH significantly increased its presence in state and local government workplaces and even exceeded the FRL for SAMM 6 in FY 2019. However, due to the COVID-19 pandemic, the number of Public Sector LEP inspections in FY 2020 and FY 2021 was down from previous years. This was mainly due to the added resources needed to investigate and perform inspections related to the substantially increased number of complaints triggered by the mask rule that UOSH established to combat the COVID-19 pandemic. The pandemic especially affected the state and local government work environment, limiting the number of opportunities to inspect. The State Plan anticipates that its presence in state and local governments will get back on track when the pandemic subsides.

7. Whistleblower Program

In FY 2021, UOSH had one dedicated whistleblower investigator who had been with the program for approximately nine months and had attended two OTI training sessions. The program also included a program supervisor and a part-time investigator for approximately six months.

The FY 2021 FAME was conducted through a virtual portal of the State Plan's whistleblower program. The review team evaluated the overall whistleblower program, including policies, procedures, and both administratively closed and investigative case files. The team reviewed three closed investigative case files and 27 administratively closed case files, totaling 30 case files.

Intake and Evaluation of Complaints:

UOSH reviews all potential whistleblower complaints for appropriate coverage requirements, timeliness of filing, and the presence of a prima facie allegation. The State Plan receives new complaints in one of four ways: from a health and safety complaint, online, telephonic/facsimile, or referral from OSHA. In most cases, the complaint is forwarded to the investigator or supervisor to

complete the complaint intake process. This process involves the investigator completing an initial screening worksheet which is provided to the program supervisor for determination about whether to conduct an investigation or to administratively close the complaint.

However, in FY 2021, 10 (37%) of 27 administratively closed whistleblower case files did not include documentation of second-level review or approval as part of the intake or screen-out process. Chapter 2, Section III.B.3.b.iv. of the State Plan's Whistleblower Investigations Manual, in reference to the evaluation of complaints, says, "The Program Manager will review the information provided on the Evaluation Form and will make a determination to either assign the Investigator to open an investigation or to administratively close the case. The Program Manager will document actions to be taken by the Investigator on the Evaluation Form, provide a signature on the form and return it to the Investigator who conducted the prima facie evaluation."

Observation FY 2021-OB-02 (previously FY 2020-OB-05 and FY 2019-OB-06): Of the 27 administratively closed whistleblower case files reviewed in FY 2021, 10 (37%) case files did not contain documentation of a second-level review or approval as part of the intake/screen-out process.

Federal Monitoring Plan 2021-OB-02 (previously FY 2020-OB-05 and FY 2019-OB-06): The OSHA Regional Office will monitor the State Plan's performance in this area during quarterly meetings throughout FY 2022.

Status FY 2021-OB-02 (previously FY 2020-OB-05 and FY 2019-OB-06): This FY 2021 observation is closely related to the FY 2020 and FY 2019 observations that the State Plan did not follow guidance in the State Plan's Whistleblower Investigations Manual regarding intake and evaluation of whistleblower complaints. This observation is continued.

Investigations:

In FY 2021, UOSH completed three whistleblower investigations, including one settled case and two dismissals. The program had one investigator for conducting whistleblower investigations and a program supervisor who also participated in intake screenings.

Documentation and Report Writing:

The written reports revealed a good understanding of whistleblower fundamentals and elements, including jurisdiction, prima facie elements, and nexus. UOSH maintained well-organized electronic whistleblower case files and utilized pre-loaded templates.

Settlements:

UOSH had one settled case in FY 2021. The parties settled outside of the State Plan with their own settlement agreement. Confirmation of the side settlement was noted in the case file, but documentation of the settlement was not included in the case file. Chapter 5, Section III.C.a. of UOSH's Whistleblower Investigations Manual, in reference to direct settlements between parties, says, "Usually one of the parties will inform the Investigator that a settlement has been reached. The Investigator must confirm with the other party that a settlement has been reached. The Investigator only needs written confirmation that a settlement has been reached and that the matter may be administratively closed." The State Plan confirmed that they obtained written confirmation that a settlement was reached and included this documentation in each case file.

For SAMM 14, data indicated that UOSH was unable to complete any 11(c) investigations within 90 days. The FRL for SAMM 14 was 100%. The State Plan did not meet the FRL. Data for SAMM 16 revealed that UOSH took an average of 406 calendar days to complete an 11(c) investigation. The FRL for SAMM 16 was 90 days. The State Plan was unable to meet the FRL. Both SAMM results were a reflection of the limited resources available to UOSH's whistleblower program in FY 2021. During FY 2021, the one whistleblower investigator departed, impacting the program significantly. Additionally, 33% of 11(c) complaints received were evaluated as meritorious, whereas the SAMM 15 FRL was from 16% to 24%, again putting a strain on available resources.

8. Complaint About State Program Administration (CASPA)

A CASPA was received on January 6, 2020, alleging that an inspection of a complaint involving inadequate powered industrial truck training was not conducted properly, including lack of confidential worker interviews. An investigation of the allegations took place and found that the State Plan had investigated the complaint allegations sufficiently. The CASPA was closed.

No CASPAs were received during FY 2021.

9. Voluntary Compliance Program

UOSH had 10 active sites participating in the VPP in FY 2021. One new applicant participated in an initial VPP evaluation and received approval in January 2022. The State Plan also worked with prospective VPP applicants, and they anticipate as many as nine new VPP applications in FY 2022. The list of establishments participating in VPP may be found in the SOAR.

UOSH supported the VPP by informing its own staff and the staff of the state and local government consultation project of the methods used to identify potential future participants. The State Plan also utilized the Labor Commission website and participated at conferences, such as the Voluntary Protection Programs Participants' Association National and Regional Conferences, the Annual Safety and Industrial Hygiene Conference, and other professional associations to foster interest in VPP. The State Plan continued to honor an agreement with OSHA to utilize "Special Government Employees" to support the State Plan's staff in the completion of VPP audits.

UOSH adopted identically OSHA Directive CSP 03-01-003, which provides guidance for the proper implementation of policies and procedures. The State Plan did not report any changes to the VPP.

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

UOSH operates a Public Sector Consultation Program for state and local government workplaces. In FY 2021, this program conducted 39 visits statewide. Of the 39 visits conducted, 37 were initial visits, one was a training and education visit, and one was a follow-up visit. Because of these visits, the State Plan identified and abated 353 hazards or regulatory issues. One hundred percent of hazards or regulatory issues were abated in a timely manner and within assigned dates.

The Public Sector Consultation Program also conducted 62 compliance assistance activities in FY 2021. These activities included safety- and health-related outreach, promotion, training, and

education to state and local government workplaces.

The COVID-19 pandemic the past two years dramatically affected UOSH's ability to conduct visits due to many of the state and local government workplaces being either closed or unavailable. However, the State Plan increased its number of consultation visits by 23 during FY 2021 as compared to FY 2020.

During FY 2021, four local government workplaces voluntarily withdrew from the Safety and Health Achievement Recognition Program (SHARP). There are currently five local government SHARP workplaces.

11. Private Sector 23(g) On-site Consultation Program

The 21(d) program funds private sector on-site consultation. The 21(d) program is evaluated separately from the 23(g) FAME.

Appendix A – New and Continued Findings and Recommendations

FY 2021 UOSH Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
	None.		

Appendix B – Observations Subject to New and Continued Monitoring

FY 2021 UOSH Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB- # or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
FY 2021-OB-01	FY 2020-OB-02 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 2022.	Continued
FY 2021-OB-02	FY 2020-OB-05 FY 2019-OB-06	Of the 27 administratively closed whistleblower case files reviewed in FY 2021, 10 (37%) case files did not contain documentation of a second-level review or approval as part of the intake or screen-out process.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2022.	Continued
FY 2021-OB-03		In FY 2021, two of two (100%) closed inspections resulted in FTA violations, but the penalty amounts for both inspections were significantly below those outlined by the State Plan’s FOM for FTA violations.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2022.	New
	FY 2020-OB-01 FY 2019-OB-01	In FY 2019, seven of the 40 (18%) unprogrammed activities (complaints/referrals/accidents) files reviewed had areas of concern: two (5%) complaint files lacked abatement documentation; two (5%) complaints 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.		Closed
	FY 2020-OB-03	In 12 of 70 (17%) cases where compliance safety and health officers identified hazards as		Closed

Appendix B – Observations Subject to New and Continued Monitoring

FY 2021 UOSH Comprehensive FAME Report

	FY 2019-OB-04	“corrected during inspection”, the inspection files did not sufficiently document whether there was evidence of a continuing violative practice for serious hazards.		
	FY 2020-OB-04 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 comprehensive general industry inspections.		Closed

Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 UOSH Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item Is Not Completed)
FY 2020-01 FY 2019-01	In FY 2019, the State Plan did not ensure that non-management workers were provided an opportunity to participate in the inspection process, through interviews or other means, in eleven of the 102 (10.8%) case files.	The State Plan should ensure that each inspection case file includes documentation of how the State Plan provided opportunities for non-management workers to participate in the inspection process	<p>In July 2020, the State Plan provided training to CSHOs and management staff to ensure they provided and documented opportunities for non-management workers to participate in the inspection process.</p> <p>The review of FY 2021 inspection case files found that the percentage of case files missing documentation of non-managerial worker contact was reduced to 6.5% (6 of 93).</p>	July 6, 2020	Completed

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 UOSH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	6.10	5	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	3.44	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	3.05	3	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	1.62	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5a	Average number of violations per inspection with violations by violation type (SWRU)	1.36	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
5b	Average number of violations per inspection with violations by violation type (other)	0.58	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
6	Percent of total inspections in state and local government workplaces	4.59%	+/- 5% of 4.11%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 3.91% to 4.32%.
7a	Planned v. actual inspections (safety)	615	+/- 5% of 805	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 UOSH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
				range of acceptable data not requiring further review is from 764.75 to 845.25 for safety.
7b	Planned v. actual inspections (health)	301	+/- 5% of 95	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 90.25 to 99.75 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,509.88	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
	a. Average current serious penalty in private sector (1-25 workers)	\$1,026.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,488.05	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.
	c. Average current serious penalty in private sector (101-250 workers)	\$2,048.64	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,990.12 to \$6,650.20.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$3,574.66	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
9a	Percent in compliance (safety)	30%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
9b	Percent in compliance (health)	67.35%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 UOSH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
11a	Average lapse time (safety)	23.14	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
11b	Average lapse time (health)	23.95	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
12	Percent penalty retained	75.57%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.
13	Percent of initial inspections with worker walk-around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	0%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	33%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
16	Average number of calendar days to complete an 11(c) investigation	406	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.44%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.

Note: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 8, 2021, as part of OSHA's official end-of-year data run.