**FY 2023 Comprehensive**

**Federal Annual Monitoring Evaluation (FAME) Report**

Utah Occupational Safety and Health Division

(UOSH)



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1. **Executive Summary**

The purpose of this report is to assess the Utah State Plan’s performance for Fiscal Year (FY) 2023 and its progress in resolving the outstanding observation 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 2023, ten CSHOs left the State Plan due to retirement, promotion, or jobs in the private sector. In addition, the full-time whistleblower investigator left at the end of FY 2023. Despite the strain on resources, the State Plan trained new CSHOs while still being responsive to complaints, referrals, and fatalities. In many instances, supervisors went into the field to conduct inspections. This exemplified the strong teamwork and mission-oriented ethic that UOSH espouses.

This FAME Report has five new observations. These observations are related to timeliness of adoption of standards; screening of complaints; sampling where workers are exposed to air contaminants; documenting employer knowledge of violations; and closing complaint investigations prior to receiving documentation of abatement.

The State Plan made progress addressing the one observation from the FY 2022 Follow-up FAME Report. However, UOSH did not completely resolve the observation during FY 2023, and it is continued.

Appendix A describes new and continued findings and recommendations. Appendix B describes observations and the related federal monitoring plans. Appendix C describes the status of FY 2022 FAME findings with the associated completed corrective actions and is blank.

**II. State Plan Background**

1. **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. Floyd C. Johnson 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.

UOSH is benchmarked for nine health and ten safety compliance officers. At the end of FY 2023, UOSH employed 23 full-time positions in the compliance section. Six safety compliance officers and four health compliance officers left the compliance section during FY 2023. Four safety compliance officer and two health compliance officer positions were filled during the fiscal year. At the end of the fiscal year, the compliance section remained short four safety compliance officers. The staff included five safety and eight health compliance officers, one full-time whistleblower investigator, one compliance assistance specialist, one state and local government consultant, one senior business analyst, and one program support position. In addition to the division director, management consisted of a field operations manager, a standards and technical assistance manager, and two safety and health supervisors.

UOSH’s federal funding base award in FY 2023 was $1,851,400, which the State Plan matched, bringing the total funding amount to $3,702,800. UOSH’s total contribution of 50.0% was identical to that of FY 2022.

The departure of ten CSHOs during FY 2023 significantly impacted operations. The State Plan was unable to meet its inspection goal of 880 inspections by approximately 22.6%. The inspection total, 681 inspections, consisted of 541 safety inspections and 140 health inspections. In total, 890 compliance interventions, including the 681 inspections, 48 state and local government consultation visits, and 161 compliance assistance activities in the private sector and state and local government workplaces, took place during FY 2023. These interventions identified and abated 1,302 hazards and removed approximately 82,133 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 24.95 days, compared to a national average of 55.23 days. UOSH’s lapse time for health inspections was 28.14 days, which was far less than the national average of 69.72 days. Both results were positive and demonstrate the State Plan’s efficiency in time management.

1. **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 with a subsequent follow-up FAME. The comprehensive FAME examines elements of the State Plan program, including but not limited to program administration, standards adoption, the enforcement program, the whistleblower program, complaints about state program administration (CASPAs), and the consultation program. The follow-up evaluation focuses on correcting deficiencies identified in the most recent comprehensive FAME. FY 2023 was a comprehensive FAME year, and as such, OSHA was required to conduct an evaluation and case file review. A seven-person OSHA team, including two whistleblower investigators, was assembled to conduct the case file review. The review team conducted the case file review remotely from November 6, 2023, through December 1, 2023. Interviews of management and workers were also held remotely during that period. A total of 254 case files for fatalities, safety and health inspections, unprogrammed activity (UPA) investigations, 23(g) consultation visits, VPP audits, and whistleblower investigations were reviewed. The UPA investigation case files, safety and health inspection case files, and whistleblower case files were randomly selected from closed cases conducted during the evaluation period (October 1, 2022, through September 30, 2023). The fatality case files included all fatalities investigated and closed during FY 2023. The selected population consisted of:

* Ten (10) fatality case files
* Eighty (80) UPA case files (including both valid and not valid complaints, referrals, and fatalities/catastrophes reported)
* Seventy (70) safety case files
* Twenty-five (25) health case files
* Forty (40) whistleblower case files
* Twenty-five (25) 23(g) state and local government consultation case files
* Four (4) VPP 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 (SIRs)
* Mandated Activities Report for Consultation
* State Operations Annual Report (SOAR)
* Inspection Summary Reports from the OSHA Information System (OIS)
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Full case file review

Each SAMM has an agreed-upon further review level (FRL) that 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 2023 SAMM Report and includes the FRL for each measure.

**B. Review of State Plan Performance**

**1. PROGRAM Administration**

1. Training

During FY 2023, CSHOs attended training courses virtually through both the OSHA Training Institute (OTI) Education Centers and the OSHAcademy. OSHAcademy provided online access to occupational safety and health training, including courses in construction, oil and gas, healthcare, and HAZWOPER. Each course consisted of a minimum of two hours of training. UOSH staff also received training from the University of Utah, the Utah Safety Council, the Utah Labor Commission, the Attorney General’s Office, as well as from other UOSH professionals. The State Plan collaborated with the OSHA Regional Office to obtain additional training for CSHOs and consultants through regional technical training webinars.

1. 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.

Several years ago, UOSH moved from physical paper case files to electronic case files for enforcement, 23(g) state and local government consultation, and whistleblower investigation cases. The State Plan maintains electronic case files outside OIS while inputting necessary data into OIS.

1. State Internal Evaluation Program Report (SIEP)

The State Plan used the SIEP to ensure quality and efficiency in 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.

For the FY 2023 SIEP, UPAs (accidents, complaints, and referrals) received from October 1, 2022, through August 31, 2023, that resulted in inspections were examined to determine if health-related UPAs were properly categorized as health inspections. It was found that some inspections were categorized as “safety” when there were allegations of health hazards in the original UPA document. Also, the UPAs generated by UOSH staff were at times missing “health” as the subject of the UPA where allegations of health hazards were present. SIEP results were sent to the supervisors for review, and training on proper coding and data entry was provided to the CSHOs. The State Plan provided a copy of the SIEP to OSHA.

1. Staffing

During FY 2023, ten CSHOs left the compliance section due to either retirement or other employment opportunities. Six of the ten positions were filled during the year, making the State Plan understaffed by four CSHOs at the end of FY 2023. Additionally, one full-time whistleblower investigator left at the end of FY 2023.

**2. ENFORCEMENT**

a. Complaints

The State Plan received 1,158 complaints during FY 2023. In 473 cases, the complaints were determined to not fall within the jurisdiction of the State Plan and were referred to other agencies, including public health agencies. UOSH conducted 318 complaint inspections and 261 complaint investigations during FY 2023, compared to 297 complaint inspections and 112 complaint investigations in FY 2022.

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 hazardous 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, failure-to-abate (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 result 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 result of the inspection.

The review of 80 closed UPA case files included 68 complaints. Of those 68 complaints, 25 were handled as phone/fax investigations, 29 resulted in inspections, and 14 were assessed as invalid. The complainants for the 25 phone/fax investigations consisted of 12 workers, six former workers, and five “others”, while two were anonymous complaints. Complaints were processed from beginning to end by either the health or safety supervisor.

**Observation FY 2023-OB-02:** In FY 2023, five of 14 (35.71%) complaints assessed as not valid contained allegations or information that should have resulted in a “valid” assessment or that should have resulted in UOSH contacting the complainant for further information.

**Federal Monitoring Plan FY 2023-OB-02:** The OSHA Regional Office will monitor UOSH’s performance in this area during quarterly meetings throughout FY 2024.

**Status FY 2023-OB-02:** This observation is new.

Six of the twelve (50%) complaints filed by current workers were addressed through the phone/fax investigation process although the OIS entries noted the complaints were formal. Each of the six complaints were electronic complaints filed by a current worker providing their name and contact information, and the electronic signature was checked in each of the six complaints. The review team did not find documentation in the six case files to explain why the formal complaints were handled as phone/fax investigations per the guidance in the UOSH FOM Chapter 9, Section I.E.4. The UOSH FOM provides guidance in Section I.C. and Section I.G. to determine if an inspection will occur. There may be circumstances when a formal complaint will not result in an inspection but will result in a phone/fax investigation. The review team suggested to UOSH that case files contain documentation supporting such decisions.

UOSH’s process for phone/fax investigations is to contact the employer within three days of receipt of a complaint and inform them of the allegation(s). The health or safety supervisor typically followed up the phone conversation with a written letter informing the employer of the allegation(s) and instructions on responding to the inquiry. In a few complaint investigation case files, the review team did not find documentation of the written inquiry to the employer as required by the UOSH FOM Chapter 9, Section I.H.1. The review team discussed this concern with the State Plan but did not elevate the concern to an observation.

Following the satisfactory response by an employer to a phone/fax investigation, the State Plan typically did not send the employer’s response to the complainant of a non-formal complaint. However, when the State Plan handled a formal complaint as a phone/fax investigation, the employer’s response was sent to the complainant. The State Plan sent the employer’s response to the complainant of a formal complaint in all case files reviewed.

Twenty-nine complaints reviewed were inspected. Twenty-one complaints were formal complaints. Eight complaints were non-formal complaints assigned for inspection due to allegations involving emphasis programs or imminent danger. UOSH sent the complainants of formal complaints the results of the inspections in 20 of 21 (95.24%) case files reviewed.

With respect to SAMM 1A, UOSH met the FRL. SAMM 1A measured the average number of workdays to initiate a complaint inspection. OSHA and the State Plan negotiated the FRL to be five days. In FY 2023, the State Plan took an average of 4.86 days to initiate a complaint inspection.

SAMM 2A measured the average number of workdays to initiate a complaint investigation. OSHA and the State Plan negotiated the FRL of three days for SAMM 2A. In FY 2023, the State Plan took an average of 1.60 days to initiate a complaint investigation. The State Plan met the FRL.

With a fixed FRL of 100% for all State Plans, SAMM 3 measured the percentage of imminent danger complaints and referrals that the State Plan responded to within one workday. UOSH met this FRL in FY 2023.

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 2023.

1. Fatalities

During FY 2023, UOSH investigated 19 work-related fatalities. Of these, two incidents involved double fatalities, resulting in a total of 17 fatality investigations during FY 2023. Of the 19 work-related deaths investigated during FY 2023, five (26.32%) of the deaths were fall-related, four (21.05%) were due to crushing, three (15.79%) were due to electrocution, two (10.53%) were due to asphyxiation, two (10.53%) were struck-by accidents, one (5.26%) was explosion-related, one (5.26%) was due to chemical exposure, and one (5.26%) was impalement-related. Five fatalities involved construction work while fourteen occurred within general industry workplaces.

SAMM 10 measured the percentage of work-related fatalities responded to within one workday. All State Plans had a fixed FRL of 100% for this measure. For FY 2023, UOSH responded to all fatalities within one day and met the FRL.

The case file review included ten fatality inspection case files that were closed during FY 2023. UOSH conducted fatality inspections in accordance with established policies and procedures. For the five fatality inspections that resulted in the issuance of citations with serious violations, the State Plan conducted follow-up inspections in four of five (80%) cases. The fifth fatality case did not receive a follow-up inspection due to the incident occurring at a temporary worksite.

The State Plan received 42 reports of fatalities during FY 2023, of which 19 were work-related and were investigated. The remaining 23 fatalities were assessed as not work-related. UOSH policy was to only enter into OIS those reported fatalities that were work-related. The review team suggested that all reported fatalities be entered into OIS and entered as work-related to be investigated or not work-related and not investigated.

The 19 FY 2023 work-related fatalities resulted in an approximate work-related fatality rate of 1.11 fatalities per 100,000 workers for employers that were under UOSH’s jurisdiction. The fatality rate for workers under UOSH’s jurisdiction was below the Bureau of Labor Statistics (2020-2022) Utah all-worker fatality rate of 3.47 fatalities per 100,000 workers.

c. Targeting and Programmed Inspection

UOSH and OSHA negotiated the FRL for SAMM 7A and SAMM 7B that measured the number of safety and health inspections respectively conducted during the evaluation period. For FY 2023, the FRL range for safety inspections was 705.85 to 780.15, and the FRL range for health inspections was 130.15 to 143.85. The State Plan conducted 541 safety inspections and 140 health inspections. The State Plan met the FRL for health inspections but was significantly below the FRL for safety inspections. The departure of ten CSHOs, predominately safety compliance officers, had a direct impact on the number of safety inspections conducted during FY 2023. During the turnover of staff, the safety and health supervisors and the field operations manager conducted inspections to maintain their responsiveness to unprogrammed activity. UOSH further explained that training new CSHOs was on pace to release all CSHOs to full status during FY 2024. The State Plan anticipates the number of safety inspections during FY 2024 will increase as the new CSHOs gain experience. The review team believes that the decrease in the number of safety inspections was a direct result of staff turnover and was not a symptom of decreased effectiveness. The review team did not elevate this to an observation.

SIR 1A calculated the percentage of private employer inspections that were programmed. For safety inspections, 8.90% of inspections were programmed. For health inspections, 2.26% of inspections were programmed. Due to strained resources with the CSHO turnover, UOSH gave more attention to unprogrammed activity. The State Plan believes that the percentage of programmed activity will increase as resources become more available.

SAMM 9A and SAMM 9B calculated the State Plan’s in-compliance percentage for safety and health inspections. For FY 2023, the SAMM 9A result for the in-compliance percentage for safety inspections was 31.80% while the SAMM 9B result for the in-compliance percentage for health inspections was 57.78%. The safety inspection in-compliance percentage was within the FRL range of 25.38% to 38.08%, but the health inspection in-compliance percentage slightly exceeded the FRL range of 35.06% to 52.58%. The health in-compliance percentage for FY 2023 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 0.70% to 1.17%. UOSH met the FRL with a result of 1%.

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 27.31% of their inspection total.

UOSH established the Construction LEP to help reduce the incidence of injuries, illnesses, and fatalities 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 2023 SOAR, the Construction LEP contributed 78 inspections with 160 hazards identified and abated and 16,108 workers affected. The Construction LEP inspections resulted in the issuance of four repeat violations, 132 serious violations, and 24 other-than-serious (OTS) violations. Of the violations, 61 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 93 inspections with 147 hazards identified and abated, affecting 16,133 workers. Of these 147 hazards, 109 were serious violations and 38 were OTS violations. Of the violations, 50 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 nine inspections with 19 hazards identified and abated, affecting 783 workers. Six of the 19 hazards were violations of the Respirable Crystalline Silica Standard. Worker personal air sampling was conducted during three inspections, of which two had exposures above the action level and one above the permissible exposure limit. The hazards were abated in both cases.

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 of death or serious injury exist and to increase awareness of the State Plan program throughout the state. Utah state and local government workplaces have been historically under-represented in inspections. The Public Sector LEP contributed six inspections with 11 violations identified and abated, affecting 448 workers.

SAMM 11A and SAMM 11B measured the lapse time for safety and health inspections respectively. For FY 2023, the State Plan had a lapse time of 24.95 days for safety inspections, which was below the FRL of 44.18 to 66.28 days. UOSH had a lapse time of 28.14 days for health inspections, which was far less than the FRL of 55.78 to 83.66 days. These were both positive outcomes. This achievement was driven by the Utah Governor’s Success Management Information System (SMIS) which set as a benchmark that citations were issued within 45 days and inspections without citations were closed within 45 days. A significant contributor to health inspection lapse time was the quick turnaround of lab analyses, typically less than two weeks. UOSH’s processes and the performance of its staff have enabled the State Plan to achieve a short lapse time for both safety and health inspections.

On another note, the State Plan opened one significant case during FY 2023. The case involved a double fatality and resulted in two willful violations and 11 serious violations issued with a penalty of $172,350.00. The case was contested.

UOSH also issued multiple FTA violations to three employers who did not abate hazards following multiple inspections and did not respond to the citations. The State Plan is pursuing legal action to obtain cease and desist orders against the employers.

Narratives and notes in the inspection case files were detailed and provided well-written descriptions of the observations and activity during the walk-arounds. Alleged hazards stemming from complaints, referrals, or accidents were identified in notes and the narratives and, in many cases, described how these hazards were evaluated by the CSHOs. CSHOs frequently identified additional hazards observed during walk-arounds. However, in several cases, the review team did not find documentation in the case files that these additional hazards were evaluated. The review team discussed their concern with the State Plan. UOSH confirmed that CSHOs had the ability to expand the scope of inspections, and supervisors provided training to CSHOs regarding this. The review team suggested that CSHOs document their evaluation of additional hazards when identified in case files.

**Observation FY 2023-OB-03:** In FY 2023, there were seven health cases in which sampling did not occur even though the case files included information of worker exposure to air contaminants. In four of the seven (57.14%) cases, the case file did not include an evaluation of worker exposure to an air contaminant, nor did the case file include documentation explaining why an evaluation did not occur. UOSH did not follow the guidance in Chapter 9, Section I.G.4 and in Chapter 3, Section II.B.4 of the UOSH FOM.

**Federal Monitoring Plan FY 2023-OB-03:** The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2024.

**Status FY 2023-OB-03:** This observation is new.

d. Citations and Penalties

UOSH typically classified violations appropriately. The field operations manager reviewed cases for appropriateness of standards cited and penalty amounts, as well as 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 and found that violations were appropriately grouped.

Violation worksheets document the violation and describe the evidence in support of the violation, including employer knowledge of the hazardous condition, worker exposure, or the applicable standard. Although the State Plan’s case files contained violation worksheets when appropriate, not all the violation worksheets had sufficient evidence of employer knowledge. Two of five (40.0%) fatality investigation case files contained violation worksheets with inadequate evidence of employer knowledge. Eleven of 45 (24.4%) safety inspection case files contained violation worksheets with inadequate evidence of employer knowledge. Six of nine (66.7%) health inspection case files contained violation worksheets with inadequate evidence of employer knowledge.

**Observation FY 2023-OB-04:** In FY 2023, 19 of 59 (32.20%) case files contained violation worksheets with inadequate evidence of employer knowledge. UOSH did not follow the guidance in Chapter 5, Section II.C.2.i and Chapter 4, Section II.C.4 of the UOSH FOM.

**Federal Monitoring Plan FY 2023-OB-04:** The OSHA Regional Office will monitor UOSH’s performance in this area during quarterly meetings throughout FY 2024.

**Status FY 2023-OB-04:** This observation is new.

Using course materials provided by the OTI, the field operations manager delivered legal aspects training to all new CSHOs. This training was especially critical given the influx of new CSHOs to UOSH.

The OIS Standards Cited Report run for the period October 1, 2022, to September 30, 2023, showed that UOSH issued a total of 914 violations during FY 2023. Of those violations, 628 (68.71%) were serious, 261 (28.56%) were OTS, 12 (1.31%) were repeat, and four (0.44%) were willful. Nine (0.98%) FTA violations were issued during FY 2023.

When comparing FY 2023 to the two previous fiscal years, a review of the Standards Cited Reports showed that during FY 2023, UOSH issued fewer serious, repeat, willful (SWRU), and OTS violations than in FY 2022. This was a result of the fewer inspections conducted due to significant staff turnover. While the inspection and violation numbers decreased during FY 2023, the average number of violations per inspection was only slightly decreased from FY 2022.

SAMM 5A data showed that the State Plan was below the FRL range for the average number of SWRU violations per inspection for FY 2023. The average number of SWRU violations per inspection was 1.06 while the FRL range was from 1.40 to 2.10. The State Plan believes that the decrease was a result of the inexperience of new CSHOs hired following the loss of 10 CSHOs during FY 2023.

SAMM 5B data showed that UOSH was also slightly below the FRL range for the average number of OTS violations per inspection for FY 2023. The average number of OTS violations per inspection was 0.58 while the FRL range was from 0.71 to 1.07.

UOSH faced a resource challenge but was only marginally outside the FRL range regarding the number of violations per inspection. 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 2023 FRL range was from $2,718.91 to $4,531.51 for all size employers. The State Plan was significantly below the FRL with an average serious penalty of $1,743.56. The Utah legislature increased maximum penalties during its 2022 legislative session, adopting the civil penalties of FY 2021. While this may have indirectly led to an average increase of approximately $235 for a serious violation since FY 2021, the State Plan still remained significantly below the FRL.

On the other hand, penalty retention was measured with SAMM 12. The State Plan retained 66.58% of penalties issued, which was solidly within the FRL of 61.06% to 82.62%.

**Observation FY 2023-OB-01 (previously FY 2022-OB-01 and FY 2021-OB-03):** During FY 2022 and FY 2023, the State Plan issued FTA violations to four employers. The four inspections resulted in seven FTA violations, but the penalty amounts for the inspections were significantly below those outlined by UOSH’s FOM for FTA violations.

**Federal Monitoring Plan FY 2023-OB-01 (previously FY 2022-OB-01 and FY 2021-OB-03):** The OSHA Regional Office will monitor UOSH’s performance in this area during quarterly meetings throughout FY 2024.

**Status FY 2023-OB-01 (previously FY 2022-OB-01 and FY 2021-OB-03):** Not only did UOSH provide training to CSHOs and managers on this issue, but the State Plan also developed a written policy regarding FTA violations and penalty calculation in response to the FY 2021 observation. Still, the daily penalty multipliers described in Chapter 6, Section VII.B.4 of UOSH’s FOM were not used in all violations, and when used, the daily multipliers were incorrect. This observation is continued.

1. Abatement

UOSH established appropriate periods for abatement. The State Plan 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. The State Plan utilized this practice in support of quick abatement of hazards while onsite. When corrected onsite, 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. The health supervisor or safety supervisor also reviewed abatement prior to closure.

Employers were required to provide certification of abatement for all violations. UOSH citations stipulate that abatement documentation is required for each serious violation. Abatement certification was provided for all violations reviewed. However, abatement documentation was not provided for all serious violations as required in the language of a UOSH citation’s general information. The review team suggested that the State Plan revisit the language of the citation’s general information or enforce the general requirement.

In most cases, employers provided abatement quickly. There were two cases in which the employer requested a petition for modification of abatement (PMA). Documentation was found in each case file, including the written request from the employer and a description of interim protections in place until abatement was complete. There was also documentation of the approval of the PMA requests.

Abatement was adequate in 54 of 57 (94.74%) case files with violations, including four of four (100%) fatality case files with violations, 44 of 44 (100%) safety inspection case files with violations, and six of nine (66.67%) health inspection case files with violations. Although the review team discussed the abatement in the health inspection case files with the State Plan, this issue is not an observation in this report.

UOSH’s policy was to perform follow-up inspections of all fatality inspections resulting in serious violations and of inspections where abatement was not received. Follow-up inspections were scheduled after final order dates. The State Plan performed six follow-up inspections during FY 2023 of fatality investigations that were closed during FY 2022 or FY 2023 to ensure ongoing abatement of hazards. UOSH also conducted eight follow-up inspections of non-fatality inspections to determine that abatement of hazards took place. An OIS Inspection Summary Report indicated that 14 follow-up inspections took place during FY 2023, corresponding to 2.06% of all (681 total) inspections. This was significantly higher than FY 2022 with 0.80% of inspections being follow-up inspections. This was a positive outcome.

Four of 14 (28.57%) follow-up inspections resulted in seven FTA violations. This statistic supports the State Plan’s focus on conducting more follow-up inspections to ensure abatement of hazards.

**Observation FY 2023-OB-05:** In FY 2023, twelve of 25 (48%) complaint investigations reviewed were closed prior to completion or receipt of abatement. Seven of 25 (28%) complaint investigation case files did not contain documentation of a written response from the employer regarding abatement. UOSH did not follow the guidance in Chapter 9, Section I.H.9 and Chapter 9, Section I.H.3.b of the UOSH FOM.

**Federal Monitoring Plan FY 2023-OB-05:** The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2024.

**Status FY 2023-OB-05:** This observation is new.

1. Worker and Union Involvement

According to the SAMM Report, UOSH included workers or worker representatives in initial inspections in FY 2023. SAMM 13 calculated the percentage 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 2023.

Documentation of worker participation, including interviews, showed improvement in FY 2023. Seven of 105 (6.67%) 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 2021, where 9.68% of the case files did not contain documentation of non-managerial worker contact. Moreover, nine of 105 (8.57%) inspection case files did not contain documentation of worker interviews. Again, this reflected an improvement from the 2021 FAME where 12.90% of the inspection case files did not contain documentation of worker interviews.

There were two case files of inspections involving unions. The unions participated in two of two (100%) of the inspections, although in one (50%) of the inspections, there was no indication that the union attended the closing conference or was separately informed of the result of the inspection. One of two (50%) inspections resulted in a citation. Documentation of the citation being sent to the union was not found in the case file. The review team discussed this with the State Plan but did not elevate this to an observation.

**3. REVIEW PROCEDURES**

* 1. Informal Conferences

Of the 105 closed FY 2023 inspection case files reviewed, the State Plan conducted four informal conferences. While there were not any deviations from the State Plan’s protocol for conducting informal conferences, in three of four (75%) cases there were inconsistencies with documentation of informal conferences. In one of those cases, the informal conference notes did not include why violations were deleted and, in another case, why a violation was reclassified. In one case, there were no informal conference notes. In two cases, completed informal settlement agreements were not found in the case file. The review team discussed this with the State Plan but did not elevate this to an observation.

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. Twenty-eight case files reviewed that resulted in citations were resolved using 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 violation 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.

SIR 5A which measured the percentage of violations vacated pre-contest was calculated to be 1.65%. SIR 6A which measured the percentage of violations re-classified pre-contest was calculated to be 0.67%. UOSH’s retention of violations and violation classifications pre-contest was highly successful.

* 1. 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 was one FY 2023 contested case appealed beyond the ALJ decision.

According to the OIS Inspection Summary Report run for the period October 1, 2022, to September 30, 2023, 22 of 530 (4.15%) cases with citations issued were contested. At the time of the report, four of 22 (18.18%) contested cases were final order. SIR 5B measured the percentage of violations vacated post-contest. UOSH’s SIR 5B was calculated to be 38.30%. SIR 6B measured the percentage of violations re-classified post-contest. UOSH’s SIR 6B was calculated to be 17.24%. SIR 7B which measured the penalty retention percentage post-contest was calculated to be 91.75%.

SIR 5B was significantly higher than the national average of 15.30%. UOSH explained that SIR 5B was driven by adverse decisions by ALJs and post-contest information provided by employers resulting in unfavorable settlement. The State Plan further stated that it is addressing these issues by training CSHOs regarding affirmative defenses and litigation processes, as well as the Assistant Attorney Generals providing additional information during hearings to ALJs regarding UOSH standards and the Utah OSH Act. A high post-contest vacate percentage is also symptomatic of inadequate evidence to support a violation.

**4. Standards and Federal Program Change (FPC) Adoption**

* 1. 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 emergency temporary standard (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](https://www.federalregister.gov/d/2016-15378). As required by law, OSHA then increased penalties annually, most recently on January 15, 2024, according to the consumer price index. See 2024 Annual Adjustments to OSHA Civil Penalties, available at https://www.osha.gov/memos/2024-01-08/2024-annual-adjustments-osha-civil-penalties (January 8, 2024).

OSHA-approved State Plans must have penalty levels that are at least as effective as 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. The State of Utah legislature did not increase UOSH penalties until FY 2022, when it statutorily adopted the FY 2021 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 November 20, 2021, and September 21, 2023, the State Plan registered its intent to adopt four of the six standards. The State Plan did not register its intent to adopt one standard and registered its intent to not adopt one standard; both involved the two COVID Vaccination and Testing ETSs which were later withdrawn by OSHA on December 27, 2021. The State Plan registered its intent timely for four of the four (100%) standards not withdrawn by OSHA.

Excluding issuance of the annual Final Rules on the Department of Labor Civil Penalties and COVID ETSs, there were five standards promulgated during the period FY 2020 through FY 2023. One non-mandatory standard was not adopted by UOSH. The State Plan registered its intent to adopt the remaining four mandatory standards but did not timely adopt the three standards whose adoption deadlines preceded the end of FY 2023. State Plans are required to adopt mandatory standards within six months of promulgation by OSHA or show that they have an existing at least as effective standard. The three standards, including the Final Rule on the Beryllium Standard for General Industry, the Final Rule on the Beryllium Standard for Construction and Shipyards, and the Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work, did not become effective until 22 months, nearly 21 months, and 20 months, respectively, following promulgation by OSHA.

Since FY 2014, there has been only one non-penalty or non-ETS standard that became effective by the adoption deadline. The remaining eleven mandatory non-penalty standards were adopted on average 24.5 months past the promulgation date. One standard did not become effective for nearly 36 months past the promulgation date.

UOSH administratively adopts the entirety of the general industry, construction, and recordkeeping standards, rather than individual standards, through incorporation by reference of the collection of OSHA standards published in the Federal Register in early July of each year. The current process of incorporation by reference significantly impacts the timeliness of adoption of standards. For the OSHA standards published in the July 1, 2021, Federal Register, they were not incorporated by reference into Utah Administrative Rule R614-1-4 until September 27, 2022, approximately 15 months after publication. This untimeliness of incorporation of standards is in addition to the time prior to publication in the July Federal Register when the OSHA standards became effective.

The State of Utah Administrative Rulemaking Act, Title 63G, Chapter 3, Part 3 directs that when making, amending, or repealing a rule, agencies shall comply with applicable federal mandates. Despite informing the review team during the FY 2021 FAME that individual standards could be adopted more frequently than the current once per year, that has not occurred and UOSH has not made changes to their current process to allow for timely adoption of standards. UOSH explained that the current process led the State Plan to be at least one year behind in the adoption of standards, resulting in significantly untimely adoption of required standards.

**Observation FY 2023-OB-06:** Three of three (100%) standards promulgated during the period FY 2020 through FY 2023 and whose State Plan adoption deadlines were within the same period were not adopted in a timely manner. UOSH has not implemented a process to adopt standards by their required deadlines.

**Federal Monitoring Plan FY 2023-OB-06:** The OSHA Regional Office will monitor UOSH’s performance in this area during quarterly meetings throughout FY 2024.

**Status FY 2023-OB-06:** This observation is new.

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

**Table A**

**Status of FY 2022 and FY 2023 Federal Standards Where Adoption Was Required**

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | N/A |  |  | 12/5/2021 |  |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910  (11/5/2021) | 1/7/2022 | 1/7/2022 | No |  | 1/24/2022 |  |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022  29 CFR 1903  (1/15/2022) | 3/15/2022 | 3/8/2022 | Yes | No | 7/15/2022 |  |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions  29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)  (2/14/2022) | 4/14/2022 | 4/13/2022 | Yes | Yes | 8/14/2022 | 5/9/2022 |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023  29 CFR 1903  (1/15/2023) | 3/15/2023 | 1/31/2023 | Yes | No | 7/15/2023 |  |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | 9/18/2023 | Yes | Yes | 1/21/2024 |  |

* 1. Federal Program Change Adoption

The Utah legislature limits the authority of the State Plan under the Utah OSH 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/uosh/uosh-resources/).

Of the 10 directives created by OSHA between December 22, 2021, and September 29, 2023, two were “adoption required,” six were “equivalency required,” and two were “adoption encouraged.” UOSH registered its intent to adopt eight of the 10 directives. Of those eight, two were adopted identically and six were adopted equivalently. Four of eight (50%) directives were adopted prior to their adoption due dates. The remaining four directives were adopted within four days of the adoption due dates. This was not a concern to the review team.

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

**Table B**

**Status of FY 2022 and FY 2023 FPCs Where Adoption Was Required**

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Revised Combustible Dust National Emphasis Program  CPL 03-00-008  (1/30/2023) | 3/31/2023 | 3/28/2023 | Yes | No | 7/30/2023 | 7/30/2023 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026  (7/13/2023) | 9/11/2023 | 9/8/2023 | Yes | No | 1/9/2024 | 1/12/2024 |

**Table C**

**Status of FY 2022 and FY 2023 FPCs Where Equivalency Was Required**

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 6/1/2022 | Yes | No | 11/3/2022 | 11/4/2022 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 10/4/2022 | Yes | No | 2/11/2023 | 2/10/2023 |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 11/14/2022 | Yes | Yes | 3/15/2023 | 3/15/2023 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 3/15/2023 | Yes | No | 8/6/2023 | 8/7/2023 |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | 6/15/2023 | Yes | No | 10/28/2023 | 11/1/2023 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | 10/25/2023 | Yes | Yes | 3/27/2024 | 12/1/2023 |

**Table D**

**Status of FY 2022 and FY 2023 FPCs Where Adoption Was Encouraged**

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- |
| OSHA’s Use of Small Unmanned Aircraft Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 1/3/2022 | No |  |  |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024  (4/8/2022) | 6/8/2022 | 4/20/2022 | No |  |  |

**Table E**

**FY 2022 and FY 2023 State-Initiated Changes**

| **State-Initiated Change** | **Adoption Date** | **Effective Date** |
| --- | --- | --- |
| None. |  |  |

**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**

Twenty state and local government inspections took place during FY 2023, significantly less than the 54 inspections that took place in FY 2022. Fifteen of the twenty (75%) inspections were closed or issued a citation by the end of FY 2023. A citation was issued in eight of fifteen (53.33%) state and local government workplace inspections. Three SWR violations were issued to state and local government entities in FY 2023, an average of 0.38 SWR violations per inspection. There were nine OTS violations issued, an average of 1.13 OTS violations per inspection.

One formal complaint resulted in an inspection of a state or local government workplace. There was not any documentation in the case file that an inspection results letter was sent to the complainant. However, the State Plan sent the complainants of formal complaints the results of the inspections in 20 of 22 (90.91%) case files reviewed, including private employers and state and local government employers. The review team was not concerned about this issue.

SAMM 6 measured the percentage of total inspections in state and local government workplaces. In FY 2023, the FRL range was from 5.94% to 6.56%. With 2.94% of total inspections in state and local government workplaces, UOSH did not meet the FRL. This was not a positive outcome. The loss of ten CSHOs during FY 2023 resulted in the State Plan performing 20 fewer inspections than it had intended in state and local government workplaces. UOSH developed a Public Sector LEP in FY 2018, establishing a legal basis for conducting programmed state and local government workplace inspections. With the implementation of the Public Sector LEP and CSHO staffing returning to a normal level, the State Plan anticipates that its presence in state and local governments will get back on track.

**7. WHISTLEBLOWER Program**

In FY 2023, UOSH had one dedicated whistleblower investigator. The program also included a program supervisor and a part-time investigator.

The review team evaluated the overall whistleblower program, including its policies and procedures. There were nine closed investigative case files and 31 administratively closed case files, totaling 40 case files reviewed.

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. The complainant is contacted, and information is collected. The evaluation process involves the investigator completing a prima facie element form which is provided to the program supervisor for determination about whether to investigate or to administratively close the complaint. The supervisor documents actions to be taken by the whistleblower investigator on the form, provides a signature on the form, and returns it to the whistleblower who conducted the evaluation.

The review team found that the prima facie element form was in 31 of 31 (100%) administratively closed whistleblower case files. Also, the evaluation form was reviewed, signed, and dated by the supervisor in 31 of 31 (100%) case files.

The review team did not find a complaint closeout letter in two of 31 (6.45%) administratively closed whistleblower complaint case files. In one of these cases, the contact information for the complainant was invalid, so a closeout letter could not be sent to the complainant. The complainant in the remaining case did not respond to the State Plan’s communication attempts during the intake. Based upon this information, it was reasonable that closeout letters were not in the two case files.

Investigations:

In FY 2023, UOSH performed nine whistleblower investigations, including two settled cases, two full investigations, and five dismissals. Upon completion of an investigation, the whistleblower investigator presents the investigation findings and recommendations to the supervisor in a report of investigation. The supervisor reviews the report and determines final action. Final action, or determination, is documented in an order. A determination may be dismissal, merit, or settlement.

The State Plan’s complaint intake process requires that complaints be docketed if the complainant does not withdraw the complaint enabling administrative closure. Once docketed, an investigation must take place and a report of investigation is produced by the whistleblower investigator. As a result of this process and limited whistleblower investigation resources available, there was a significant backlog of docketed cases. During FY 2023, resources were re-allocated to reduce this backlog. During FY 2023, twenty-seven whistleblower investigations that were greater than one year old were completed. At the conclusion of FY 2023, there remained only 38 cases older than 90 days, with only four cases greater than one year old. The progress made by the State Plan reducing the backlog of docketed whistleblower cases was a positive outcome.

Documentation and Report Writing:

The written reports revealed a good understanding of whistleblower fundamentals and elements, including jurisdiction, prima facie elements, and nexus. Evaluation, determination, and order documentation were signed by appropriate persons. Case files were well-organized and contained necessary documents, including evidence of communication with complainants and respondents.

Settlements:

UOSH had two settled cases in FY 2023. The parties settled outside of the State Plan with their own settlement agreement in both cases. Documentation of the direct settlement was found in each case file. The review team did not find documentation of a review of the settlement in two of the two (100%) directly settled cases. Under the previous UOSH Whistleblower Investigations Manual, a review of a direct settlement was not required. During FY 2023, the State Plan updated its Whistleblower Investigations Manual, Chapter 5, Section III.B to include a requirement to “review the settlement agreement for consistency with public policy, i.e., the settlement agreement is not repugnant to the Utah OSH Act and does not undermine the protection the UOSH whistleblower statute provides.” The two settled cases during FY 2023 occurred during the development of the new Whistleblower Investigations Manual. The State Plan explained that the whistleblower investigator did review the settlements but did not document the review. The review team discussed documentation of the review of settlements with the State Plan but did not raise this to an observation.

For FY 2022, whistleblower investigations were transitioned from an older legacy software system to OIS. Data from the legacy system was not completely merged with OIS. As a result, older whistleblower cases, which remained within IMIS, could not be included in the calculations of SAMMs 14, 15, and 16. These measures are not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS.

**8. Complaint About State Program Administration (CASPA)**

No CASPAs were received during FY 2022.

A CASPA was received on September 14, 2023, alleging that UOSH failed to adequately process and/or investigate an online safety and health complaint. An investigation of the allegation took place and found that the State Plan had incorrectly assessed the complaint as invalid. The State Plan provided training to staff regarding jurisdiction and procedures to follow when jurisdiction questions arise. The CASPA was closed by the OSHA Regional Office.

A CASPA was received on September 26, 2023, alleging that UOSH did not adequately investigate a whistleblower complaint. An investigation of the allegation took place and found that the State Plan followed its Whistleblower Investigations Manual policies, and that the conclusion of the investigation was reasonable. The CASPA was closed by the OSHA Regional Office.

**9. Voluntary Compliance Program (VPP)**

UOSH had 13 sites participating in the VPP in FY 2023. While there were three more VPP participants in FY 2023 than in FY 2021, there were no new applicants during FY 2023. Two re-certifications were completed during FY 2023, with two additional re-certifications in process by the end of FY 2023. The State Plan does not anticipate additional VPP sites for FY 2024. 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’s National and Regional Conferences, the Annual Safety and Industrial Hygiene Conference, and other professional associations’ conferences 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 VPP 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 consultation program for state and local government workplaces. In FY 2023, this program conducted 48 visits statewide. Of the 48 visits conducted, 43 were initial visits and five were training and education visits. The goal for FY 2023 was 40 state and local government consultation visits, which the State Plan exceeded by 20.0%. Because of these visits, the State Plan identified and abated 387 hazards or regulatory issues. Twenty-one of twenty-five (84%) case files reviewed had hazards or regulatory issues abated in a timely manner. Of the consultation visit case files where abatement extensions were granted, documentation of the request and interim protections in place was found in nine of nine (100%) case files.

The state and local government consultation program also conducted 67 compliance assistance activities in FY 2023. These activities included safety- and health-related outreach, promotion, training, and education to state and local government workplaces.

During FY 2023, the number of requests for state or local government consultation declined. As a result, opportunities for compliance assistance activities were reduced. However, the State Plan increased its number of consultation visits by three during FY 2023 as compared to FY 2022.

At the onset of FY 2023, the five state and local government Safety and Health Achievement Recognition Program (SHARP) workplaces had consisted of five fire stations within a single city’s fire department. The five fire stations were consolidated into a single SHARP entity. During FY 2023, the fire department voluntarily withdrew from SHARP. UOSH was also unable to reach its goal of recruiting one new SHARP workplace. There are currently no state and local government SHARP workplaces, however the State Plan anticipates the addition of one new SHARP member in FY 2024.

**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.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or**  **FY 2022-OB-#** |
| --- | --- | --- | --- |
|  | None. |  |  |

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 2022-OB-# *or* FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 | FY 2022-OB-01  FY 2021-OB-03 | During FY 2022 and FY 2023, the State Plan issued FTA violations to four employers. The four inspections resulted in seven FTA violations, but the penalty amounts for the inspections were significantly below those outlined by UOSH’s FOM for FTA violations. | The OSHA Regional Office will monitor UOSH’s performance in this area during quarterly meetings throughout FY 2024. | Continued |
| FY 2023-OB-02 |  | In FY 2023, five of 14 (35.71%) complaints assessed as not valid contained allegations or information that should have resulted in a “valid” assessment or that should have resulted in UOSH contacting the complainant for further information. | The OSHA Regional Office will monitor UOSH’s performance in this area during quarterly meetings throughout FY 2024. | New |
| FY 2023-OB-03 |  | In FY 2023, there were seven health cases in which sampling did not occur even though the case files included information of worker exposure to air contaminants. In four of the seven (57.14%) cases, the case file did not include an evaluation of worker exposure to an air contaminant, nor did the case file include documentation explaining why an evaluation did not occur. UOSH did not follow the guidance in Chapter 9, Section I.G.4 and in Chapter 3, Section II.B.4 of the UOSH FOM. | The OSHA Regional Office will monitor UOSH’s performance in this area during quarterly meetings throughout FY 2024. | New |
| FY 2023-OB-04 |  | In FY 2023, 19 of 59 (32.20%) case files contained violation worksheets with inadequate evidence of employer knowledge. UOSH did not follow the guidance in Chapter 5, Section II.C.2.i and Chapter 4, Section II.C.4 of the UOSH FOM. | The OSHA Regional Office will monitor UOSH’s performance in this area during quarterly meetings throughout FY 2024. | New |
| FY 2023-OB-05 |  | In FY 2023, twelve of 25 (48%) complaint investigations reviewed were closed prior to completion or receipt of abatement. Seven of 25 (28%) complaint investigation case files did not contain documentation of a written response from the employer regarding abatement. UOSH did not follow the guidance in Chapter 9, Section I.H.9 and Chapter 9, Section I.H.3.b of the UOSH FOM. | The OSHA Regional Office will monitor UOSH’s performance in this area during quarterly meetings throughout FY 2024. | New |
| FY 2023-OB-06 |  | Three of three (100%) standards promulgated during the period FY 2020 through FY 2023 and whose State Plan adoption deadlines were within the same period were not adopted in a timely manner. UOSH has not implemented a process to adopt standards by their required deadlines. | The OSHA Regional Office will monitor UOSH’s performance in this area during quarterly meetings throughout FY 2024. | New |

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status**  **(and Date if Item is**  **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
|  | None. |  |  |  |  |

| State Plan: SAMM Number | State Plan: SAMM Name | State Plan: Data | FY 2023 Further Review Level | FY 2023 Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 4.86 | 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) | 3.94 | 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) | 1.60 | 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) | 1.07 | 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) | 1.06 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.58 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 2.94% | +/- 5% of  6.25% | 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 5.94% to 6.56%. |
| 7a | Planned v. actual inspections (safety) | 541 | +/- 5% of  743 | 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 705.85 to 780.15 for safety. |
| 7b | Planned v. actual inspections (health) | 140 | +/- 5% of  137 | 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 130.15 to 143.85 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $1,743.56 | +/- 25% of  $3,625.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. |
| 8a | Average current serious penalty in private sector  (1-25 workers) | $1,055.00 | +/- 25% of  $2,348.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. |
| 8b | Average current serious penalty in private sector  (26-100 workers**)** | $1,534.86 | +/- 25% of  $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. |
| 8c | Average current serious penalty in private sector  (101-250 workers) | $2,928.00 | +/- 25% of  $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. |
| 8d | Average current serious penalty in private sector  (greater than 250 workers) | $3,486.16 | +/- 25% of  $7,331.41 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| 9a | Percent in compliance (safety) | 31.80% | +/- 20% of  31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in compliance (health) | 57.78% | +/- 20% of  43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% 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. |
| 11a | Average lapse time (safety) | 24.95 | +/- 20% of 55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 28.14 | +/- 20% of 69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | 66.58% | +/- 15% of  71.84% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| 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 | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | 1.00% | +/- 25% of  0.93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%. |

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 14, 2023, as part of OSHA’s official end-of-year data run.

\*Due to the transition of 11(c) data from IMIS to OIS, SAMMs 14, 15, and 16 are not being reported for FY 2023.