

REPORT TO THE
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**A Performance Audit
of the
Utah Occupational Safety
and Health Division (UOSH)**

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Table of Contents

Page

Digest.	i
Introduction.	1
UOSH Protects Worker Safety and Health.	1
Audit Scope and Objectives.	6
Chapter II	
Comprehensive Policies Needed Throughout Inspection Process.	9
Effective Policies Needed to Guide CSHOs.	9
Settlement Terms Need More Documentation and Less Subjectivity.	17
Recommendations.	22
Chapter III	
Staff Management Practices Need Improvement.	25
UOSH New Hire Training Program Needs More Structure.	25
Management Needs to Improve Monitoring of Staff Productivity.	33
Recommendations.	41
Chapter IV	
Better Grant Management Practices Would Improve UOSH Finances.	43
Accounting Errors Have Prevented Federal Funding of Some Eligible Expenditures.	46
A Lack of Eligible Expenditures Has Also Caused Federal Funds to Lapse.	47

Table of Contents (Cont)

Page

Recommendations..... 49

Appendix A..... 51

Agency Response..... 57

Digest of A Performance Audit of the Utah Occupational Safety & Health Division (UOSH)

Chapter I: Introduction

Utah's Occupational Safety and Health Division (UOSH) provides safety and health assistance to Utah employees and employers. Since 1985, UOSH has operated as Utah's response to a federal charge for states to operate their own job safety and health program in lieu of a federal program, stepping in where the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) would otherwise. UOSH is organized into three programs. The Compliance program (Compliance) enforces safety and health regulations by conducting inspections, ensuring hazard abatement, and issuing penalties if necessary. The Consultation Program (Consultation) provides education about complying with safety and health standards to employers at no cost to the employers. UOSH's Bureau of Labor Statistics (BLS) collects, compiles, and analyzes occupational safety and health statistics.

This audit focused on the Compliance process. Specific audit objectives included evaluating the effectiveness and consistency of UOSH's enforcement of safety and health standards, assessing the effectiveness and efficiency of internal staff management practices including new staff training and inspector productivity, and reviewing federal grant management practices.

Our audit work included interviewing UOSH inspectors and managers, observing workplace inspections, reviewing citation files, attending settlement conferences between UOSH and Utah businesses, reviewing performance measures and federal grant documents and expenditures.

Chapter II: Comprehensive Policies Needed Throughout Inspection Process

Effective Policies Needed to Guide Compliance Officers.

Providing better guidance to Compliance Officers (CSHOs) can better ensure workers are protected and businesses are treated consistently. This section of Chapter II focuses on three areas where we think CSHOs need additional direction. First, UOSH should do more to make sure that identified hazards are abated. Second, UOSH should strive to enhance

the consistency of CSHO inspections. Third, UOSH should provide clearer policies and require that CSHOs better document routinely granted penalty reductions.

Settlement Terms Need More Documentation and Less Subjectivity. The case settlement process lacks some required documentation to justify why settlement decisions are made and reductions are given. Utah law requires UOSH to document a statement of reasons when settling penalties. In our review of 23 files, we found minimal documentation justifying adjustments to penalties. This lack of justification, along with the Compliance Manager's broad authority to reduce penalties exposes UOSH to criticism regarding an inconsistent settlement process. In fact, one case's settlement terms have been questioned as to its appropriateness. We believe the terms of the settlement were an error in judgment on the part of UOSH and needs to be controlled in policy.

1. We recommend UOSH make a more concerted effort to ensure hazards are abated by verifying 100 percent abatement and establishing a clear policy on the number of follow-up inspections to conduct.
2. We recommend UOSH regularly review staff performance measures to ensure CSHO differences do not adversely affect delivering a fair safety and health enforcement program that protects all workers.
3. We recommend UOSH hold office wide staff meetings, including both Consultation and Compliance staff, on how standards are to be applied.
4. We recommend UOSH create a policy reflecting the current practice of the one-time offer deal.
5. We recommend CSHOs improve documentation of the justification for allowing good-faith reductions and the one-time offer deal.
6. We recommend UOSH comply with **Utah Code** 34A-6-202 and provide better documentation in the case file justifying any penalty reductions.
7. We recommend UOSH develop a more systematic way of determining how settlement terms are reached, such as using a checklist in each settlement conference.
8. We recommend UOSH create a policy requiring that all settlements involving third parties be reviewed by the Labor Commissioner, or designee.

UOSH New Hire Training Program Needs More Structure. A more comprehensive, well-defined new hire training program can help UOSH ensure that new CSHOs receive a well-rounded training experience that enables them to properly enforce workplace health and safety regulations. Under Utah law, UOSH is required to provide qualified personnel. However, we found that the program provided CSHOs an inconsistent training experience, leaving some feeling unprepared to conduct their own inspections once released from training. We believe that by adopting the best practices of other agencies, UOSH's new hire training program can provide the necessary structure and guidance to ensure that new CSHOs are competent to conduct inspections.

Management Needs to Improve Monitoring of Staff Productivity. We reviewed several indicators that concern us as to the productivity of CSHOs and management's response to their differences. First, the number of cases CSHOs issue differs significantly, making us question how management allocates workload. Second, CSHOs are disproportionately assigned fatality, accident, and complaint investigations. Third, there is a great deal of variance between CSHOs on how long it takes them from opening an investigation to issuing a citation. We believe it is management's responsibility to measure these differences and remedy any problems.

1. We recommend UOSH develop a structured, policy-driven training program, considering some of the following areas of improvement:
 - Adequately document trainee activities
 - Send new Compliance Officers in the field with experienced CSHOs for an adequate number of visits while in the training period
 - Create a syllabus type training schedule to be used during down time
 - Test Compliance Officers at scheduled intervals upon completion of a subject area
2. We recommend UOSH Management analyze CSHO productivity to ensure all are performing adequately and as expected and are participating appropriately in the workload distribution.

Accounting Errors Have Prevented Federal Funding of Some Eligible Expenditures. The Labor Commission's Administrative Services failed to account for all eligible expenditures in their request for

federal grant reimbursement. Due to coding errors, eligible expenditures were overlooked. Over the last four years, this accounting error totals about \$97,500 in missed grant monies for UOSH.

A Lack of Eligible Expenditures Has Also Caused Federal Funds to Lapse. Other contributing factors have caused an additional \$144,260 in grant monies to lapse. These funds may have lapsed for a number of reasons including, extended vacancies within UOSH which causes the budget to be underspent. However, a lack of reconciliation of program operating costs between the UOSH Administrator and the Labor Commission's Administrative Services Director also contributed to lapsed funds.

1. We recommend that the Labor Commission put in place processing controls into FINET so that each expenditure under the UOSH org cannot be processed without an activity code.
2. We recommend UOSH and the Labor Commission regularly reconcile UOSH expenditures.

Chapter I

Introduction

UOSH takes OSHA's place in providing safety and health assistance for Utah's workers.

The Utah Occupational Safety and Health Division (UOSH) is Utah's program for providing safety and health assistance for employees and employers. *Utah Code* 34A-6-102 charges UOSH with preserving "human resources by providing for the safety and health of workers" through "a coordinated state plan to implement, establish, and enforce occupational safety and health standards." States are encouraged by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) to operate their own job safety and health program in lieu of a federal program. Thus, UOSH steps in where OSHA would otherwise. Since 1985 UOSH has operated under a state plan; federal OSHA approves and monitors the plan and also provides a portion of the operating costs.

UOSH Protects Worker Safety and Health

Utah Code 34A-6-104 vests UOSH, through the Labor Commission, with "jurisdiction and supervision over every workplace in this state" and empowers it to "administer all laws and lawful orders to ensure that every employee in this state has a workplace free of recognized hazards." UOSH has jurisdiction over all workplaces in the state except those employing federal employees and mining establishments, with some limitations on small farming operations. Although UOSH is organized into three programs, our audit work focused on the compliance process which ensures that businesses comply with safety and health regulations. In addition, separate from our audit work, OSHA also provides oversight of UOSH.

UOSH Is Organized Into Three Programs

UOSH works to accomplish its mission through three programs: Compliance, Consultation, and Bureau of Labor Statistics (BLS). Expenditures for state fiscal year 2005 for each program are presented in Figure 1. The amounts shown in this figure include both program costs and UOSH administrative costs. However, as explained in Chapter IV,

other indirect administrative costs may also be included in state matching expenditures for federal grant purposes, but are not shown here.

Figure 1. UOSH spent \$2.5 million in three programs in state fiscal year 2005.

UOSH Program	FY2005 Expenditures
Compliance	\$1,871,449
Consultation	562,905
Labor Statistics	112,789
UOSH Total	\$2,547,143

Consultation includes Workplace Safety expenditures managed by UOSH.

UOSH has 37 employees in the division, which includes administration and program staff.

Compliance Enforces Safety and Health Regulations. The Compliance program (Compliance) provides inspections of Utah workplaces to ensure “places of employment are free from recognized hazards that are causing or are likely to cause death or serious physical harm to their employees.” UOSH’s website states that through these inspections, and other employer or employee contact, Compliance helps to ensure that hazards are identified and abated to protect workers. To accomplish this, the Utah Occupational Safety and Health Act authorizes UOSH “to conduct inspections, and to issue citations and proposed penalties for alleged violations.” Thus, Compliance’s main function is regulatory; it requires businesses to comply with safety and health regulations. Compliance also provide assistance to Utah employers through the Voluntary Protection Program, compliance assistance, and public sector consultation. Additional duties may include on-going CSHO training/presentations, maintaining UOSH equipment, and other administrative tasks. Compliance has a staff of 19 Compliance officers.

Consultation Provides Education to Employers. The purpose of the Consultation program is to help businesses meet safety and health regulations, as well as develop ongoing safety and health programs. Consultation staff visit places of business at the request of employers to

Compliance protects workers from hazards by conducting inspections and issuing citations.

Consultation provides employer education but does not issue citations or penalties.

identify potential hazards. When safety and health hazards are identified, Consultation staff provide education but do not issue citations or assess penalties. The Consultation program “is available at no charge to any business with one or more employees throughout the state.” However, priority is given “to small business employers in high hazard industries.” Consultation has a staff of six Consultation officers.

UOSH’s Bureau of Labor Statistics Program Compiles Safety and Health Data. UOSH’s Bureau of Labor Statistics collects, compiles, and analyzes occupational safety and health statistics. Utah work place illnesses and injuries are compiled, whether or not the employment is within UOSH jurisdiction.

Audit Focused on Compliance Enforcement Process

Our audit focuses mainly on the management and operation of the Compliance enforcement program. The Compliance process includes both the conducting of an inspection and its resolution. Inspections are conducted by Compliance officers (CSHOs) but the resolution of citations issued usually involves a settlement conference with the Compliance Manager.

The inspection process begins in one of two ways: First, UOSH may be alerted to an event, such as a complaint, accident, referral or imminent danger situation. If UOSH determines the information has merit, then a CSHO is assigned to investigate. Second, UOSH may also generate their own planned inspections aimed at identifying certain illnesses/injuries or industries where employees are most at risk. These assignments include: follow-ups, monitors, and planned inspections.

CSHOs Conduct Inspections. Once the inspection is assigned, a CSHO will visit the site. The CSHO will conduct a walkaround inspection to “identify potential safety and/or health hazards in the workplace.” The CSHO may use several techniques to conduct the inspection, including interviewing employees or other individuals, reviewing the employer’s safety and health plan, taking samples, taking pictures or making audio recordings, and reviewing medical records.

Upon completion of the on-site inspection, the CSHO will conduct a closing conference either in person or by telephone. In the closing

Compliance officers (CSHOs) conduct inspections either in response to an event (such as an accident) or in an effort to target certain high hazard industries or illnesses.

conference the CSHO is to “describe the apparent violations found during the inspection.” If any violations were found, the CSHO will write a citation, including any penalty assessed and establish a time frame for the employer to abate or fix a hazard. The citation is then reviewed and approved by UOSH management and sent to the employer. *Utah Code 34A-6-302* requires the citation to be issued within six months following the occurrence of the violation.

Employers May Contest Inspection Findings. According to *Utah Code 34A-6-303*, an employer has 30 days from the receipt of the citation to notify UOSH that the employer intends to contest the citation, abatement, or proposed assessment. Otherwise the citation “is final and not subject to review by any court or agency.” If an employer files a formal notice to contest, the Labor Commission must provide the opportunity for a hearing. Formal administrative hearings are provided by an Administrative Law Judge (ALJ) in the Labor Commission’s Division of Adjudication.

The majority of UOSH’s citations are handled through an informal settlement. Often an employer will informally meet with the Compliance Manager and resolve the citation and penalty before the period to file a formal notice to contest has elapsed. Other times informal conferences are used to settle formally contested citations before they are heard by an ALJ. We discuss the informal settlement process more in depth in Chapter II of this report.

Once a citation is finalized, a monetary penalty may be due. As discussed later, a variety of factors affect whether a penalty is assessed and the amount charged. According to *Utah Code 34A-6-307*, “Any civil penalty...shall be paid into the General Fund.” Figure 2 shows the amount of UOSH penalty receipts over the past five years as well as the unrestricted General Fund appropriations to UOSH.

Employers may contest citations formally with an ALJ or informally with the UOSH Compliance Manager. Most are handled informally.

Since 2001, UOSH penalty receipts have almost met UOSH general fund expenditures.

Figure 2. UOSH Cash Receipts From Penalties vs. General Fund Expenditures. Unrestricted General Fund expenditures are largely offset by cash receipts from penalties from UOSH citations.

State Fiscal Year	General Fund Receipts from UOSH Penalties	Unrestricted General Fund Expenditures
2001	\$ 510,509	\$ 584,300
2002	542,126	631,300
2003	449,015	605,900
2004	584,873	670,200
2005	<u>796,986</u>	<u>647,200</u>
Total	\$2,883,509	\$3,138,900

The figure shows that penalty receipts have been roughly comparable to UOSH’s unrestricted General Fund expenditures since 2001. The absence of any direct link between penalties and UOSH’s budget reduces potential concerns that citations are issued to generate revenue. Nevertheless, Figure 2 shows that state funding of UOSH is largely offset by penalty receipts into the General Fund.

OSHA Provides Federal Oversight of UOSH

OSHA provides ongoing oversight of UOSH in a number of ways. Every five years, UOSH is required to develop a strategic plan designed to guide the state’s program in helping OSHA achieve its strategic goals. Annually, OSHA provides grant funds and requires the state account for expenditures according to federal requirements. Federal staff periodically audit UOSH. In addition, as discussed below, OSHA reviews UOSH’s performance through several State Activity Mandated Measures (SAMMs). The SAMMs while useful, primarily measure timeliness as opposed to quality of inspections. In some cases, UOSH has shown significant improvement in the timeliness of initiating or completing inspections.

Improved Performance Measures Are Encouraging. For federal fiscal years 2003 through 2005 UOSH’s performance, as reflected in

OSHA oversight of UOSH includes reviewing performance measures and periodic audits.

Some federal timeliness measures show UOSH's improved performance.

federal performance measures, has shown improvement. In one of these measures, OSHA requires UOSH to initiate an inspection within five days of a complaint. UOSH's Compliance program in this area has improved since 2003 from 7 days to 4 days. Another example of UOSH's improvement is the reduction in average number of calendar days from opening conference to citation issuance over the last three years; it has gone from 67 days to 42 days, better than the national average of 45 days. While the improvement in average timeliness is encouraging, we are concerned that on many measures CSHO performance varies widely. Some of the differences among CSHO performance are discussed in more detail in Chapters II and III.

Audit Scope and Objectives

This audit addresses the performance of the Utah Occupational Safety and Health's (UOSH) Compliance program. Specific audit objectives included the following:

- Evaluate the effectiveness and consistency of UOSH's enforcement of safety and health standards. Our review included both the initial inspection and post-inspection settlement processes.
- Assess the effectiveness and efficiency of internal staff management practices including new staff training and inspector productivity.
- Review federal grant management practices.

Our audit work included interviewing UOSH inspectors and managers, observing workplace inspections, reviewing citation files, attending settlement conferences between UOSH and Utah businesses, and reviewing performance measures. We reviewed federal grant documents and discussed the UOSH program with OSHA officials. To help put UOSH performance into perspective, we contacted other state safety and health programs.

To help assess how UOSH is perceived in the business community, we interviewed a number of business representatives and also conducted an employer survey. We sent a survey to 200 businesses that were inspected by UOSH in 2005. We received 102 responses. The survey (shown in Appendix A) asked questions about the business' experience with the

CSHO during the inspection and Compliance Manager during the informal settlement phase of the process, if applicable. Overall, 81 percent of the responses indicate the inspection process improved safety and health conditions for the company.

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Chapter II

Comprehensive Policies Needed Throughout Inspection Process

Our review of the Compliance program found that more comprehensive policies are needed throughout the inspection process to ensure a fair, efficient, and effective operation. First, we found that policies should be strengthened and more clearly communicated to help ensure Compliance officers (CSHOs) treat businesses fairly and properly follow-up on identified problems. Second, we found that case settlement terms between UOSH and businesses to resolve inspection findings should be based on consistently applied rationale that is properly documented.

Throughout the inspection process we found unclear policies and practices that may produce an inconsistent enforcement program. We found it difficult to understand which policies UOSH follows, is required to follow, and what it chooses to follow. UOSH's policies include the Field Inspection Reference Manual (FIRM), their own Field Operations Manual, and their policies and procedures manual. We heard similar comments from CSHOs, that they were not exactly sure which policies to follow or why they conduct some inspections. UOSH management has stated they are in the process of revamping their Field Operations Manual. We encourage them to continue in their efforts.

Effective Policies Needed to Guide CSHOs

By improving guidance provided to CSHOs, UOSH can better ensure that workers are protected and businesses are treated consistently. This section describes three areas where we think CSHOs need additional direction. First, UOSH should do more to make sure that identified hazards are abated. Otherwise, worker safety and health may continue to be endangered even though the state has identified a hazard. Second, UOSH should take additional steps to ensure CSHOs treat businesses as fairly and consistently as possible. Based on performance measures we reviewed, it appears that some CSHOs are more likely to find violations and impose penalties than others. This could indicate some CSHOs are

CSHOs need more guidance to ensure workers are protected and businesses are treated consistently.

more strict while others are more lenient; if this is the case it would have an unfair impact on businesses and an adverse effect on workers. Third, UOSH should provide clearer policies and require that CSHOs better document routinely granted penalty reductions.

More Effort Needed to Ensure Identified Hazards Are Abated

UOSH should do more to protect workers by making sure the safety and health hazards it finds are abated. If known hazards are not eliminated, it does little good to inspect workplaces. UOSH can confirm that identified hazards are corrected by obtaining evidence of abatement and by subsequent inspections. While obtaining abatement verification evidence is important, it cannot be relied on exclusively. Evidence of repeat violations shows that more follow-up and monitoring inspections are also needed.

Better Abatement Verification Is Needed. Although UOSH should obtain evidence that the hazard is abated whenever a violation is found, this is not always done. Each time a citation is issued, the CSHO determines “the shortest interval within which the employer can reasonably be expected to correct the violation.” Based on that determination, the citation includes a specific date in order to ensure that the hazard to workers is remedied as soon as possible. Then, the employer is required to provide evidence to UOSH by the required date showing that the hazard is abated.

One of the performance measures OSHA routinely tracks is the percentage of violations for which UOSH has obtained evidence that the employer has abated the hazard to workers. OSHA requires 100 percent abatement verification in a timely manner. Although UOSH has improved its abatement verification compared to prior years, the rate in 2005 was only 74 percent, leaving potentially 26 percent of the inspections not abated within the federally set time limit of 30 days. During the final quarterly conference call for federal fiscal year 2005, federal OSHA officials pointed out that UOSH needs to verify abatement of hazards for all violations.

Abatement Verification Is Not Always Enough. We agree with OSHA that UOSH should obtain evidence of abatement from employers whenever a citation is issued. However, because the evidence is generally

More follow-up and monitoring inspections are needed to ensure hazard abatement.

In 2005, UOSH verified only 74 percent of hazard abatement within 30 days; although OSHA requires 100% verification in the same time frame.

29 percent of the follow-ups conducted revealed businesses either failed to abate or repeated the hazard.

UOSH does not have a clear policy on conducting follow-up and monitoring inspections and few are conducted.

self-reported by employers it should not be relied on exclusively. Subsequent inspections sometimes prove to be needed.

UOSH inspections sometimes result in repeat violations indicating that previously identified hazards have, in effect, not been abated. Federal policy states that “An employer may be cited for a repeated violation if that employer has been cited previously for a substantially similar condition.” In 2005, UOSH issued 76 repeat violations. Some of the repeat violations arose from follow-up inspections specifically designed to verify abatement, but most came from other types of inspections.

More Follow-up Inspections Needed to Protect Workers. We believe UOSH needs a clear policy directing CSHOs to conduct more follow-up and monitor inspections. The purpose of these two types of inspections is similar: to ensure that hazards are being corrected and workers are being protected. Follow-ups verify abatement is completed; monitoring is used when a long period of time is needed for abatement or to verify Compliance with variances.

Currently, UOSH has no clear policy on conducting follow-up and monitoring inspections, and few are conducted. Generally, CSHOs use their judgement on whether to follow up on previous citations. However, CSHOs who do not conduct at least 10 percent of their caseload as a follow-up or monitoring inspections receive a “marginal” on their performance evaluation. We found most CSHOs do not meet this standard. In 2005, only 49 of UOSH’s 780 inspections (6 percent) were for follow-up or monitoring. Individual CSHOs ranged from 3 to 16 percent; most were below the minimum 10 percent needed for acceptable performance.

The importance of following up on previous citations is shown by the number of repeat violations found. We examined 21 follow-ups conducted in 2005 and found that six (29 percent) either did not abate the originally cited hazard or repeated the hazard after it was abated. We believe that incidence of repeat violations indicates UOSH should put greater emphasis on following up on identified hazards. If UOSH is going to make an impact on safe working conditions, it must first start with employers who have been found to have unsafe working conditions.

UOSH Should Strive to Enhance Consistency of CSHO Inspections

In addition to increasing follow-up efforts, UOSH should strive to enhance the consistency of inspections. Our review of performance measures and our discussions with UOSH staff indicate important differences among CSHOs. Some inspectors appear more likely than others to issue citations—which if true, would have an unfair impact on businesses and an adverse effect on workers. This apparent inconsistency is a concern because UOSH seeks to treat all businesses as fairly as possible and protect all workers by eliminating safety and health hazards. Although we recognize UOSH does review some CSHO performance measures, we believe measures should be reviewed to ensure CSHOs are consistent with employers in how they conduct inspections and issue citations. Performance measures should also be used to tailor training and communication efforts to address issues that arise from that review.

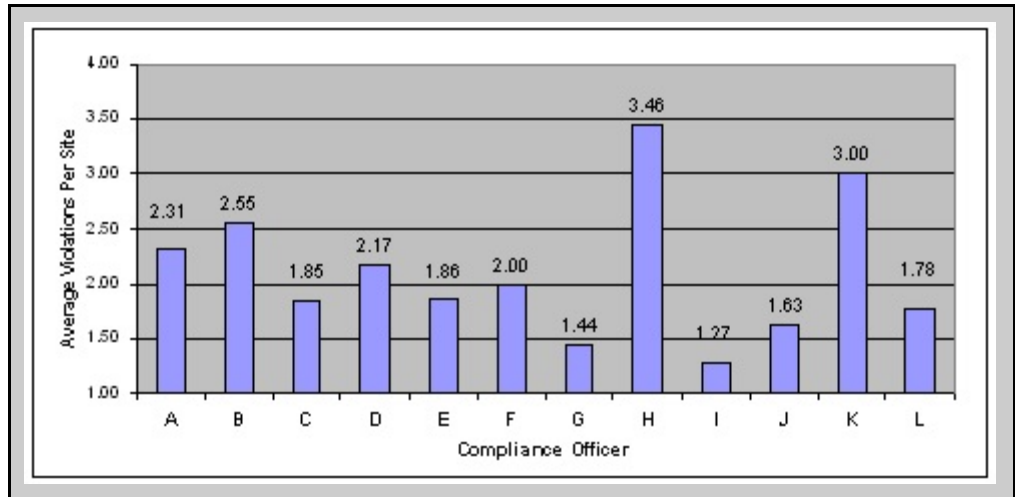
Performance Measures Indicate CSHO Inconsistency. We looked at several output measures that track the performance of individual CSHOs. Some measures show wide variances in the productivity of different CSHOs (e.g., how many and how quickly inspections are completed); these are discussed in the next chapter. This section reviews performance measures that indicate some CSHOs may be more strict or more lenient than others in identifying violations of safety and health standards. If that is the case, some workers may not be protected and/or some businesses may be treated unfairly.

To evaluate whether some CSHOs might be more likely than others to find violations, we reviewed data for inspections completed in 2005. Figure 3 shows that CSHOs varied considerably in the number of violations per inspection, ranging from about 1.3 to 3.5 violations.

CSHO variance shown in some performance measures is a cause for concern.

Performance measures indicate that CSHO variability may affect the consistency of the program.

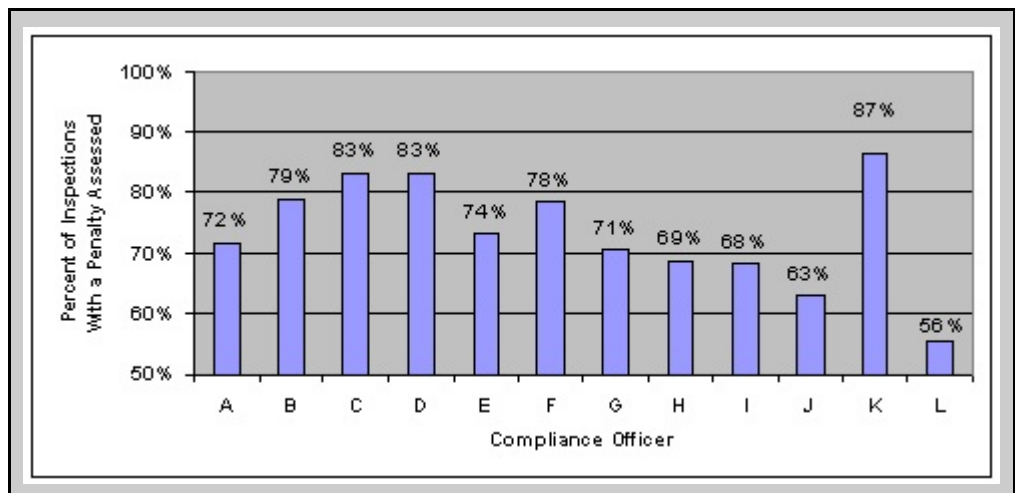
Figure 3. Average Violations per Inspection by CSHO in 2005. The variance among CSHOs in the number of citations issued raises concerns about the consistency of enforcement.



Compliance officers A through L in both Figures 3 and 4 conducted inspections throughout 2005 and had completed new hire training.

A second measure we developed using UOSH’s CSHO performance data, shows the percent of inspections with a penalty assessed and also presents the differences among CSHOs. Figure 4 shows that all inspectors assessed penalties on most of the inspections they conducted, but just three CSHOs assessed penalties on more than 80 percent of inspections.

Figure 4. Percent of Inspections with a Penalty by CSHO in 2005. Some CSHOs assessed penalties more frequently than others.



There are many possible explanations for the data shown in the above figures. For example, the preponderance of health vs. safety inspections or of construction vs. other industries may affect performance measures. While we do not discount such causes, we could not confirm that they explained the differences. When we asked about the inconsistency in performance measures, the UOSH Compliance Manager said that the types and scopes of inspections vary greatly and it is difficult to compare CSHO performance. However, the Administrator seems more concerned with the variability. He has questioned the Compliance Manager why CSHOs perform so differently. He acknowledged some performance issues with CSHOs that he is concerned about. We recognize that each inspection is unique, but think the variances are too significant and indicate differences among CSHOs. Moreover, as discussed below the Compliance Manager also acknowledged that citations must be reviewed to correct for differences among CSHOs.

UOSH management is aware of CSHO variance.

UOSH Staff Acknowledge Differences Among CSHOs. Both UOSH managers and CSHOs are aware of the variance in their approaches to enforcing workplace safety and health standards. For example, although all violations that are cited as willful are carefully scrutinized by the Compliance Manager, she acknowledged that one particular CSHO cites more than others. This CSHO identified seven willful citations last year. After review, the Compliance Manager only allowed two of this CSHO's willful citations to be issued. As discussed previously, willful violations are very serious because they indicate a knowing disregard for worker safety and health by an employer. It is concerning that one CSHO appears much more likely to classify violations as willful than others. In addition, CSHOs' inspections are formally contested with great variance. Formal contests range from one CSHO having one formal contest out of 37 inspections, compared to another CSHO having seven formal contests out of 35 inspections. Again, we believe management must look at these indicators to ensure appropriate consistency among CSHO performance.

CSHOs said they are frustrated by differing opinions on how standards are to be applied.

Our discussions with UOSH staff also indicated possible differences in inspection practices. Some staff expressed frustration about differing opinions within UOSH about how some standards should be applied. One staff member voiced a frustration with differences in standard applications from the officer's initial training—which was within the last three years. Another member of UOSH staff stated everyone, including

Compliance and Consultation, needs to understand the application of standards, yet they do not.

During the audit a number of staff from both Consultation and Compliance expressed frustrations over a general lack of communication within the agency. One staff member even said that because of this lack of communication employers play Compliance and Consultation against each other. For example, staff told us that the fall protection standards application changed yet not everyone was informed. However, UOSH management told us they communicated the change in multiple ways, including minutes from a staff meeting, e-mails between Compliance and Consultation management, and a joint conference which included both Consultation and Compliance staff. Although management believes they clarified the change in application, it does not appear it was understood by all staff.

Performance Measure Review Should Focus on Ensuring Appropriate Consistency Between CSHOs. We believe UOSH should review CSHO performance measures to determine if differences among the CSHOs are impacting the consistency of the program. Performance measures may also be used to tailor training and communication efforts to address issues that arise from that review. Differences among CSHOs do not necessarily indicate problems, but the variability between them should be investigated and understood. In our opinion, UOSH managers too willingly attribute differences among CSHOs to differences among particular inspections or other factors that are beyond their control. We think UOSH should be more proactive in using performance measures to assess whether unwarranted or undesirable differences among CSHOs exist.

Information gleaned from performance measures may help UOSH managers identify topics that need discussion among staff. During our audit we were approached by both Compliance officers and Consultation staff with complaints of a lack of communication of the safety and health standards. We were told that Compliance and Consultation do not meet together to discuss the application of the standards, nor does UOSH publish an internal document on how standards are to be applied. Fostering more communication among staff can help enhance the consistency of the enforcement program.

Performance measures should be reviewed to ensure differences among CSHOs are appropriate.

Better Documentation Needed of Routine CSHO Penalty Reductions

UOSH should improve the justification for penalty reductions included in case files. When CSHOs issue citations they routinely grant several types of penalty reductions according to OSHA guidelines. These include a 15 to 25 percent reduction based on the employer's good faith establishment of a safety and health program. In reviewing case files we were sometimes unable to verify that granted reductions for good faith were warranted. In addition to the good faith reduction, CSHOs may also allow an additional 60 percent discount for a UOSH authorized "one-time offer." We found this one-time offer needs to be defined in policy as the practice currently exists and better documented in files.

We randomly selected 12 case files to become familiar with UOSH's processes from the start of an inspection to the end. Specifically, we focused on assessed penalties, penalty reductions, and the informal and formal settlement processes. We initially hoped to be able to assess the merits of individual cases, but we found that there was not adequate information in the files for us to do so. While a limited number, the 12 files examined did show the need for better written justification of some penalty reductions.

Good Faith Reduction Needs Written Justification. CSHOs have the authority to give either a 15 or 25 percent penalty reduction for an employer's "good faith." Good faith is based on the employer having a written safety and health program. The degree of the program determines whether 15 to 25 percent is justified. If a safety and health plan included more than incidental deficiencies, then the employer would be limited to a 15 percent reduction. The good faith reduction can account for a significant penalty adjustment. For example, if an inspection's initial penalty was \$5,000 the good faith reduction could be as much as \$1,250 or 25 percent.

When reviewing files we found that some businesses received no reduction for good faith, others received a 15 percent credit, and others a 25 percent credit, but there was insufficient written justification explaining the credit amount. We believe employers should be given the good faith reduction when appropriate but there must be documentation justifying the reduction—such as an explanation of why, in the CSHO's professional judgment, this employer's safety and health program was meritorious.

The justification for granting good faith reductions to employers was difficult to verify due to insufficient documentation.

UOSH's allowance of up to a 60 percent reduction in penalties is not set forth in policy.

One-Time Offer Needs Guiding Policy and Documentation. In reviewing the cases we also found that UOSH offers a discount of up to 60 percent for the first time an employer is issued a citation, or if it has been at least ten years since the last citation, or if there has been a change in ownership since the last citation. This is only allowed for small businesses (with 250 employees or less). This practice is not described in OSHA guidelines, nor is it a written UOSH policy.

When writing up the citation, CSHOs make the determination whether or not a business “deserves” this discount. If the business qualifies, then a notice is sent showing the proposed penalty after the OSHA designated reductions, and the reduced amount with the 60 percent reduction. To receive the one-time reduction, the employer signs a settlement agreement accepting the citation. We believe this practice should be in policy with guidelines explaining how CSHOs should apply it.

We also found that files did not contain documentation on how CSHOs justified allowing a UOSH-permitted one-time offer of up to a 60 percent reduction on an employer’s first citation. Our review showed one example of one employer receiving this discount twice. This resulted in the employer receiving a \$750 discount on the second citation that should not have been received. Requiring CSHOs to document the justification for allowing the offer will force them to go through the necessary steps that will alert them if the offer has been given before.

Settlement Terms Need More Documentation and Less Subjectivity

The case settlement process lacks some required documentation to justify why settlement decisions are made and reductions are given. We reviewed 23 files and found minimal if any documentation justifying penalty reductions. In 2005, UOSH penalties were reduced by 53 percent. This, coupled with the Compliance Manager’s broad authority to reduce penalties, and lack of documentation justifying why penalties are reduced, exposes UOSH to criticism regarding an inconsistent case settlement process. In fact, one case’s settlement terms have been questioned by several interested parties as to its appropriateness. We were specifically asked to look into this case settlement. We found it was an isolated case, with no apparent personal gain, but believe the terms of the

A lack of documentation justifying informal settlement terms, partnered with broad authority to reduce penalties, exposes UOSH to criticism on case settlement consistency.

settlement were an error in judgment on the part of UOSH and needs to be controlled in policy.

Under Utah law, employers may request an informal settlement conference “for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest.” The UOSH Administrator has delegated the authority to conduct settlement conferences to the Compliance Manager. If the employer chooses to discuss a citation, they meet with the UOSH Compliance Manager.

We observed that UOSH’s settlement conference is a venue for employers who have been cited to discuss and negotiate violations and penalties issued. Employers can present their progress toward abatement and discuss any concerns or disagreements with the citation. The Compliance Manager will make a determination if adjustments to the citation should be made. Most inspections that contain violations are settled. An Employer may also formally contest a citation and present the case to an Administrative Law Judge within the Labor Commission.

Penalty Reductions Need Adequate Documentation

We found little justification for the settlement terms on the cases we reviewed. The settlements frequently include reductions in penalties. According to Utah law, UOSH is required to document penalty adjustments. The Compliance Manager admitted that the reason for the reduction does not always get documented. In federal fiscal year 2005, UOSH penalties were reduced by about 53 percent or about \$755,000. This includes reductions from settlement conferences and one-time offers. Citation penalties were originally assessed at about \$1,438,000 million. However, after adjustments, including reductions based on settlement agreements and the one-time offer, the final amount owing from businesses was \$683,000.

UOSH should comply with the law in requiring the justification for penalty reductions be documented. *Utah Code* 34A-6-202(5) states, “the administrator shall include a statement of reasons for the administrator’s actions when the administrator...compromises, mitigates, or settles any penalty assessed under this chapter.” The OSHA Field Inspection Reference Manual (FIRM) states that “the reasons for such changes shall

UOSH does not adequately document a statement of reasons justifying penalty reductions as required by *Utah Code* 34A-6-202(5).

be documented in the case file.” State OSHA programs are designed so that the Compliance Manager has broad authority to reduce penalties. As a general UOSH practice, the Administrator does not review the settlement agreements.

Penalties Were Reduced with Insufficient Documentation.

During our audit we looked at the settlement or outcome of 23 cases to determine the justification for reductions or changes. In all 23 cases the initial penalty was reduced. The documentation in these 23 cases was not sufficient to explain why penalty adjustments were made. In addition, a lack of policies guiding the reductions did not help explain why adjustments were made. As stated previously, UOSH is required by Utah law to document the reasons why adjustments are made to the penalty.

The Compliance Manager explained that in the settlement conference, she may give a 60 percent reduction if it's the first discount offered to the employer and 50 percent if it's the second discount offered. She does not always give a reduction but when she does, it is (1) to fix holes in the employer's program or (2) to take into account the enormous cost of abatement that some companies face. She may also reduce it down to the statutorily required minimum amount of \$250 for serious violations. While we were auditing, there was no policy guiding this practice. However, the Compliance Manager has recently drafted a policy outlining the parameters justifying either a 60 percent or 50 percent reduction. In addition to creating the new policy, the Compliance Manager has stated she is making a more concerted effort to take better notes during conferences.

UOSH Should Develop a More Systematic Process for Determining How Settlements are Reached. The new policy mentioned above does state when either a 60 percent or 50 percent reduction may be given but it is very broad. We believe that developing a systematic process for determining settlement terms along with detailed documentation in the case file will support UOSH on the reasons justifying reductions. We suggest that in her effort to comply with Utah law and take better notes, the Compliance Manager (and UOSH) should document the justification for settlement terms in a more consistent, detailed way.

In the employer survey we conducted, discussed in Chapter I, we asked employers if they believe the settlement terms were reasonable.

The Compliance Manager's practice of discounting up to a 60 percent reduction in penalties was just recently set forth in policy.

Forty-one percent (18 out of 44) of the businesses that responded did not believe the settlement terms were reasonable. We realize some businesses may have answered this questions negatively due to a general disagreement with the penalties associated with these citations. As a regulatory agency, some complaints about penalties are to be expected.

Documentation explaining the justification for settlement terms will help to reduce scrutiny over UOSH's settlement process.

Detailed documentation, such as a checklist, would benefit both UOSH and the cited companies by reducing speculation on inconsistent settlement practices. It could provide information that certain items were consistently reviewed at the settlement conferences, such as the comprehensiveness of the employer's safety and health or training program. The documentation could include why the company was initially cited and what they have done since the inspection to justify a reduction.

Detailed documentation will also help UOSH recognize training opportunities for CSHOs.

In addition, UOSH may also want to document if an employer is given a reduction because the initial inspection's evidence was weak or the CSHO made a mistake. Not only do we believe this may help UOSH in meeting the requirement of the law for justifying penalty reductions, but it may also serve to help UOSH track individual CSHO performance, such as when CSHOs make mistakes, or to act as a training tool to explain when better evidence is needed.

One Case's Inappropriate Settlement Terms Causes UOSH's Integrity to Be Questioned

UOSH allowed a company to make a donation to an OSHA training center instead of paying a penalty.

The settlement of one case in 2003 has caused UOSH's integrity to be questioned. We believe the actions of the Compliance Manager involved in a particular settlement agreement were inappropriate as there was no authority allowing this type of settlement. We were asked to look into a donation made to an education association connected with UOSH. In the settlement, the company agreed to pay an amount equal to the citation's penalty, as a contribution, to an OSHA training center located in Utah. The contribution was to provide funding for scholarships for training in construction.

As discussed in Chapter I, *Utah Code* 34A-6-307 requires that any civil penalty collected by UOSH, "Shall be paid to the General Fund." Technically, the contribution monies were not collected by UOSH; the company sent them directly to the training center. Although UOSH does have the authority to re-evaluate penalties, we found no authority

allowing them to redirect a negotiated penalty reduction to another entity. UOSH's Compliance Manager told us she was approached by the company with the settlement request—the company confirmed this. We asked OSHA if they have a similar type of practice. We were told that federal OSHA does not offer this type of deal.

The Compliance Manager believes UOSH's case was weak and a penalty was not justified anyway.

The Compliance Manager stated that several factors contributed to the settlement of the case, including her belief that the case was weak and not strong enough to withstand litigation and the Assistant Attorney General involved in the case was urging her to settle old cases. The Compliance Manager also stated no penalties would have been received anyway because of the reduced severity of the case (based on the evidence). We are not in a position to determine if this would have been the outcome. We asked her why she did not vacate the case if she did not believe it was well supported. The Compliance Manager said that by settling the case this way both UOSH and the employer benefitted because neither had to expend their resources litigating.

Our concern is that a third party, the training center, benefitted from the settlement with no policy guidance. The employer had to pay an amount equal to the original penalty of an inspection that was not well supported. In fact, two investigations stemming from this incident stated policies are needed addressing this type of settlement.

UOSH still needs to create a policy prohibiting this practice.

Two Investigations Agree to the Inappropriateness of the Settlement. After an internal investigation was conducted by the UOSH Administrator in 2003 on the settlement, a policy was to be created prohibiting this practice. However, since then, no policy has been written. Incorporated into this written policy was to be a requirement that the UOSH Administrator must personally review all settlements which appear to depart from normal practices. In this case, the Administrator was not aware of the settlement until after it occurred. However, the formal settlement agreement was submitted by the Assistant Attorney General and signed an Administrative Law Judge, as is the procedure once a formal contest has been filed.

In October 2005, Federal OSHA concluded their own investigation (called a Complaint about State Program Administration, or CASPA) concerning the alleged unethical conduct with regard to the formal settlement agreement with the company. OSHA notes that UOSH took immediate steps to discontinue the practice; UOSH said they would

revise their policies concerning settlement terms. OSHA also notes that UOSH's Administrator notified OSHA upon becoming aware of the agreement and admitted to their error in judgment.

The Compliance Manager's Involvement Raises Additional Concerns. In addition to the settlement being a questionable practice, the situation was complicated further by the Compliance Manager's involvement in an organization related to the training center that received the donation; the Compliance Manager serves on the advisory board of this related organization. Although this settlement was, in our opinion, a conflict of interest for the Compliance Manager, we do not believe she received any personal gain. The training center is one of two training centers in Federal OSHA's Region VIII (which Utah, along with five other states, is included in). The other training center is in Colorado.

The Compliance Manager's involvement, coupled with the terms of the agreement, did not sit well with several people. We spoke with individuals in the community who were aware of the deal and spoke very poorly of it. We also heard from a company that was concerned about the terms of the settlement. UOSH was even questioned about the settlement in the interrogatories of another company's case.

We believe addressing the issues in this chapter will help UOSH ensure they are providing a consistent program. We believe that some of the concerns perceived by the business community can be reduced or eliminated if management works to reduce the opportunity for inconsistency.

Recommendations

1. We recommend UOSH make a more concerted effort to ensure hazards are abated by:
 - Verifying abatement in 100 percent of the inspections, as required by OSHA; and
 - Establishing a clear policy on the number of follow-up inspections to conduct.

2. We recommend UOSH regularly review staff performance measures to ensure CSHO differences do not adversely affect delivering a fair safety and health enforcement program that protects all workers.
3. We recommend UOSH hold office wide staff meetings, including both Consultation and Compliance staff, on how standards are to be applied.
4. We recommend UOSH create a policy reflecting the current practice of the one-time offer deal.
5. We recommend CSHOs improve documentation of the justification for allowing good-faith reductions and the one-time offer deal.
6. We recommend UOSH comply with *Utah Code* 34A-6-202 and provide better documentation in the case file justifying any penalty reductions.
7. We recommend UOSH develop a more systematic way of determining how settlement terms are reached, such as using a checklist in each settlement conference.
8. We recommend UOSH create a policy requiring that all settlements involving third parties be reviewed by the Labor Commissioner, or designee.

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Chapter III

Staff Management Practices Need Improvement

During our audit we found two major areas where management practices need to be improved to strengthen the UOSH program. First, we found that UOSH's new hire training program is unstructured and lacks sufficient guidance for new Compliance officers (CSHOs). Although we recognize changes to the program that management has implemented since the audit began, we believe there are still areas that require additional improvement. Second, we are concerned with staff productivity and believe that management needs to monitor and analyze workload to ensure staff are utilized effectively. Improved management practices can help relieve internal tensions between staff and management that also affect the agency.

UOSH New Hire Training Program Needs More Structure

By establishing a more comprehensive, well-defined new hire training program UOSH can help ensure that new CSHOs receive a well-rounded training experience that enables them to properly enforce workplace health and safety regulations. *Utah Code* 34A-6-109 requires UOSH to “provide an adequate supply of qualified personnel” to accomplish their mission. However, we found that the program provided CSHOs an inconsistent training experience that left some of them unprepared to conduct their own inspections once released from training. By adopting the best practices of other agencies, UOSH's new hire training program can provide the necessary structure and guidance to ensure that new CSHOs are competent to conduct inspections.

Training a new CSHO is a significant undertaking that requires months to complete. From 2000 to 2005 UOSH put 24 CSHOs through the new hire training program. The intention of the program is to provide each new hire with the knowledge, skills, and ability to effectively protect the health and safety of Utah workers while treating businesses fairly. Some of the items covered in the training include:

UOSH's new hire training program is applied inconsistently and leaves some new CSHOs feeling unprepared.

- State and federal health and safety standards
- Utah administrative code and various OSHA technical manuals
- Hazard recognition techniques
- Accessing and applying federal interpretations of new and existing standards
- Interfacing with the federal data recording system
- Collecting evidence and the preparation of legally defensible citations
- Appropriate use of personal protective equipment
- Proper engagement of investigatory activities with state businesses.

Unstructured Training Program Does Not Adequately Prepare CSHOs

We question the new hire training program’s sufficiency on delivering well-trained personnel. Although UOSH conducts a variety of training activities, policy is limited in defining standards for those activities. In addition, the policy on length of training and number of shadows has not been followed. As a result, we believe the new hire training program has not prepared new CSHOs for their jobs as well as it should.

Some CSHOs Not Receiving Well-Rounded Training. Based on available documentation and discussions with staff, we do not believe new CSHOs are adequately trained. UOSH does not have a comprehensive written plan for new trainees, and we could not verify that training time was well spent. While valuable training experiences are provided, new CSHOs also spend a significant amount of time self-studying standards. CSHOs told us, and we agree, that active training experiences are the most valuable. According to UOSH records, most new CSHOs do not stay in training long enough, and while in training, spend most days in self-study.

We found that most new CSHOs do not receive enough training. The UOSH policy manual states that, “the approximate time it should take to train a new CSHO is 110 to 120 days.” However, after reviewing the training records, we discovered that CSHOs spent anywhere from 73 to 121 days in training. The following figure shows the total number of work days ten CSHOs were in the new hire training program. Seven out of ten CSHOs did not meet the minimum requirement of 110 days in training.

The number of days new CSHOs spend in training are inadequate and too much of that time is spent on self-study.

Seven out of 10 CSHOs reviewed did not meet the 110 day minimum time requirement for new hire training.

Figure 5. CSHO Training Time. Large amount of CSHO time in new hire training program is unaccounted for.

Compliance Officer	Number of Days in Training	Days with Recorded Activity	Days without Recorded Activity	Percentage of Days with No Recorded Activity
1	84	52	32	38%
2	73	53	20	27
3	106	46	60	57
4	121	40	81	67
5	89	29	60	67
6	113	44	69	61
7	113	44	69	61
8	96	36	60	63
9	96	42	54	56
10	74	36	38	51

New CSHOs with the highest number of days in training have the lowest number of days of recorded activity – indicating a lack of structure in the program.

Figure 5 indicates that some CSHOs are given longer periods of training than others. For example, officers 1 and 2 were given only 84 and 73 days of training, respectively, compared to officers 6 and 7 who each received 113 days of training (or about 30 percent more days). We were told that some officers come with previous experience and need less training days than others. But it is interesting that officers 6 and 7, who received among the most training days, are actually given fewer days of recorded activity (44 days) than officers 1 and 2 who received the least training days but have the most days of recorded activity (53 days each). This indicates a breakdown of structure and order to the training process; we would expect the officers needing the most training to have more days of recorded activity than officers receiving less training.

We also reviewed training records for activities completed during the training period and found that much of the time had no recorded activities. UOSH records show that a wide variety of training activities are offered to provide the new hires a valuable experience. These activities include: classroom lectures on OSHA standards, field trips to view industry operations, classes taught by staff on topics relating to their expertise, video presentations, and inspections where a new hire shadows a senior officer. However, as Figure 5 shows, much of the training period

New CSHOs are frequently left to self-study safety and health standards.

includes no recorded activities. For eight of ten CSHOs, training records show no activities on more than half of the days in training.

In discussions with CSHOs, we learned that a significant amount of training time was spent in self-study of OSHA standards. One CSHO reported that there were periods totaling several weeks where he/she was simply left to self-study with no other direction provided. In addition, CSHOs told us that reading standards was a difficult way to learn the material, and that more active training experiences were much more valuable.

When we spoke with the UOSH Manager that handles training about the absence of recorded activities, he commented that they did not have time to constantly directly supervise CSHOs' training activities. The Manager stated that new hires are left to their "own reconnaissance" to self-study the standards. While it is understandable that management cannot always directly oversee the day-to-day training of new hires, we do not believe that large portions of time dedicated to self-training on the standards is a productive use of training time or even an effective learning tool. A more structured training program with a schedule of activities would result in a more productive learning experience.

CSHOs Vary Widely in the Number of Training Inspections Completed. We also found that some CSHOs did not participate in enough training inspections (shadows) during their training. Shadows are one of the most important training experiences because they allow a trainee to participate in a real inspection that is being conducted by an experienced CSHO. The UOSH policy manual states that "when the new hire is nearing the end of training he/she should have been out approximately 15 to 20 times with an experienced CSHO." Because many CSHOs participated in fewer shadows, we are concerned that they were not adequately prepared to conduct inspections when released from training to do so.

UOSH policy expects new hires to participate in 15 to 20 shadow inspections.

An analysis of training records for ten CSHOs who received new hire training between 2003 and 2005 revealed that the number of shadows they participated in ranged from 5 to 34. Figure 6 shows the number of actual shadows each new hire participated in and the average number of shadows per week conducted during training. The figure illustrates that seven out of ten CSHOs did not meet the policy requirement of

participating in 15-20 shadows during the initial training period. Most new hires averaged less than one shadow per week in training.

Figure 6. CSHO Participation in Inspection Shadows and Total Training Period Does Not Follow Policy. CSHO’s experiences in the new hire training program vary widely.

Seven out of 10 CSHOs did not participate in enough shadow inspections.

Compliance Officer	Number of Work Days in Training	Number of Shadows Participated In	Number of Shadows per Week
1	84	15	.9
2	73	34	2.3
3	103	18	.9
4	121	13	.5
5	89	5	.3
6	113	6	.3
7	113	9	.4
8	96	6	.3
9	96	14	.7
10	74	14	.9

When we asked the Manager why some CSHOs participated in so few shadows, he stated that some Compliance officers did not need many shadows because they come to UOSH with advanced degrees. However, after reviewing the training records we found no correlation between the number of shadows conducted and having an advanced degree. In addition, many CSHOs, regardless of educational background, expressed concerns regarding the adequacy of the training they received.

Figure 6 also shows that some of those with the fewest shadows remained in training the longest. If these CSHOs did not need shadows because of their existing knowledge, it seems the rest of the training experience would be shortened as well, but that was not the case. We do not understand the relationship between the length of the training period and number of shadows shown in the figure. In fact, the trainee who had the shortest training experience—just 73 days—had participated in the most shadows—34.

Some CSHOs and members of management agree that new CSHOs are not adequately prepared to conduct inspections after completing training.

New Hire Training Can Leave CSHOs Unprepared. Some CSHOs appear to be unprepared to conduct inspections on their own upon release from training, and this situation negatively impacts several functions of the agency. We were told by some members of management and CSHOs that new CSHOs are not adequately prepared to conduct their own inspections, after completing new hire training.

According to the UOSH Administrator, the citation review process is more lengthy and filled with more frequent mistakes because of the constant presence of new officers in the organization. Inconsistent training of these newly hired CSHOs further confounds the problem by routinely introducing CSHOs with inadequate training into the work force. The Compliance Manager and Supervisor have stated that they are overburdened because they have to conduct additional training for CSHOs in the field on skills not learned while they were in training. The Compliance Manager also stated that many UOSH citations are weak on evidence, which forces the agency to settle a significant number of cases.

After discussing the new hire training program with CSHOs, some told us they felt unprepared upon completion. CSHOs explained they did not feel they had participated in enough shadow inspections, and never had the opportunity to see the entire process from start to finish before being released from training. They also expressed the desire for more hands-on training with the equipment used on the job and specifically, more training in residential construction. In addition, CSHOs stated that more mock inspections, field trips to industries, and more legal training, would have improved their preparedness when entering the field.

UOSH Should Adopt Best Practices of Other Agencies

We believe that UOSH can take a number of steps to improve the new hire training program including: better documentation, more shadowing, a written training plan, and more testing. In discussions with other agencies we identified some best practices that we think UOSH should adopt. In some instances UOSH should improve its new hire training policy, while in others it just needs to follow existing policy.

We spoke with federal and other states' officials about new hire training programs. Although Federal OSHA does not have a required training program, OSHA offers a model for what a new hire training

Federal OSHA does offer a model new hire training program that UOSH could use to guide their program.

program should include. After discussing the details of this model with the Manager over training, it was determined that several concepts which were intended to be covered under the federal guide were absent from UOSH's practice or undocumented in policy and individual training records.

We also spoke with six states about their programs. Four states just verbally described their practices, but two states, Nevada and South Carolina, provided us with copies of their new hire training programs. These documents outline specific program requirements, such as benchmarks for progress and ways of measuring that progress and other improvements that we feel UOSH may benefit by adopting. Based on this information and our own review of the state program, we think UOSH should consider these improvements:

- Improve training documentation
- More frequently accompany seasoned inspectors on inspections
- Provide a comprehensive written program with a training schedule to ensure the CSHO is exposed to all duties of the Compliance officer job function
- Set time frames to achieve competence in critical areas and test on those areas

Adequate Documentation Will Track Trainee Progress. Adequate documentation of trainee activities is a tool management needs to track and evaluate the progress of each CSHO. It also ensures that each new hire has received consistent instruction and the appropriate level of preparedness before being released from training. However, we found UOSH does not fully track CSHOs through the new hire training program. UOSH needs to establish a reliable way of documenting CSHO training activities. We believe that the existing mechanism for tracking CSHOs does not fully capture all the components that have been deemed essential for effective training.

Frequent Shadowing of Experienced CSHOs Is Essential. In speaking with six other states, we found that most reported that their new hires shadow senior inspectors into the field during many occasions over the course of their entire training period. Although we were unable to establish a specific number of shadows required of new CSHOs, other states emphasized that it was a routine and frequent practice. In addition, UOSH Compliance officers have stated in interviews that they believe

Better tracking of training activities and increasing shadow inspections will help ensure new CSHOs are participating in consistent, meaningful training.

spending more time shadowing seasoned Compliance officers in the field would have better prepared them for conducting inspections. We believe it would be beneficial for trainees to participate in more shadows during their new hire training, and spend less time engaging in self-study. We believe that UOSH should require more shadow inspections, as well as review their current policy which only requires new CSHOs to participate in 15 to 20 shadows.

Having a written training plan will help UOSH create a structured program based on achieving adequately trained CSHOs.

Written Training Plans Are Needed. We believe the creation of a comprehensive written training program is needed. The lack of policies for conducting new hire training and the frequency of inconsistent practices such as variation in the number of times a CSHO shadows a senior inspector and the total time for each CSHO's training period, lead to the undesirable result of widely varying training experiences among CSHOs. For example, UOSH policy states that management should capture the type of industries a CSHO visits during training, yet fails to establish standards for how many different types of industries they should visit. Establishing criteria for what an adequately trained CSHO should be, and a structured plan for how to achieve that result, should be UOSH's goal.

Testing CSHOs throughout the training process will help ensure competency and alert UOSH when more training is needed.

Testing Can Help Ensure New CSHOs Are Competent. According to the Manager over training, UOSH does not conduct comprehensive testing on Compliance officers prior to releasing them from training. We were told that what is administered are scenario problems and questions on standards where trainees must identify hazards, site standards, and answer various questions. CSHOs check their own answers and then review the material as a group. This component of the training program is intended to serve as another part of the self-study technique that is emphasized in other areas. We believe that this type of testing does not adequately demonstrate comprehension and preparedness to enter the field. According to New Mexico and South Carolina, they test their CSHOs at scheduled intervals to ensure competency and address possible areas for additional training. We believe UOSH will benefit by adopting a similar practice and test CSHOs for competence.

In conclusion, we believe that UOSH should develop and implement a comprehensive written state program. This program should direct new hires towards participating in more frequent shadowing of senior inspectors instead of self-studying the standards and include testing mechanisms that emphasize competence, while adequately documenting

that progress. This plan should strive to remove the variation in training experiences among CSHOs and focus on producing a more competent and well-rounded staff.

Management Needs to Improve Monitoring of Staff Productivity

We reviewed several indicators that concern us as to the productivity of CSHOs and management's response to their differences. First, the number of cases CSHOs issue differs greatly making us question management workload allocation. Second, CSHOs are disproportionately assigned fatality, accident, and complaint investigations. Finally, we found a great deal of variance between CSHOs on how long it takes them from opening an investigation to issuing a citation.

We question how management utilizes their human resources and believe it is management's responsibility to ensure all CSHOs are being productive. Some CSHOs seem to consistently produce where others seem to be less productive. Management has told us that inspections and CSHOs differ so greatly that they cannot be compared. We believe it is clearly management's responsibility to measure CSHO performance using a variety of indicators. Then management must compare the results and provide feedback and direction that ensure productivity and efficiency. It is not acceptable to dismiss the inconsistencies we have identified as merely differences in inspections and CSHOs. Although we agree that a major part of the problem is the difference in how the individual CSHOs approach and complete inspections. We believe this problem is controllable. It is management's responsibility to measure and rectify the problem and we have not observed this happening.

Number of Cases Issued by CSHOs Differs Greatly

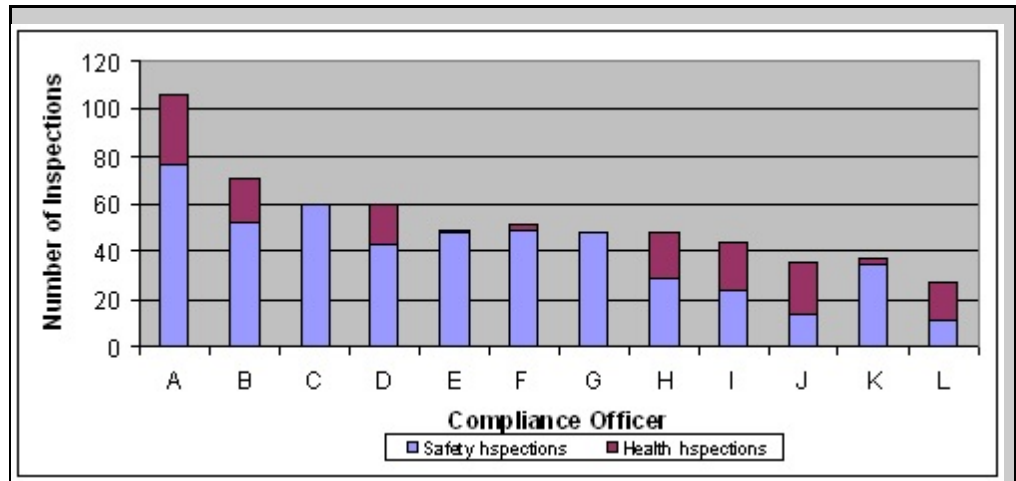
We found the number of inspections issued greatly differs among CSHOs. UOSH managers explain that some CSHOs produce a lot of inspections while others focus on detail as opposed to numbers. Management expectations are not clear. We do not believe management has effectively communicated to CSHOs the balance between the number of inspections versus detail. It is inconsistent to allow both and sends a

It is management's responsibility to monitor CSHO productivity and efficiency through performance measures.

Management must clearly communicate to CSHOs their expectations about inspection goals.

mixed message to CSHOs. The figure below shows the differing productivity of CSHOs.

Figure 7. Number of Inspections Issued in 2005 Differs Greatly Between CSHOs. Management should examine the number of inspections CSHOs issue to determine why some CSHOs are producing so many more inspections than others.



CSHO	Safety Inspections	Health Inspections	Total Inspections
A	77	29	106
B	52	19	71
C	60	0	60
D	43	17	60
E	48	1	49
F	49	2	51
G	48	0	48
H	29	19	48
I	24	20	44
J	14	21	35
K	34	3	37
L	11	16	27

Compliance officers A through L conducted inspections throughout 2005 and had completed new hire training.

Inspections are both assigned by management and self-generated by CSHOs. Management assigns inspections by allocating activities, such as complaints, accidents, fatalities, etc., to CSHOs. According to management, assignment is based on a variety of things, such as CSHOs' current workload, experience in a particular industry or safety or health focus, physical locality at the time (if the activity is an accident or

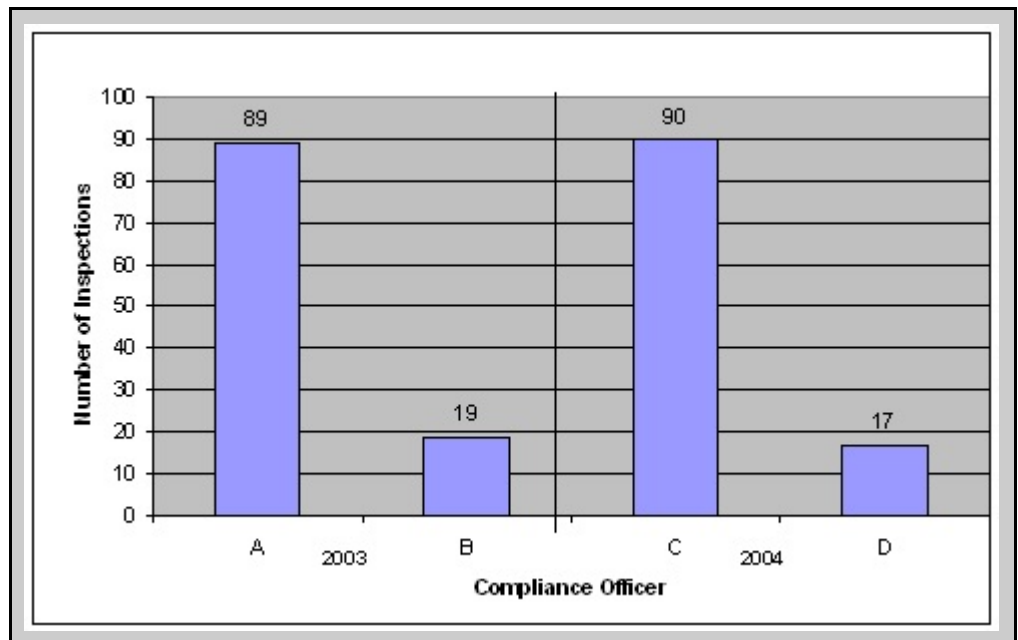
imminent danger), or availability. Management may also expand a complaint or other activity into a full inspection, as well as assign a planned inspection. CSHOs self-generate inspections by expanding the scope of a complaint, etc., if in the CSHO's professional judgment there is a necessity. CSHOs also self-generate inspections by witnessing a hazard or potential hazard.

We looked at inspection numbers for federal fiscal years 2003 and 2004 to see if 2005's variance in the number of inspections was just an anomaly, but we did not find that to be the case. In both 2003 and 2004, we saw significant differences between CSHO caseloads. Figure 8 shows that although CSHOs A through D on this figure are not the same CSHOs A through D as in Figure 7, management has continually allowed a great deal of variance in the number of inspections CSHOs conduct.

Figure 8. Past Years' Differing Caseloads are Also Troubling.

The difference in the number of safety and health inspections conducted by CSHOs in 2003 and 2004 further strengthens our belief that management needs to examine how and why workloads differ so dramatically. CSHOs A through D each worked a full year.

Productivity problems have been acknowledged by management.



In this figure, Compliance officers A - D are not the same officers as previously listed.

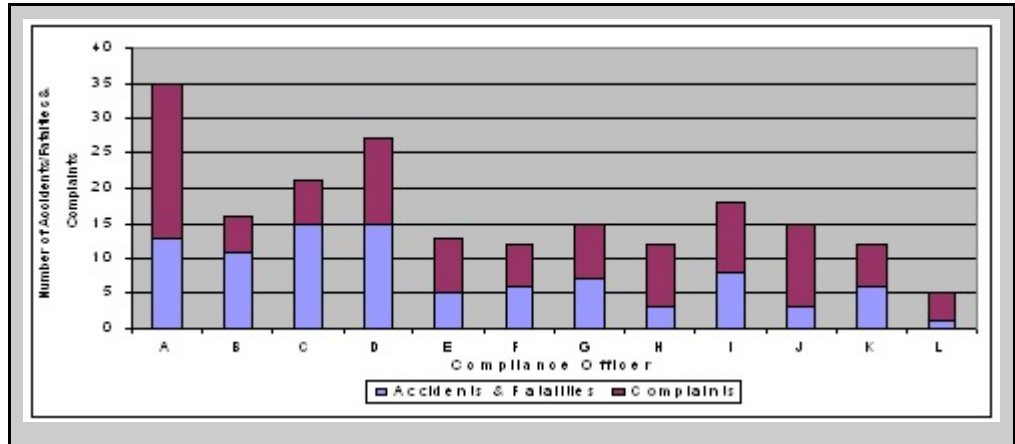
In response to this figure, UOSH management agreed that they have had productivity problems. The difference among CSHO caseloads makes us

question what management has done to ensure more consistent productivity.

Fatality, Accident, and Complaint Investigations are Disproportionately Assigned

We found that management assigns fatality, accident, and complaint inspections disproportionately among CSHOs. The figure below shows that some CSHOs are being assigned these activities more than others. Fatality, accident, and complaint investigations are not self-generated by the CSHOs. UOSH is notified of these events through various means, including a written complaint, the Internet, telephone calls from the employee, the employee's family may also call in, as well as the employer, the police, hospital, and even through the news. Once management determines UOSH will investigate the activity, a CSHO is assigned.

Figure 9. Management-Assigned Activities are Also Unbalanced. We question if management is assigning work effectively to ensure all CSHOs are contributing.



CSHO	Accidents & Fatalities	Complaints
A	13	22
B	11	5
C	15	6
D	15	12
E	5	8
F	6	6
G	7	8
H	3	9
I	8	10
J	3	12
K	6	6
L	1	4

Compliance officers A through L conducted inspections throughout 2005 and had completed new hire training.

Figure 9 shows that CSHO A was assigned 35 accidents/fatalities and complaints and CSHO L was assigned five. As seen in Figure 9, CSHO A is clearly assigned more accidents/fatalities and complaints by management than CSHO L. The number of these activities directly impacts the total number of inspections the CSHOs issue in Figure 7. Thirty-three percent of CSHO A's issued inspections are accidents/fatalities and complaints, which have been assigned by management. However, only 19 percent of CSHO L's issued inspections consist of the same management assigned activities. We question why CSHO L, with the lowest total number of issued inspections, is not being assigned more accidents/fatalities and complaints. We are concerned with this unbalanced distribution of assignments.

Policy states that a CSHO with expertise in a particular industry will be assigned to investigate (an accident, for example); management acknowledges they are not always able to assign activities this way. In addition, we reviewed the Standard Industrial Codes for each inspection, compared to the CSHO that was assigned. It does not appear that CSHOs are overwhelmingly assigned inspections from specific industries.

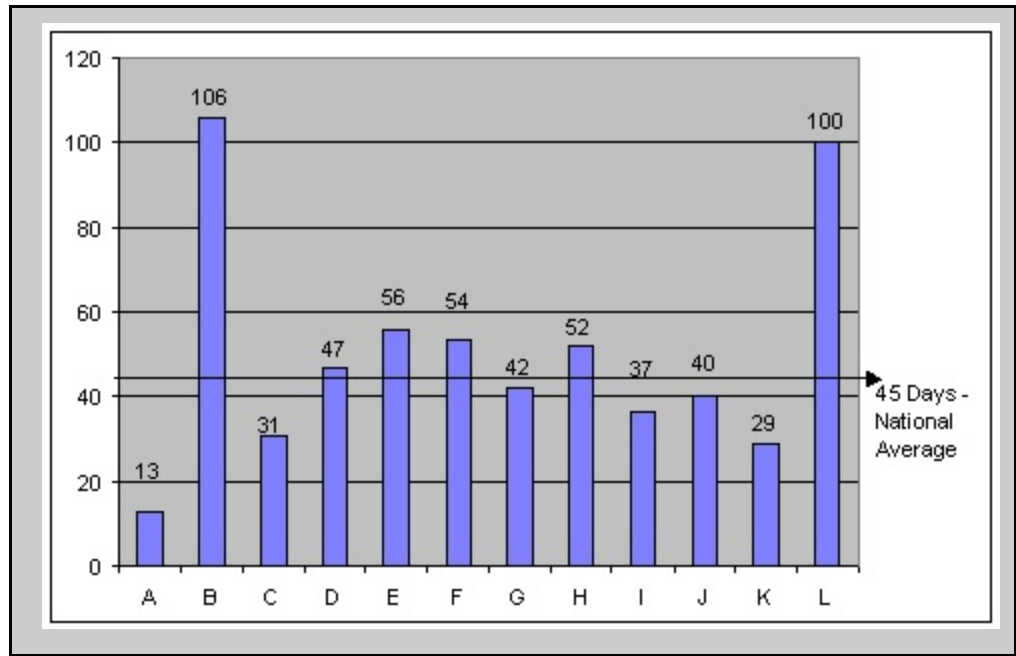
Average Open to Issuance Varies by CSHO

We also found CSHO variance in how long it takes from opening an inspection to issuing the citation. We believe the variance indicates performance problems with some CSHOs. Management must determine if the difference among CSHO performance creates inconsistency which affects the program and the employees CSHOs are to protect equally. The measure was discussed in Chapter I as one of the federal performance measures.

Based on the national average, CSHOs are expected to issue safety citations within 45 days of the opening conference. The figure below shows the great amount of variance among CSHOs in contributing to the average number of days from opening conference to citation issuance for safety citations.

Management must determine if the differences among CSHOs in the time it takes from opening to issuing an inspection are justified or produces an inconsistent program.

Figure 10. Average Number of Days from Open to Citation Issuance for Safety Inspections Shows Great Variance Among CSHOs. It appears that some CSHOs consistently take longer to issue citations than others. We believe management should be expecting similar performance from all CSHOs.



This federal performance measure is taken from the State Activity Mandated Measures for Safety Inspections. This figure reflects the performance of the same CSHOs as shown in previous figures.

This figure shows that on average the CSHOs differ exceedingly on how long it takes them to issue a citation. For example, CSHOs B and L take twice as long to issue an inspection than other CSHOs. We question why some CSHOs consistently take longer to issue citations and what management has done to bring CSHOs more in-line with each other. In turn, it appears that some CSHOs are consistently producing inspections faster than others.

Workload Allocation and Communication About Expectations Needs Improvement

During our audit we heard from several past and present CSHOs regarding dissatisfaction with some management practices, such as management’s distribution of assignments and the expectations placed on CSHOs. We believe that some of these practices have contributed to morale problems within UOSH. Our review of the differences in workload and assignment distribution, previously in this chapter, lends

We believe management weaknesses have contributed to morale problems with UOSH.

some justification to the CSHOs' concerns, whether or not it was management's intention.

We were told that workloads are not evenly distributed and that management assigns activities without understanding the complexity of the CSHO's current workload. Some CSHOs also feel that management has inconsistent expectations. For example, one CSHO expressed frustration over how management wants the CSHO to allocate his/her time because he/she is evaluated on conducting several types of activities at what the CSHO feels to be maximum levels.

Mixed messages about expected performance levels frustrate and discourage CSHOs.

We also believe management must communicate and demand what they desire from CSHOs' productivity. Management must determine at what point a CSHO is performing too much of a specific type of activity and require the CSHO to reallocate his/her time to another desired activity. In reviewing CSHO evaluation forms, 10 to 20 percent of the CSHOs' activities are expected to be from a type of activity called an intervention. However, one CSHO accomplished over 50% of his/her activities as interventions and was given an "exceptional" rating. This sends a mixed signal to the CSHO about what is an acceptable performance level. We believe management must taper these situations and require more structure in how CSHOs allocate their time to activities so that they perform them within management's desired plan.

By allowing performance at opposite ends of the spectrum, management encourages variance.

We also question how management directs CSHOs in inspection writing. As discussed previously, management told us that CSHOs perform differently—for example, one CSHO produces very detailed inspections while another produces a lot of inspections. These two CSHOs produce vastly different numbers of inspections. Allowing these two opposite ends of the performance spectrum opens management up to allowing every other type of performance from CSHOs.

We spoke with the Compliance Manager regarding management's expectations of CSHOs in the number of inspections they are required to conduct. In our review of the staff evaluation form for five Industrial Hygienists, none received a successful evaluation—this means none of them accomplished management's preset goal for how many inspections should be conducted. The Compliance Manager recognized some weaknesses in what is expected and is in the process of changing their evaluation instrument. We are concerned that CSHO productivity

Management's responsibility is to ensure citations are correct and communicate changes to CSHOs, helping CSHOs understand why the change was necessary.

differences may lead to differences in protecting Utah's employees, as well as make us question UOSH's effective use of human resources.

Finally, some CSHOs are frustrated because they believe management, unjustifiably, changes their citations after the CSHO has conducted an inspection. The CSHOs believe it undermines their professionalism and makes them look bad to the employers they are inspecting. However, we believe it is management's responsibility to ensure that all inspections are correct. If in their review of the CSHO's inspection video, management witnesses an additional violation that the CSHO failed to cite in the inspection, it is management's duty to correct that error. However, we also believe that it is crucial that management communicate with the CSHO the reason for the change and use the situation as a training opportunity for the CSHO. CSHOs have the responsibility to make the citation as correct as possible and management has the responsibility to communicate necessary improvements to the CSHOs. There must be an open communication between the two parties.

Recommendations

1. We recommend UOSH develop a structured, policy-driven training program, considering some of the following areas of improvement:
 - Adequately document trainee activities
 - Send new Compliance Officers in the field with experienced CSHOs for an adequate number of visits while in the training period
 - Create a syllabus type training schedule to be used during down time
 - Test Compliance Officers at scheduled intervals upon completion of a subject area
2. We recommend UOSH management analyze CSHO productivity to ensure all are performing adequately and as expected and are participating appropriately in the workload distribution.

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Chapter IV

Better Grant Management Practices Would Improve UOSH Finances

Accounting errors and a lack of eligible expenditures have caused UOSH to lapse a total of \$241,760 in federal Compliance grants since 2002.

Grant funds have not been fully utilized in operating the UOSH program. Since federal fiscal year 2002, UOSH has lapsed \$241,760 in the Compliance grant program. (An additional \$35,700 was lapsed in other grant programs.) Accounting errors have prevented the federal funding of some of UOSH’s eligible expenditures—causing about \$97,500 to lapse; the state earned these funds, but failed to request them. In addition, a lack of eligible expenditures has also caused about \$144,260 in federal funds to lapse; additional state matching funds would have been needed to draw down these funds.

Although UOSH is federally mandated, as a state program overseen by Federal OSHA, it receives funding from both state and federal funds. As shown in Figure 11, state funds accounted for 33 percent of the state fiscal year 2005 actual expenditures while federal funds accounted for 67 percent.

Figure 11. Sources of UOSH Funds in State Fiscal Year 2005.
Two-thirds of UOSH’s funding comes from the Federal Government.

UOSH’s program expenditures are 33 percent state funded.

Source of Funds	Amount	Percentage
Federal Grants	\$1,697,245	67%
State General Fund	<u>849,898</u>	<u>33</u>
Total	\$2,547,143	100%

The state’s portion comes from the general fund, including a portion coming from the restricted workplace safety fund. The federal portion comes from four different grant programs: Compliance, Consultation, Bureau of Labor Statistics (BLS), and OSHA Data Initiative (ODI). The combination of state and federal funds poses some unique challenges to UOSH in both accounting for funds and managing their budget.

Although not paid through UOSH's budget, indirect costs and rent are an important part of grant costs.

Indirect Costs are an Important Part of Grant Funding.

Figure 11 above shows actual UOSH expenditures and the total federal funds given for UOSH grants. Since federal grants are such a large part of UOSH's funding, it is important that they are well managed. In addition to direct costs, states charge indirect costs to OSHA grants; these are general overhead costs for running a state agency that are not directly associated with the agency (such as state or Labor Commission administrative support staff). And although the funds for indirect costs are not directly appropriated to UOSH, federal OSHA counts them as state costs benefitting the UOSH program. Therefore, OSHA includes these indirect costs when calculating the total grant program cost. Similarly, grant costs include a rent amount even though it is not paid through the UOSH budget.

Figure 12 illustrates the grant costs for the Compliance grant which is the largest of the federal grants. In addition to UOSH's expenditures, both the rent and indirect cost amounts for the Compliance grant as submitted by the Labor Commission for federal fiscal year 2005 are shown below in Figure 12. Although UOSH spent less than \$2 million from its budget for Compliance, the eligible expenditures for the grant were over \$2.4 million.

Figure 12. Compliance Grant Costs, Federal Fiscal Year 2005. UOSH Compliance grant revenue depends on indirect costs and rent as well as UOSH expenditures.

Type of Grant Cost	Amount
UOSH Compliance Expenditures	\$1,989,268
Indirect Costs for Compliance	389,203
Rent for Compliance	<u>49,541</u>
Total	\$2,428,012

These amounts are based on the Labor Commission's grant submission and not corrected for the errors discussed later in this chapter.

Funding by the federal government varies by grant type up to the grant limit. In the case of the Compliance and the BLS grants, the federal government matches state dollars on a 50/50 basis—they pay half the costs. However, the Consultation grant is on a 90/10 basis. This means

Grant money is capped at a fixed amount.

that federal OSHA covers 90 percent of the program costs and the state covers 10 percent, which may be done through indirect costs. Although the basis for these grants is a set percentage, the total grant money is capped at predetermined amounts. In each grant agreement, the federal government authorizes a fixed amount that can be used to match state dollars spent on the programs.

For the Compliance grant example shown in Figure 12, the grant limit was \$2.52 million. Since the match rate was 50 percent and the state had \$2.43 million eligible expenditures, about \$46,000 was lapsed. As discussed next, additional amounts were lapsed in prior years.

Weaknesses in Grant Management Have Affected UOSH Funding

UOSH has consistently allowed available federal funds to go unused with the biggest portion coming from the Compliance program grant. The following figure shows that over the past four years UOSH has lapsed over \$241,000 Compliance grant money. This is an average of \$60,000 per year which could have been used towards improving the safety and health of workers throughout the state. Although in much smaller amounts, some federal funds in the Consultation grant have gone unused as well.

The \$241,000 of lapsed funds could have been used towards improving the safety and health of Utah's workers.

Figure 13. Lapsed Federal Funds from the Compliance grant. Over the last four years, UOSH lapsed over \$241,000 of federal money from the Compliance grant.

Federal Fiscal Year	Federal Funds Lapsed, Compliance Grant
FFY 2002	\$ 40,291
FFY 2003	93,325
FFY 2004	62,150
FFY 2005	<u>45,994</u>
Total	\$ 241,760

In addition to the Compliance grant funds shown here, \$35,700 was lapsed from the Consultation and Labor Statistics grants over the same four-year period.

There may be several reasons why federal OSHA grant funds have lapsed. This chapter addresses two of them. Of this \$241,760, we found that accounting errors have prevented the state from requesting the reimbursement of federal funds for some eligible expenditures by about \$97,500. In addition, we believe there is also a lack of eligible expenditures preventing UOSH from capturing the federal portion, causing about \$144,260 to lapse. We reviewed these issues in relation to the Compliance Program grant since that is UOSH's largest grant.

Accounting Errors Have Prevented Federal Funding of Some Eligible Expenditures

The Labor Commission's Administrative Services failed to account for all eligible grant expenditures in their request for federal grant reimbursement. These eligible expenditures were overlooked because of errors in coding the expenditures in the state FINET accounting system.

In order to account properly for grant funds, expenditures are to be given an activity code that signifies a specific grant and specific federal fiscal year. The eligible expenditures were missed because they were not assigned an activity code. Thus, when the year-end reports were run based on the specific grants' activity codes, those expenditures were overlooked and consequently were missed in the request for reimbursement.

In addition to expenditures without activity codes, indirect costs associated with those expenditures were also missed. Over the last four years, this accounting error, consisting of both direct and indirect costs, led to a loss of \$97,500 of federal Compliance grant funds. Figure 14, below, breaks out the missed grant monies since 2002.

Of the \$241,000 that lapsed, \$97,500 was caused by a coding error in the state FINET system.

Figure 14. Federal Reimbursement Missed Because UOSH Compliance Expenditures Were Not Given Grant Activity Codes. Over the past four years UOSH missed nearly \$100,000 of matching federal funds because they failed to apply for reimbursement for those funds.

Federal Fiscal Year	Eligible Billings Missed For Reimbursement
FFY 2002	\$ 19,600
FFY 2003	17,045
FFY 2004	26,881
FFY 2005	<u>33,992</u>
Total	\$ 97,518

The Labor Commission has now fixed the accounting error and these expenditures should not be missed again.

Since the coding error was discovered, the Labor Commission has made changes that should ensure that all grant expenditures have an activity code. In the future, the FINET system will not process UOSH expenditures unless they are assigned activity codes.

A Lack of Eligible Expenditures Has Also Caused Federal Funds to Lapse

The other lapsed funds, totaling \$144,260, lapsed for several reasons, including a lack of reconciliation.

In addition to the accounting errors mentioned above, we believe there are other contributing factors that have caused federal funds to lapse. As discussed above, since 2002, UOSH has lapsed over \$241,760 federal grant dollars. Roughly \$97,500 was lapsed due to the coding errors discussed above. We believe that the remainder, about \$144,260, may have lapsed for several reasons. For example, extended vacancies within UOSH may cause budget to be underspent. However, there is also an important administrative factor that contributed to lapsing grant dollars. Program operating costs were not being reconciled between the UOSH Administrator and the Labor Commission's Administrative Services Director.

Lack of Reconciliation Has Caused Federal Funds to Lapse

We believe that if the UOSH Administrator and the Administrative Services Director had been regularly reconciling UOSH expenditures they may have recognized that federal grant monies were going unspent before the end of each fiscal year. If UOSH does not spend the money in the federal fiscal year, they cannot receive the federal grant match. In addition, if the UOSH Administrator and the Administrative Services Director were regularly reconciling UOSH expenditures, they may also have been able to recognize the accounting error addressed above.

Both parties were aware of a problem with lapsing federal funds in the past, yet they did not work together towards a resolution. By the end of federal fiscal year 2005 the UOSH Administrator had believed he had actually overspent the grant monies by \$6,000. Then, a few weeks later, he was told by the Administrative Services Director that in fact they had significantly underspent. Both parties told us they knew there was a problem reconciling; however, during federal fiscal year 2005 they did not resolve how to reconcile UOSH expenditures.

This lack of reconciliation has allowed the perpetuation of a problem where monies remained unspent and therefore lost to UOSH. Quoted from his letter dated December 20, 2005, to the U.S. Department of Labor/OSHA, the Administrative Services Director states that the grant was underspent by \$46,000. "This is due to a miscalculation of anticipated expenditures. The amount could have been obligated and expended; however, the miscalculation prevents us from now utilizing the funds."

We believe this lack of reconciliation has existed for at least four years. The missed reimbursements described previously show they have not been communicating the expenditures or reconciling regularly. Federal OSHA also believes this to be the case. In our discussions with OSHA Region 8's Manager of Administrative and Financial Program for State Plans, she said she was frustrated by the Labor Commission and UOSH's inability to reconcile. During a 2004 audit of UOSH she voiced those concerns to both the UOSH Administration and the Administrative Services Director, expressing her frustration because she was unable to find evidence of where they are budgetwise at year end. She went on to say that communication is a problem in this organization and it has existed for a

long time. One of the goals of Region 8's 2006 regularly scheduled review of UOSH was to understand their budget problems.

According to the UOSH Administrator and the Administrative Services Director, they are now meeting monthly to reconcile UOSH budget issues. We encourage them to resolve this issue. We feel this is necessary to ensure that Utah does not continue to allow federal grant monies to go unspent.

Recommendations

1. We recommend that the Labor Commission put in place processing controls into FINET so that each UOSH expenditure cannot be processed without an activity code.
2. We recommend UOSH and the Labor Commission regularly reconcile UOSH expenditures.

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Appendix A



STATE OF UTAH

Office of the Legislative Auditor General

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Audit Subcommittee of the Legislative Management Committee

President John L. Valentine, Co-Chair • Speaker Greg J. Curtis, Co-Chair
Senator Mike Dmitrich • Representative Ralph Becker

JOHN M. SCHAFF, CIA
AUDITOR GENERAL

January 19, 2006

«Employer»
ATTN: Safety/ Health Manager
«Mailing_Address»
«City», UT «ZIP»

Dear Sir or Madam:

The Office of the Legislative Auditor General has been asked by the Legislature to audit Utah Occupational Safety and Health (UOSH). The purpose of the audit is for program review and assessment. We understand that your organization has been inspected by UOSH in the recent past. We are conducting a survey of a number of businesses recently inspected by UOSH to better understand UOSH's impact on the local business community and professionalism in helping to improve safety and health conditions for Utah employees. We are interested in your experience in working with UOSH during the most recent inspection.

Data collected from this survey will be aggregated or used in such a way so as not to identify a particular business's experience with UOSH. We appreciate your participation in completing this brief survey. Please return the completed survey in the enclosed envelope by Friday February 3. Please be assured that all responses will be kept confidential and will not be released to UOSH or any member of the public.

If you have any questions or concerns about the survey or this audit, please do not hesitate to contact me.

Sincerely,

DeAnna Herring,
Lead Legislative Performance Auditor
(801) 326-1744
dherring@utah.gov

Confidential Employer Survey of Utah Occupational Safety and Health (UOSH) Inspection Experience

Circle or mark the appropriate area next to the following statements pertaining to your company's experience with UOSH during the most recent inspection:

	Strongly Agree	Agree	Disagree	Strongly Disagree
1. The Compliance Officer who inspected my business acted in a professional manner.	1	2	3	4
2. After the closing conference I understood which standards had been allegedly violated as explained by the Compliance Officer. <i>(If applicable)</i>	1	2	3	4
3. The Compliance Officer seemed knowledgeable about safety and health standards.	1	2	3	4
4. The inspection process improved safety and health conditions for the company.	1	2	3	4
5. Did the inspection result in penalties?	_____ yes		_____ no (if no, end of survey)	
6. Did you attend a settlement conference?	_____ yes		_____ no (if no, end of survey)	
7. During the settlement conference the UOSH Compliance Manager responded to my concerns in a professional manner.	1	2	3	4
8. During the settlement conference the UOSH Compliance Manager seemed knowledgeable about safety and health standards.	1	2	3	4
9. The settlement terms were reasonable.	1	2	3	4

Additional Comments (If desired, list the details of your case. If you are willing to allow us to contact you, please include your name and contact information. Additional sheets may be used.):

Employer Survey Results

The number of responses in each category are shown below.

	Strongly Agree	Agree	Disagree	Strongly Disagree
1. The Compliance Officer who inspected my business acted in a professional manner.	27	66	5	3
2. After the closing conference I understood which standards had been allegedly violated as explained by the Compliance Officer. <i>(If applicable)</i>	20	60	11	5
3. The Compliance Officer seemed knowledgeable about safety and health standards.	28	61	10	1
4. The inspection process improved safety and health conditions for the company.	15	64	13	6
5. Did the inspection result in penalties?	70-yes		29-no	
6. Did you attend a settlement conference?	47-yes		34-no	
7. During the settlement conference the UOSH Compliance Manager responded to my concerns in a professional manner.	16	25	6	0
8. During the settlement conference the UOSH Compliance Manager seemed knowledgeable about safety and health standards.	13	30	4	0
9. The settlement terms were reasonable.	9	17	11	7

Agency Response

June 15, 2006

Mr. John M. Schaff
Legislative Auditor General
W315 State Capitol Complex
Salt Lake City, Utah 84114

RE: Utah Legislature Report No. 2006-06

Dear Mr. Schaff:

The Utah Labor Commission appreciates the opportunity to comment on the referenced document. In general, the Commission agrees with the report and will work diligently to implement improvements. However, in the interest of recognizing the efforts of Utah Labor Commission personnel in improving operations of the Utah Occupational Safety and Health Division over the past four years, the following response is provided. First however, we would like to acknowledge the Office of the Auditor General's willingness to discuss and incorporate many of the Commission's comments on the exposure draft of the audit report. The final report reflects a document the Commission and specifically the Utah Occupational Safety and Health (UOSH) Division will utilize in guiding continuing improvement efforts over the near term.

The audit was an extensive effort which commenced in July 2005. During the course of the audit, the auditors looked at performance over several years. However, the report largely focuses on 2005. Although the report acknowledges some recent performance improvement, the Commission would like to briefly discuss the extensive effort invested by Commission personnel and improvement that has been realized. These improvements will be presented in the context of the audit report.

Procedures

UOSH acknowledges that it needs to continue the process of accurately documenting Division policy and practices in written procedures. UOSH established a policy and procedures manual in 2003 and adds or amends procedures as necessary. A copy of that manual's table of contents is attached. UOSH also uses procedures and processes developed by federal OSHA. Federal OSHA is currently revising its Field Inspection Reference Manual (FIRM). Once that revision is completed, UOSH will "Utah-ize" it to

document specific practices in Utah which may differ slightly from federal OSHA practices. Included in this Utah FIRM will be many of the documentation recommendations from the audit report.

Data

Although it is not explicitly stated in the report, the quality of Utah's occupational safety and health data has drastically improved from its status in 2002. Federal OSHA personnel called the status of UOSH's data "dismal" in 2002. Through training, extensive effort and dogged determination, UOSH corrected its data quality to the extent that federal OSHA now characterizes its status as "fixed and functional". Much of the data utilized by the auditors in assessing UOSH performance would either have been not available or of questionable quality in 2002.

Hazard Abatement

Hazard correction is the main element of UOSH's mission. No matter what else the Division does, if hazards are not abated, Utah's employees are exposed to risk of injury from those hazards and that is unacceptable. It is also essential that the abatement of those hazards is verified in a timely manner. The report states that in 2005 UOSH accomplished this 74% of the time. While UOSH needs to continue to improve, it is noteworthy that in May 2003 timely abatement verification stood at less than 1%. UOSH will utilize the audit report's recommendation of increased follow-up and monitoring inspections as one means of improvement.

Training

UOSH completely agrees with the audit report's assessment on the need to better train new Compliance Officers. UOSH currently operates with staffing levels that were established in 1985 even though the number of Utah employers has approximately doubled since 1985. It is imperative that these limited resources be as prepared as possible to perform very difficult, but worthwhile jobs. In 2002 the state of UOSH training was assessed and the need for improvement was noted, but it was functioning and producing acceptable results so improvement efforts were focused on other aspects of the Division's performance. Revision of the training program was formally commenced just before the audit started. Utilizing recommendations from the audit as well as input from federal OSHA and other states, UOSH plans to significantly improve its Compliance Officer training over the next year.

Personnel turnover is not specifically addressed in the report although the auditors looked extensively at the issue. Trained, experienced personnel are crucial to UOSH accomplishing its mission. UOSH completed and implemented a plan to retain its personnel. This plan sees training improvements as an essential element in retaining these valuable resources.

Communication

UOSH management makes a concerted effort to communicate well with employers, employees and its own personnel. Web site upgrades, membership on contractor association safety committees and a Compliance Assistance newsletter are all communications tools utilized to communicate externally. Internally, UOSH mainly utilizes staff meetings, electronic mail and written procedures for communications. However, UOSH communications can improve and UOSH will implement the audit report's recommendations to accomplish that improvement.

Grant Management

Grant management is another area where significant improvement has been made since 2002. Improper use of funding (co-mingling) and poorly developed performance plans characterized the program. Diligent effort and improved cooperation with OSHA Region VIII addressed many of the issues. With the audit indicating that further improvement was necessary, Administrative Services and UOSH individual and collective responsibilities were better defined and should improve communications concerning the grants. The corrective actions already taken in response to the issues identified in the audit process and documented in the report should be the final major steps in achieving the desired performance in federal grant management.

While audits of this nature are rarely pleasant for either the auditors or those being audited, they provide an independent assessment of performance and identify opportunities for improvement. UOSH accepts the serious challenge of fulfilling the mandate given it in Utah Code. In meeting that challenge, UOSH desires to be a fair and consistent regulatory agency and will use the audit report's recommendations as means for continuing improvement.

Sincerely,

R. Lee Ellertson
Commissioner

Attachment

Attachment
Utah Occupational Safety and Health Division
Policy and Procedures Manual
Table of Contents

Section	Title	Number
1 - Administration		
	Grants Application	ADM - 001
	Budget Management	ADM - 002
	FINET Invoicing	ADM - 003
	GRAMA Request Management	ADM - 004
	Media Requests	ADM - 005
	OSHA Log and Two Way Memos	ADM - 006
	Adopting Final Rules and OSHA Directives	ADM - 007
	Developing Strategic and Annual Performance Plans	ADM - 008
	Internal Evaluation and Quality Assurance	ADM - 009
	Fatality Reporting	ADM - 010
	Anonymous Complaints	ADM - 011
	UOSH E-Correspondence Policies and Procedures	ADM - 012
2 - Compliance		
	Inspection Casefile Preparation	ENF - 001
	Citation Compilation Preparation - NCR Application	ENF - 002
	Inspection Report Processing	ENF - 003
	VPP Approval and Management	ENF - 004
	Complaint Compilation and Assignment	ENF - 005
	Site Specific Targeting	ENF - 006
	Litigation Strategy Implementation	ENF - 007
	Post Inspection Procedures	ENF - 008
3 - Consultation		
	Employer Request Processing	CON - 001
	Consultation Marketing and Outreach	CON - 002
	Consultation Work Scheduling	CON - 003
	SHARP Approval and Management	CON - 004
	On-Site Visit Management	CON - 005
4 - Data/Reporting		
	BLS Survey Management	DSR - 001
	Fatalities Survey Management	DSR - 002
	ODI Survey Management	DSR - 003
	Data Quality Assurance	DSR - 004
	IMIS Query	DSR - 005
5 - General		
	Training - New CSHOs	GEN - 001
	Training CSHO's Using OTI	GEN - 002
	Medical Evaluations (New Hires)	GEN - 003
	Medical Evaluations (Current CSHOs)	GEN - 003a
	Respiratory Protection Program	GEN - 004
	General Standards	GEN - 005
6 - DHRM Rules		