

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

Wyoming Occupational Safety and Health Administration  
(Wyoming OSHA)



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## I. Executive Summary

The purpose of this report is to assess the Wyoming State Plan (Wyoming OSHA)'s performance for Fiscal Year (FY) 2021 and its progress in resolving the outstanding finding from the previous Federal Annual Monitoring Evaluation (FAME) Report.

Despite the challenges created by the COVID-19 pandemic, the State Plan was able to perform well with respect to many of the mandated measures. Two specific areas of success for Wyoming OSHA were its retention of penalties and retention of classification of violations. The State Plan was also highly successful in reducing its time between the opening conference and citation issuance for safety and health inspections.

Wyoming OSHA continued to utilize electronic case files, maintaining all inspection-related documents within the OSHA Information System (OIS). The review team commended the State Plan on its foresight in utilizing OIS to hold complete inspection case files.

An area that challenged the State Plan was obtaining prompt abatement of hazards. This FY 2021 Comprehensive FAME Report includes two new findings: one related to resolving and closing abatement for phone/fax complaints and the other related to late abatement for open, non-contested inspections. The number of phone/fax investigations open for more than thirty calendar days steadily increased from FY 2019 to FY 2021. Similarly, the number of open, non-contested cases with abatement incomplete for more than 60 calendar days has remained significantly high from FY 2019 to FY 2021. The timely closure of phone/fax investigations and open, non-contested cases was not successfully addressed.

This FAME Report also has two new observations. One is related to the State Internal Evaluation Program (SIEP), and the other is related to inadequate documentation in whistleblower investigation case files.

One of the observations from the FY 2020 FAME will continue to be monitored. This observation involved the lack of follow-up inspections for fatalities, as well as for safety or health inspections where abatement was incomplete. This issue was addressed as part of the previously mentioned FY 2021 FAME finding.

Wyoming OSHA made significant progress in addressing the previous finding and seven observations from the FY 2020 Follow-up FAME Report. The State Plan successfully completed the one finding from FY 2020 that involved complainant review of an employer's response to a complaint. Six observations from the FY 2020 FAME Report were closed. These observations were related to lapse time for safety inspections; OIS coding errors; adoption of the Site-Specific Targeting (SST) Directive; mailing the citation to the union involved in an inspection; processing of whistleblower complaints; and the percentage of state and local government workplace inspections among total number of inspections.

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

## II. State Plan Background

### A. Background

Wyoming OSHA is housed within the Wyoming Department of Workforce Services. The State Plan designee is Jason Wolfe, who also serves as the Workforce Standards Administrator of the Office of Standards and Compliance. Karen Godman is the Deputy Administrator of Wyoming OSHA. The main office is located in Cheyenne, with field offices in Casper, Gillette, Sheridan, and Rock Springs.

The program, funded through the 23(g) grant, consists of the enforcement, whistleblower, and cooperative programs (including the Voluntary Protection Program (VPP) and Partnerships), as well as state and local government consultation. A separate 21(d) cooperative agreement funds private sector consultation. The State Plan closely mirrors the federal program with some differences that allow for the accommodation of unique state demands and issues. The enforcement program maintains jurisdiction over safety and health issues for workers in the private sector, as well as for those in state and local government workplaces. Wyoming OSHA enforces unique regulatory standards for oil and gas well drilling and servicing, including anchor testing, drill-stem testing, wireline operations, hydraulic fracturing, and mobile pumping.

The State Plan was benchmarked for six safety compliance officers and two health compliance officers during FY 2021. There was a total of seven compliance safety and health officers (CSHOs) on board; one of the CSHO positions was filled by the whistleblower investigator. In addition to the seven CSHOs, management and staff consisted of a deputy administrator, compliance program supervisor, consultation program area director, program operations manager, one compliance assistance specialist, one whistleblower investigator, two administrative personnel, and an accountant. Wyoming OSHA had 16 workers providing 13.05 full-time equivalents to the program.

Wyoming OSHA's federal funding award in FY 2021 was \$649,600, which the State Plan matched. The State Plan contributed an additional \$737,910, and received one-time money of \$21,462, bringing the total funding amount to \$2,058,572. Wyoming OSHA's total contribution of 67.4 percent was similar to that of FY 2020, when the State Plan's contribution was 69.7 percent.

The COVID-19 pandemic continued to impact compliance activity. The State Plan was unable to meet its inspection goal of 168 inspections. The actual number of inspections performed was 147, 87.50% of the State Plan's goal. The inspection total consisted of 133 safety inspections and 14 health inspections. Also, 186 compliance interventions, including the 147 inspections, 25 consultation visits, and 14 compliance assistance activities, took place during FY 2021. These interventions identified and abated 210 hazards.

The State Plan did not adopt the COVID-19 Emergency Temporary Standard (ETS) until August 2021. The State Plan adopted the ETS identically with the exception of paragraphs (d), (l) and (q), which were not adopted nor equivalent policy created. Paragraphs (d), (l), and (q) address patient screening and management; employee screening and management; and recordkeeping of COVID-19 worker positive test results, respectively. On December 27, 2021, OSHA withdrew all portions of the Healthcare ETS except the recordkeeping requirements of paragraphs (q) and (r) while continuing to work on a final standard for the healthcare industry.

## **B. New Issues**

None.

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

### **A. Data and Methodology**

OSHA has established a two-year cycle for the FAME process. The two-year cycle consists of a comprehensive FAME with a subsequent follow-up FAME. The comprehensive FAME examines elements of the State Plan program, including but not limited to program administration, standards adoption, enforcement programs, the whistleblower program, CASPAs, and consultation programs. The follow-up evaluation focuses on correcting deficiencies identified in the most recent comprehensive FAME. FY 2021 was a comprehensive evaluation year, and as such, OSHA was required to conduct an on-site evaluation and case file review. A five-person OSHA team, which included a whistleblower investigator, was assembled to conduct a case file review. The review team conducted the case file review remotely from November 15, 2021, to November 26, 2021. Interviews of management and workers also occurred remotely during that period. A total of 91 case files for fatality, safety, and health inspections; unprogrammed activity (UPA) investigations; and whistleblower investigations were reviewed. The complaint investigation files and safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (October 1, 2020, through September 30, 2021). The fatality case files reviewed included all fatalities investigated and closed during FY 2021. The selected population consisted of:

- Three (3) fatality case files
- Thirty (30) UPA case files (including complaint, referral, and fatality/catastrophe reporting)
- Thirty (30) safety case files
- Five (5) health case files
- Twenty-three (23) closed whistleblower case files

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

- State Activity Mandated Measures (SAMM) Reports (Appendix D)
- State Indicator Reports (SIR)
- Mandated Activities Report for Consultation
- State Operations Annual Report (SOAR)
- Inspection Summary Reports from the OIS
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Limited case file review

Each SAMM has an agreed-upon further review level (FRL) which can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2021 SAMM Report and includes the FRL for each measure.

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

### **1. Program Administration**

#### **a. Training**

Due to the COVID-19 pandemic, many out-of-state and in-state training opportunities were cancelled, so Wyoming OSHA relied upon online training and its own experienced staff to conduct training of consultants, CSHOs, and the whistleblower investigator. During FY 2021, CSHOs attended OSHA Training Institute (OTI) training courses virtually. In addition to OTI virtual courses, in-house training that covered State Plan processes, case file development, directives, and CSHO safety was provided by experienced staff. New staff were mentored and provided field training during inspections. As new staff acquired skills, a manager assessed their skills and determined if they needed additional training.

#### **b. OSHA Information System**

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

A review of the three closed FY 2021 fatality inspection case files revealed that fatality inspections were coded as fatalities correctly. The review team did note that two fatality cases were received as an employer-reported referral (hospitalization) and as a complaint (employer not reporting a hospitalization) prior to the deaths of the workers. Upon their deaths, fatality UPAs were not entered into OIS. The third fatality was determined during the inspection to fall outside the jurisdiction of the State Plan. The inspection coverage was not updated to “no inspection” in OIS. The review team discussed these issues with the State Plan but did not determine that they were a continuation of the FY 2020-OB-02 observation.

Also, the review team noted that of the 30 closed FY 2021 safety inspection case files, 17 were self-referral inspections. Of those, 15 were coded correctly in OIS as programmed-planned or programmed-related. One self-referral was coded as programmed other, and one self-referral was coded as unprogrammed other. The last self-referral should have been coded as programmed-related. As only one of 17 (5.88%) self-referral case files reviewed was incorrectly coded, the review team determined that Wyoming OSHA had made significant progress toward addressing the FY 2020-OB-02 observation.

**Observation FY 2020-OB-02 (Previously FY 2019-OB-02):** The State Plan coded some referrals and fatality inspections in OIS incorrectly in FY 2019. Six of 22 (27%) self-referral inspections under emphasis programs were coded as unprogrammed-other when they should have been coded as programmed-planned. Three non-work-related fatalities were coded as referrals instead of fatalities – non-work-related.

**Status FY 2020-OB-02 (Previously FY 2019-OB-02):** This observation is closed.

c. State Internal Evaluation Program Report

Wyoming OSHA evaluates its compliance program through the consultation program's Internal Quality Assurance Program (IQAP). The IQAP is a mechanism to ensure that the organizational and contractual objectives of the State Plan are achieved by outlining processes to be followed by workers in order to ensure that the State Plan maintains program requirements. However, elements of the IQAP, such as marketing, client surveys, or position vacancies, are not elements that should be used for an evaluation of the State Plan's compliance program. Areas of focus for a SIEP may include lapse time, abatement of hazards, documentation of violations, or other areas of concern for enforcement activity. At least one year before the FY 2021 FAME, the OSHA Regional Office began explaining to Wyoming OSHA that evaluating its compliance program through its IQAP is not an adequate SIEP replacement. Because the State Plan has not developed a sufficient internal mechanism to evaluate its program, the review team issued a related observation.

**Observation FY 2021-OB-02:** The State Plan does not have an adequate SIEP, as required by Chapter 6, Section III.B.1. of the State Plan Policies and Procedures Manual.

**Federal Monitoring Plan FY 2021-OB-02:** The OSHA Regional Office will monitor the State Plan's performance in this area during quarterly meetings throughout FY 2022.

**Status FY 2021-OB-02:** This observation is new.

d. Staffing

Wyoming OSHA faced a challenge retaining experienced staff, especially industrial hygienists, to perform health inspections. In fact, there was only one industrial hygienist on staff. The State Plan was in the process of training a safety compliance officer to perform health inspections at the time of the FAME visit. The State Plan's efforts to retain staff include coaching and mentoring CSHOs and providing feedback that described their contribution to reducing worker exposure to hazards. Wyoming OSHA had one dedicated whistleblower investigator. The investigator was part of the program for three years, lending stability to the whistleblower program. The State Plan was fully staffed at the conclusion of FY 2021.

**2. Enforcement**

a. Complaints

As part of Wyoming OSHA's effort to improve its complaint and referral processing, the State Plan centralized the review of complaints and referrals with the compliance program supervisor. The compliance program supervisor evaluated each complaint and determined its disposition. The compliance program supervisor then gave the complaint to a CSHO for processing. Upon receipt, CSHOs handled complaints from cradle to grave, processing 134 complaints and conducting 36 complaint inspections and 67 complaint investigations during FY 2021. The compliance program supervisor also ran a report weekly to monitor complaint status.

The State Plan adopted the OSHA Field Operations Manual (FOM) with the exception of guidance for informal conferences. Chapter 9, Section I.I.6. of the FOM instructs that for resolving complaints and referrals, “[t]he complainant will be advised of the employer’s response, as well as the complainant’s rights to dispute that response and, if the alleged hazard persists, of the right to request an inspection.” Similar criteria are in place for complaint inspections. The FOM states that if an inspection is to occur, the Area Office will inform the complainant of the intent to schedule an inspection and will advise the complainant of the results. The FOM further directs that after the inspection, the Area Office will send a letter to the complainant addressing each complaint item, with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued.

The review of 30 closed UPA case files included 23 complaints. The complaint case files contained documentation of the complainant’s request to receive the employer’s response (for three complaints) or the complainant’s declination to receive the employer’s response (for seven complaints). Seven complaints were documented as not valid, five were anonymous complaints, and one complaint was withdrawn by the complainant. The review team determined that the complainant received a copy of the employer’s response to a phone/fax complaint or a copy of the inspection results when requested (three of three, 100%).

The State Plan indicated to the FY 2020 FAME review team that it would follow the guidance in Chapter 9 of the FOM to provide a complainant the opportunity to evaluate whether the employer corrected the hazards unless the complainant indicated that a response was not required. The FY 2021 FAME review team found that Wyoming OSHA has implemented this process.

**Finding FY 2020-01:** The State Plan did not give complainants the opportunity to evaluate whether the employer corrected the hazards in 20 of 23 (87%) complaint investigation files reviewed in FY 2019.

**Recommendation FY 2020-01:** The State Plan should follow FOM Chapter 9 to notify both formal and non-formal complainants of pending investigations and inspections and then of the results of the investigations and inspections.

**Status FY 2020-01:** This finding is completed.

Next, the review of the FY 2021 closed complaint case files noted five complaints that were classified as not valid. The review team did not note documentation of a letter to the complainant explaining that the complaint was not within the jurisdiction of the State Plan or that the complaint was to be referred to another agency. Chapter 9, Section I.H.2.b. of the FOM says, “In the event of a non-formal complaint or referral, if possible, the individual providing the information will be notified by appropriate means of OSHA’s intent not to conduct an inquiry or inspection. The justification for not inspecting or conducting an inquiry will be noted in the case file.” The review team discussed this concern with the State Plan; however, the review team did not elevate it to an observation.

With respect to SAMM 1A, Wyoming OSHA performed exceptionally during the evaluation period. OSHA and the State Plan negotiated the FRL for SAMM 1A, which measured the average number of workdays to initiate a complaint inspection, and the FRL was 16 days. In FY 2021, the State Plan took an average of 2.72 days to initiate a complaint inspection.

SAMM 2A measured the average number of workdays to initiate a complaint investigation. OSHA and the State Plan negotiated the FRL of one day for SAMM 2A. In FY 2021, Wyoming OSHA took



an average of 4.87 days to initiate a complaint investigation. The State Plan did not meet the FRL. Handling complaints through the phone/fax process continued to be problematic for the State Plan. The review team did not escalate this concern to an observation, but the Regional Office will continue to monitor this metric and determine if the negotiated FRL should be revised.

With an FRL of 100% for all State Plans, SAMM 3 measured the percentage of imminent danger complaints and referrals that the State Plan responded to within one workday. Wyoming OSHA met this FRL in FY 2021.

SAMM 4 measured the number of inspections where employers denied entry and the State Plan did not gain access to the worksite. Wyoming OSHA met the fixed FRL of zero in FY 2021.

b. Fatalities

During the evaluation period, the State Plan investigated six worker deaths during five inspections. One inspection involved the deaths of two workers. Of these six deaths, three involved COVID-19, two involved an explosion, and one involved a fall from height. Excluding the COVID-19 fatalities, one fatality involved construction work, and two occurred in a general industry workplace.

SAMM 10 measured the percent of work-related fatalities responded to in one workday. The State Plans had an FRL of 100% for this measure, and Wyoming OSHA responded to 20% (one of five) of work-related fatalities in one workday. The State Plan did not meet the FRL. An analysis of the FY 2021 fatality inspection data revealed that the three non-COVID-19 fatalities were responded to within one day of receiving the report of the fatalities. However, the COVID-19 fatalities were not responded to within one day of receiving a report of death. In two of those cases, the response time was two days; the third case was responded to in 23 days. The third case involved jurisdictional issues that were not resolved quickly, resulting in the inspection not being opened until the twenty-third day after receiving notice of the worker's death. Given the circumstances, the review team did not elevate this issue to an observation.

The review of the three closed fatality cases showed that Wyoming OSHA conducted fatality inspections in accordance with established policies and procedures. Also, each case file contained a next-of-kin notification letter and an inspection result letter in the case file.

The six FY 2021 fatalities resulted in a fatality rate of 2.12 fatalities per 100,000 workers for industries that were under the State Plan's jurisdiction. Wyoming's fatality rate was below the Bureau of Labor Statistics 2017 - 2020 all-worker fatality rate of 3.48 fatalities per 100,000 workers.

c. Targeting and Programmed Inspection

Wyoming OSHA conducted 147 inspections during FY 2021. Of those inspections, 133 were safety inspections, and 14 were health inspections. The State Plan and OSHA negotiated the FRL for SAMM 7, which measured the number of inspections conducted during the evaluation period. The FRL range for safety inspections was from 145.35 to 160.65, and the FRL range for health inspections was from 14.25 to 15.75. The State Plan did not meet the FRL for safety inspections. However, the State Plan did meet the FRL for health inspections. The COVID-19 pandemic had a significant impact on inspection activity during FY 2021 with staff illness or quarantine, so the review team was not overly concerned with the safety inspection numbers.

FY 2021 SIR data showed that 60.90% of safety inspections were programmed inspections while none of the health inspections were programmed. The Programmed Construction Local Emphasis Program (LEP) was a significant driver of inspection activity.

SAMM 9 calculated the State Plan's in-compliance percentage, i.e., the percent of safety or health inspections without violations. High in-compliance rates may indicate that the State Plan did not target worksites that were highly hazardous or prone to having serious violations. The safety inspection in-compliance rate of 49.15% exceeded the FRL range of 25.32% to 37.98% and was not a positive outcome. On the other hand, the health inspection in-compliance rate of 0% was significantly below the FRL range of 32.51% to 48.77% and was a positive outcome. COVID-19 complaints impacted the in-compliance rate as did Wyoming OSHA's practice to inspect all employers at multi-employer worksites. The review team is not concerned with the State Plan's performance on SAMM 9 at this time.

SAMM 17 measured the percentage of enforcement presence in the state. The FRL range was between 0.74% and 1.24%. Wyoming OSHA was within the FRL range with an enforcement presence of 0.86%.

The State Plan maintained LEPs to address hazards in the construction industry and in the oil and gas industry. The LEP that Wyoming OSHA developed for construction hazards significantly contributed to the State Plan's enforcement presence, as this program accounted for approximately 75% of their inspection total. The Construction LEP was established to help reduce hazards to which construction workers are exposed. According to an OIS Inspection Scan Summary Report run for FY 2021, the Construction LEP contributed 118 inspections with 126 hazards identified, classified as 104 serious, willful, or repeat violations and 22 other-than-serious (OTS) violations.

The LEP that the State Plan developed for oil and gas servicing and drilling hazards accounted for approximately 3.4% of their inspection total. Inspection activity in FY 2021 was generally in response to accidents and employer-reported referrals. The Oil and Gas Servicing and Drilling LEP was established to help reduce hazards to which oil and gas workers are exposed. According to an OIS Inspection Scan Summary report run for FY 2021, the Oil and Gas Servicing and Drilling LEP contributed five inspections with five hazards identified.

Next, SAMM 11 measured the lapse time for safety and health inspections. For FY 2021, Wyoming OSHA had a lapse time of 48.79 days for safety inspections, which was solidly within the FRL of 41.94 days to 62.90 days. The State Plan also met the health FRL of 52.88 days to 79.32 days with an average of 55.67 days for health inspections.

**Observation FY 2020-OB-03 (previously FY 2019-OB-03):** The lapse time for safety inspections exceeded the FRL by 27% in FY 2020.

**Status FY 2020-OB-03 (previously FY 2019-OB-03):** This observation is closed.

d. Citations and Penalties

The review team found that Wyoming OSHA typically classifies violations appropriately. The lead CSHO reviews cases for appropriateness of standards cited, how a violation is cited, and how a case file is assembled. The deputy administrator or the compliance program supervisor reviews each case file prior to the issuance of a citation. The review team agreed with the State Plan's assessment of the

severity of hazards but were concerned that probability was frequently linked to the number of workers exposed rather than the duration or frequency of exposure. On the other hand, the review team found that Wyoming OSHA supports violations with adequate evidence, including employer knowledge and worker statements.

The State Plan performed well regarding penalties. SAMM 8 measured the average current serious penalty in the private sector, and the FY 2021 FRL range was from \$2,325.28 to \$3,875.46 for employers with one to greater than 250 workers. In FY 2021, Wyoming OSHA was near the top end of the FRL with an average serious penalty of \$3,476.73.

An OIS Inspection Summary Report run for FY 2021 showed that the State Plan issued a total of 138 violations during FY 2021. Of those violations, 110 (79.71%) were serious, 21 (15.22%) were OTS, four (2.90%) were repeat, and three (2.17%) were willful. At the time of the generation of the Inspection Summary Report, eight health violations and 130 safety violations had been issued for FY 2021 inspections. Given the six-month statute of limitations for issuance of citations, it was anticipated that more health and safety violations will be issued for FY 2021 inspections.

SAMM 5 data showed that Wyoming OSHA was within the FRL range for the average number of serious, willful, repeat, and unclassified (SWRU) violations per inspection in FY 2021. The State Plan's average was 1.69 while the FRL range was from 1.42 to 2.14. However, the State Plan was outside (below) the FRL range for the average number of OTS violations per inspection in FY 2021. Wyoming OSHA's average was 0.27 while the FRL range was from 0.73 to 1.09. This may be partly due to the effect of COVID-19 upon inspection activity. The average number of OTS violations per inspection remained consistent from FY 2020 to FY 2021.

e. Abatement

CSHOs attempt to obtain abatement of hazards at the inspection site. For those violations where abatement is not accomplished at the inspection site, the CSHOs review the abatement provided by the employer. Once acceptable abatement is received, the CSHOs inform the compliance program area supervisor for closure of the case.

Wyoming OSHA established appropriate time periods for abatement. The review of closed FY 2021 case files found that safety inspections and fatality inspections contained documentation of abatement that was received by the abatement deadlines. However, the review of health inspection case files found that four (80%) of five health inspection case files contained documentation of abatement that was received past the abatement deadline.

For the two fatality inspections involving serious citations, the State Plan did not conduct follow-up inspections to confirm abatement. Wyoming OSHA adopted the OSHA FOM, including Chapter 11, Section II.K.3 in reference to fatality inspections, which states, "Where the worksite continues to exist, OSHA will normally conduct a follow-up inspection if serious citations have been issued." OIS Inspection Summary Reports for FY 2020 and FY 2021 revealed that the State Plan did not conduct any follow-up inspections for fatalities in either year. While consideration must be given for the impact upon resources during the COVID-19 pandemic, follow-up inspections for fatalities should have occurred.

**Observation FY 2021-OB-01 (Previously FY 2020-OB-04 and FY 2019-OB-04):** In FY 2021, the State Plan did not conduct follow-up inspections to confirm abatement for fatality inspections.

**Federal Monitoring Plan FY 2021-OB-01 (Previously FY 2020-OB-04 and FY 2019-OB-04):** The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2022.

**Status FY 2021-OB-01 (Previously FY 2020-OB-04 and FY 2019-OB-04):** This observation is continued.

SIR metric 3A measures prompt abatement of violations within a fiscal year. For FY 2020, the number of private sector inspections with unabated violations greater than 60 days post-issuance of citation was 27 (all safety). The State Plan reduced the number of inspections with unabated violations to 19 in FY 2021 (17 safety, two health). The unabated hazards of these 19 inspections could have prompted Wyoming OSHA to conduct follow-up inspections to confirm abatement; however, no follow-up inspections were conducted.

The State Plan has an ongoing trend involving numerous valid, phone/fax complaints that remain open for more than 30 calendar days. Wyoming OSHA has been unable to successfully resolve abatement and close valid complaints handled via phone/fax investigation in a timely manner for many complaints dating back to FY 2017. For FY 2021, 107 complaints handled as phone/fax investigations were open for more than 30 calendar days. Forty-eight of these were complaints received in prior fiscal years (FY 2017 – FY 2020.) The number of phone/fax investigations open for more than thirty calendar days was 73 in FY 2019 and 85 in FY 2020, which shows a steady increase. The State Plan should have a system in place to review abatement and close these investigations in a timely manner.

While many of the open phone/fax investigations were due to untimely administrative closure of the investigations following receipt of abatement, a significant number had incomplete abatement. In FY 2021, Wyoming OSHA processed 67 phone/fax investigations. Sixty (89.6%) investigations were open for greater than 30 days, and 13 (19.4%) were missing abatement at the end of the fiscal year. Twenty-three (21.4%) phone/fax investigations open at the end of FY 2021 did not have complete abatement, with 10 (9.3%) of those investigations from prior fiscal years.

**Finding FY 2021-01:** The State Plan did not obtain complete abatement and review the abatement for phone/fax investigations to ensure timely closure of complaints. Twenty-three of 107 (21.4%) phone/fax investigations that had been open for at least 30 days and remained open at the end of FY 2021 did not have complete abatement, with 10 (9.3%) of those investigations being open since FY 2017 through FY 2020.

**Recommendation FY 2021-01:** The State Plan should evaluate the existing process for receiving and reviewing abatement to determine appropriate short-term and long-term modifications to expedite abatement and closure.

**Status FY 2021-01:** This finding is new.

Also in FY 2021, Wyoming OSHA had 49 open, non-contested cases with abatement incomplete for more than 60 calendar days. Of those 49 cases, 35 cases were from previous fiscal years. The carryover of cases with incomplete abatement is a trend. At the end of FY 2020, there were 70 open,

non-contested cases with abatement incomplete for more than 60 calendar days, including 45 from previous fiscal years. Similarly, in FY 2019, there were 56 open, non-contested cases with abatement incomplete for more than 60 calendar days, with 39 of these cases carrying over from prior fiscal years. While the number of affected cases with open abatement decreased from FY 2020 to FY 2021, there was still a significant number of cases with incomplete abatement. Without prompt confirmation of abatement, the State Plan is unable to determine whether workers continue to be exposed to these hazards.

**Finding FY 2021-02:** The number of open, non-contested cases with abatement incomplete for more than 60 calendar days has remained significantly high with 56 cases in 2019, 70 cases in 2020, and 49 cases in 2021.

**Recommendation FY 2021-02:** The State Plan should evaluate the existing process for receiving and reviewing abatement to determine appropriate short-term and long-term modifications to expedite abatement and closure.

**Status FY 2021-02:** This finding is new.

f. Worker and Union Involvement

According to the SAMM Report, the State Plan included workers or worker representatives in initial inspections in FY 2021. SAMM 13 measured the percent of initial inspections with worker walk around representation or worker interview. The FRL was 100% for all State Plans. The SAMM data showed that Wyoming OSHA met the FRL in FY 2021.

Documentation of worker participation in the inspection process was present in 37 (97.37%) of the FY 2021 case files reviewed. The review team did find, however, that documentation of worker interviews was absent in 13 (34.21%) of the inspection case files. Of those 13 case files, 10 were in-compliance inspections; two resulted in serious violations.

With regard to recording all facts pertinent to a violation, Chapter 3, Section VII.C. of the FOM directs that “CSHOs will document interview statements in a thorough and accurate manner, including names, dates, times, locations, types of materials, positions of pertinent articles and witnesses.” Section VII.I.5.b. instructs that “interview statements of employees or other persons shall be obtained whenever CSHOs determine that such statements would be useful in documenting potential violations. Interviews shall normally be reduced to writing and written in the first person in the language of the individual. Employees shall be encouraged to sign and date their statement”. While the review team identified this as a concern, the review team did not elevate this issue as an observation.

The review team encountered only one case file of an inspection involving a union. The inspection was generated by a complaint lodged against a local government workplace, and Wyoming OSHA followed its policy for union participation during the inspection. The inspection identified violations, and a citation was issued to the employer. The review team did not find documentation that the citation was mailed to the union within the case file. The State Plan compliance program supervisor confirmed that not only had the union participated during the inspection, but the union had been offered a copy of the citation. However, the union declined to receive a copy of the citation.

**Observation FY 2020-OB-05 (Previously FY 2019-OB-05):** Wyoming OSHA did not mail a copy of the citation to the union in three of three (100%) inspections that involved unions in FY 2019.

**Status FY 2020-OB-05 (Previously FY 2019-OB-05):** This observation is closed.

### 3. Review Procedures

#### a. Informal Conferences

Of the 38 closed FY 2021 inspection case files reviewed, Wyoming OSHA conducted seven informal conferences. The review team noted no deviations from the State Plan's protocol for conducting informal conferences but did note an inconsistency in documentation of informal conference notes in the case files.

The State Plan adhered to the direction in the OSHA FOM in that citations became final order after 15 working days following receipt of the citation unless a Notice of Contest was received. The State Plan's citation specified to the employer that the running of this contest period was not interrupted by an informal conference. However, Wyoming OSHA's FOM was modified to allow employers to schedule informal conferences after the 15-working day contest time without a Notice of Contest. The review team identified one case where the informal conference was scheduled after the citation had become a final order without a Notice of Contest.

The State Plan published "Wyoming OSHA Citation Booklet for Employers: A Step-by-Step Guide" to provide guidance to employers who received a citation. This publication outlines flexibility in scheduling informal conferences by stating that the request for informal conferences shall be made within 30 days of receiving the citation package. Additionally, a Wyoming statute provides that informal conferences may be held at any time prior to a formal hearing.

The State Plan does not utilize an informal settlement program similar to the OSHA Expedited Informal Settlement Agreement.

Wyoming OSHA had an exceptional penalty retention percentage in FY 2021. SAMM 12 measured the percent penalty retained, and the FRL range was from 58.72% to 79.44%. The State Plan successfully retained 97.07% of assessed penalties, a significant achievement.

SIRs 5A and 6A showed that 2.68% of violations were vacated pre-contest and 1.38% of violations were re-classified pre-contest for private sector inspections. These were positive outcomes.

#### b. Formal Review of Citations

An employer may contest a citation up to 15 working days following receipt of a citation. When an employer contests violations, penalties, or proposed abatement periods for violations, Wyoming OSHA refers the case to an independent hearing officer within the Office of Administrative Hearing. The State Plan may also settle the case informally during the contest period up to the hearing date per Wyoming statute. The Wyoming State Attorney General's Office represents the State Plan during hearings. The hearing officer submits written findings of fact, conclusions of law, and a recommended decision to the Wyoming OSHA Commission. The commission has the power to accept, amend, or overturn the recommended decision of the hearing officer.

After due and proper consideration of the contested case, the commission renders its decision. The decision of the commission is the final administrative decision. A party adversely affected by a decision of the commission may appeal to the district court in the county where the violation allegedly occurred and ultimately to the Wyoming Supreme Court.

According to the OIS Inspection Summary Report run for FY 2021, one case (1.25%) was contested. SIRs 5B and 6B showed that for the single contested case, none of the violations were vacated post-contest, and none of the violations were re-classified post-contest. By comparison, five cases (5.26%) were contested in FY 2020. The State Plan successfully settles cases, preserving resources for inspection activity.

#### **4. Standards and Federal Program Change Adoption**

##### **a. Standards Adoption**

The standard adoption process begins once Wyoming OSHA receives electronic notification of the promulgation of a new OSHA standard. Once this occurs, the State Plan has a multi-step process to promulgate the rule. The State Plan forwards the new standard to the Wyoming OSHA Commission for approval. Once approved, Wyoming OSHA sends a courtesy memo to the governor explaining that the State Plan is requesting a new rule. The governor then has 10 days to reply. After 10 days have passed, the State Plan files the standard with the Legislative Service Office and the Secretary of State where a 45-day period for public comments begins. After the 45 days have passed, the Wyoming OSHA Commission meets to review public comments and vote on the adoption of the standard. Once the commission approves the standard, the commission sends it to the Attorney General's Office and the Legislative Service Office for a final review before sending it to the governor's office for his or her approval and signature. The governor has 75 days to accept the federally promulgated standard, and once signed, it becomes law in the State of Wyoming.

The mechanism for adoption of an ETS is similar, but according to Wyoming OSHA, they have an informal process to shorten the timeframe. First, the proposed ETS is evaluated. The State Plan then holds a commission meeting, and a vote is held. If approved by a commission vote, the proposed ETS is then developed by the State Plan rules team, drafted, and sent through the governor's office. Upon approval, the ETS is sent to the Secretary of State for publication. The Occupational Exposure to COVID-19 Healthcare ETS was adopted in part through Wyoming administrative rules with a specific timeline, effective date, and expiration date. The timeline depends upon all of the actions, offices, and approval mechanisms implemented by each representative group.

Of the six standards promulgated by OSHA between July 14, 2020, and June 21, 2021, Wyoming OSHA entered its intent to adopt five of the standards. Intent was registered by the response deadline for only two of the five standards to be adopted. The State Plan did not register intent for two standards, the Final Rule on the Beryllium Standard for Construction and Shipyards and the Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work, until seven months after the respective deadlines.

Wyoming OSHA adopted the Occupational Exposure to COVID-19 Healthcare ETS identically, except for paragraphs (d), (l), and (q). The State Plan did not provide alternate, equivalent policy for these paragraphs. As a result, the Regional Office sent the State Plan a letter on November 24, 2021, advising them of concerns with maintaining worker protections that were "at least as effective" with respect to the requirements of those paragraphs. The State Plan responded on December 2, 2021,

explaining that they had concerns about initiating rulemaking relative to the identified portions of the standard when the future of the ETS after December 21, 2021, was unknown. On December 27, 2021, OSHA withdrew all portions of the Healthcare ETS, except the recordkeeping requirements of paragraphs (q) and (r), while continuing to work on a final standard for the healthcare industry.

The timeliness of the adoption of standards was a concern; however, the review team did not raise this issue as an observation. The following table shows the status of federal standards, including any delinquent standards, due during the evaluation period.

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

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	8/4/2020	Yes	Yes	1/14/2021	8/4/2020
Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records 29 CFR 1913 (7/30/2020)	9/28/2020	12/11/2020	No	N/A	1/26/2021	
Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1926 (2/24/2021)	10/30/2020	6/18/2021	Yes	Yes	2/27/2021	6/18/2021
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work 29 CFR 1926 (11/16/2020)	11/14/2020	6/18/2021	Yes	Yes	3/14/2021	6/18/2021
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/14/2021)	3/16/2021	3/19/2021	Yes	Yes	7/14/2021	10/26/2021
Occupational Exposure to COVID-19; Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	7/1/2021	Yes	No	7/21/2021	8/17/2021



b. Federal Program Change Adoption

Generally, the adoption of directives, policies, and procedures falls under the statutory authority provided to the State Plan.

Wyoming OSHA may adopt a required directive identically, or where equivalency is permitted, the State Plan develops a directive at least as effective as the OSHA directive. Directives requiring notice of intent and adoption are reviewed by the State Plan. Potential impacts or concerns are discussed with political leadership and the Attorney General’s Office to ensure validity and compatibility with state statutes, laws, and rules. Following review and public notification, a commission meeting is scheduled to vote on the directive. If voted for adoption, the directive goes into effect on its adoption date.

Of the 13 directives created by OSHA between December 10, 2019, and July 7, 2021, two were “adoption required”, seven were “equivalency required”, and four were “adoption encouraged”. Wyoming OSHA entered its intent to adopt nine of the 13 directives. Of those nine, seven were adopted identically; the remainder were developed equivalently. All nine of the adopted directives were adopted in a timely manner.

The State Plan adopted the two “adoption required” directives. Wyoming OSHA did not adopt two COVID-19 directives which were “equivalency required”. Intent was registered within four months of creation of all federal directives in FY 2021. Adoption occurred prior to the adoption due dates, with the exception of the SST Directive, which was adopted four days past the adoption due date. Since the State Plan adopted the SST Directive on June 18, 2021, the review team closed one observation.

**FY 2020-OB-06 (Previously FY 2019-OB-07):** Although Wyoming OSHA adopted the SST Directive by incorporating it into the Workers Compensation LEP, the LEP does not provide for comprehensive inspections. As a result, Wyoming OSHA was not conducting comprehensive programmed general industry inspections.

**Status FY 2020-OB-06 (Previously FY 2019-OB-07):** This observation is closed.

Wyoming OSHA performed one comprehensive construction worksite inspection during FY 2021, but the review team did not find any general industry comprehensive or SST inspections during FY 2021. The review team raised this concern with the State Plan but did not elevate this concern to an observation.

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

**Table B**  
**Status of FY 2021 FPC Adoption**  
*(may include any delinquent FPCs from earlier fiscal years)*

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<b><i>Adoption Required</i></b>						
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	3/13/2020	Yes	No	6/10/2020	3/13/2020
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	3/13/2020	Yes	Yes	8/4/2020	3/13/2020
<b><i>Equivalency Required</i></b>						
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/13/2020	5/11/2020	Yes	No	10/14/2020	5/11/2020
Inspection Procedures for the Respirable Crystalline Silica Standard CPL 02-02-080 (6/25/2020)	8/24/2020	8/4/2020	Yes	Yes	12/25/2020	8/4/2020
Site-Specific Targeting CPL 02-01-062 (12/14/2020)	2/12/2021	6/18/2021	Yes	Yes	6/14/2021	6/18/2021
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	6/18/2021	Yes	Yes	9/19/2021	6/18/2021
Inspection Procedures for the COVID-19 Emergency Temporary Standard CPL 2021-02 (CPL 02) (6/28/2021)	7/13/2021	8/5/2021	No	N/A	12/28/2021	
Compliance Directive for the Excavation Standard CPL 02-00-165 (7/1/2021)	8/30/2021	7/22/2021	Yes	Yes	1/1/2022	7/22/2021
Revised National Emphasis Program-Coronavirus Disease 2019 (COVID-19) CPL 2021-03 (CPL 03) (7/7/2021)	7/22/2021	7/22/2021	No	N/A	1/7/2022	
<b><i>Adoption Encouraged</i></b>						

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	5/11/2020	Yes	Yes	n/a adoption not required	5/11/2020
Electronic Case File System Procedures for the Whistleblower Protection Program CPL 02-03-009 (6/18/2020)	8/18/2020	8/4/2020	No	N/A	n/a adoption not required	N/A
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	6/18/2021	No	N/A	n/a adoption not required	N/A
Communicating OSHA Fatality Inspection Procedures to a Victim's Family CPL 02-00-166 (7/7/2021)	9/7/2021	8/5/2021	Yes	Yes	n/a adoption not required	8/5/2021

## 5. Variances

The State Plan did not have any variances at the time of the evaluation.

## 6. State and Local Government Worker Program

Seven state and local government inspections took place during FY 2021, with three serious violations cited and 0.43 serious violations cited per inspection on average. The State Plan continued to maintain its presence in state and local government workplaces, accounting for approximately the same number of inspections of state and local government workplaces and approximately the same distribution of state and local government inspections as compared to private sector inspections during the past three fiscal years.

In FY 2021, 4.76% of Wyoming OSHA's inspections were in state or local government workplaces. The SAMM 6 FRL range was 2.02% to 2.23%. The State Plan exceeded its goal. In previous years, the FRL range was from 19% to 21%, but in FY 2021, the FRL was reset to an achievable goal.

**Observation FY 2020-OB-01 (previously FY 2019-OB-01, FY 2018-OB-02, and FY 2017-OB-02):** The State Plan was significantly below the FRL for SAMM 6, which measures the percent of inspections conducted in state and local government workplaces. At 4.76%, the State Plan was outside the FRL range of 19.23% to 21.25%.

**Status FY 2020-OB-01 (previously FY 2019-OB-01, FY 2018-OB-02, and FY 2017-OB-02):** This observation is closed.

## **7. Whistleblower Program**

The FY 2021 FAME was conducted through a virtual portal of the State Plan whistleblower program. The review team considered the overall whistleblower program, including policies, procedures, and investigative case files. The selected population consisted of 11 closed investigative case files and 12 administratively closed case files, totaling 23 case files.

### **Intake and Evaluation of Complaints:**

Wyoming OSHA screened 12 whistleblower complaints alleging retaliation for possible investigation. The State Plan reviewed all potential complaints for appropriate coverage requirements, timeliness of filing, and the presence of a prima facie allegation. New complaints were received in three forms: a health and safety complaint, a telephonic/facsimile complaint, or a referral from OSHA. In those cases, the complaint was forwarded to the whistleblower investigator to complete the complaint intake process. The complaint intake process was completed entirely by the whistleblower investigator with oversight by a manager. In FY 2021, the State Plan had one dedicated whistleblower investigator and a program manager. The whistleblower investigator was with the program for three years and had attended required OTI training.

The complaint intake process involves the whistleblower investigator conducting an initial screening with the complainant, which includes sending the complainant a worksheet to complete and return to the whistleblower investigator. After the worksheet is reviewed, the whistleblower investigator and program manager or compliance manager reviews the elements of the case. Then, the program manager or compliance manager approves the case for investigation or recommends the case for administrative closure. Wyoming OSHA has a good mechanism in place for the intake and evaluation of new complaints. Upon review, the State Plan properly evaluates complaints for jurisdiction, timeliness, and prima facie elements.

### **Documentation and Report Writing:**

Given the small sample of closed investigative cases (11), the ability to identify trends was limited. The review team did, however, observe that the State Plan utilized electronic case files that were well-organized and well-documented.

### **Settlements:**

Wyoming OSHA had eight settled cases in FY 2021. The State Plan recognized the positive impact of settlements and initiated pre-investigative settlements, which minimized investigative resources. In addition, the eight settlements resulted in positive outcomes for the parties and an increased program merit rate.

A single page of the settlement agreement was missing from the case file of one of the eight (12.5%) settled cases. Settlement details were found in all eight of the eight (100%) settled cases reviewed.

In two cases, the settlement agreements contained language and provisions that were outside the State Plan's jurisdiction. The review team discussed settlement language as written in Chapter 6 of the

Whistleblower Investigations Manual, which states, “In general, much of the language of the standard agreement should not be altered, but certain sections may be removed to fit the circumstances of the complaint or the stage of the investigation.” While the review team identified this as a concern, the review team did not raise this issue as an observation.

**Observation FY 2020-OB-07 (Previously FY 2019-OB-08 and FY 2018-OB-04):** Throughout FY 2019, the whistleblower program had deficiencies involving the receipt, processing, and disposition of whistleblower cases. Of the 25 whistleblower case files reviewed, there were sixteen cases where OSHA was unable to determine whether a manager was involved in the review and approval of the complaints during the complaint intake process for both docketed or administratively closed cases (64%); there were three cases where OSHA was unable to locate a complaint intake form or one similar to the OSHA-87 Form (12%); and in nine cases, OSHA was unable to locate a copy of the notification letters to the complainant and/or respondent (36%). Of the eight settled cases, there were three cases where OSHA could not determine whether the settlement was reviewed and approved (38%); in three cases, OSHA could not locate a copy of the executed settlement agreement or check (38%); and in five cases, OSHA could not locate supporting settlement details (63%).

**Status FY 2020-OB-07 (Previously FY 2019-OB-08 and FY 2018-OB-04):** Wyoming OSHA resolved whistleblower complaint receipt, processing, and disposition issues in all cases reviewed. For settlement issues, the State Plan resolved the issue involving review of settlements in each case reviewed. Case file documentation showed that the manager was involved in 12 of 12 (100%) whistleblower complaints reviewed. Intake documentation was also found in 12 of 12 (100%) whistleblower complaints reviewed. The whistleblower investigator forwarded the details of the settlement agreement and the whistleblower investigator’s recommendation to the supervisor for review in all eight of the eight (100%) settled cases reviewed. Case file documentation included the supervisor’s authorization in all eight of the eight (100%) settled cases reviewed. This observation is closed.

While examining the case files of the eight settled cases, the review team noted minimal documentation regarding the review of the settlement terms. The Whistleblower Investigations Manual encourages early resolution of complaints, including prior to completion of the investigation. The manual also requires that settlement agreements provide fair and equitable relief for the complainant and are consistent with public policy, e.g., the settlement is not repugnant to the relevant whistleblower statute and does not undermine the protection that the relevant whistleblower statute provides. Case file documentation did not include evaluation of the settlements to ensure that the settlement was fair and equitable and that the settlement was in adherence with the requirements in Chapter 6 of the Whistleblower Investigations Manual. Chapter 6, Section XII directs that “[t]he appropriate remedy in each case must be carefully explored and documented by the investigator.” Section XII also notes that “[a]ll appropriate relief to which the complainant is entitled, and its justification, must be documented in the file, and the complainant’s concurrence must be noted.” The review team discussed these requirements with the State Plan managers.

**Observation FY 2021-OB-03:** The State Plan did not ensure that settlement case files included documentation regarding why the settlement was fair and equitable in six (75%) of eight settled cases, as required by Chapter 6, Section XII of the Whistleblower Investigations Manual.

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

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

For SAMM 14, data indicated that Wyoming OSHA was unable to complete any 11(c) investigations within 90 days, so the State Plan did not meet the FRL of 100%. For SAMM 16, Wyoming OSHA took an average of 100 calendar days to complete an 11(c) investigation, which means the State Plan did not meet the FRL of 90 days. Both SAMM results were a reflection of the limited resources available to the whistleblower program in FY 2021. Additionally, 75% of 11(c) complaints received were evaluated as meritorious, whereas the SAMM 15 FRL was 16% to 24%, again putting a strain on available resources. During FY 2021, one whistleblower investigator received, evaluated, investigated, and resolved whistleblower complaints. The whistleblower program decreased the number of days to complete an 11(c) investigation from 219 days in FY 2019 to its current 100 days. There was a small increase in the number of days to complete an 11(c) investigation from 71 days in FY 2020, but the review team believes the FRL will be achievable with the continued tenure of the current whistleblower investigator.

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

The State Plan received a CASPA on June 12, 2020. The complainant disagreed with the dismissal of a whistleblower complaint filed on April 18, 2020, against the Wyoming Department of Corrections. An investigation of the allegation took place. On June 23, 2020, Wyoming OSHA reported to the Regional Office that corrective action was taken. The Regional Office informed the complainant of the State Plan's response on June 28, 2020. The CASPA was closed.

Wyoming OSHA did not receive any CASPAs during FY 2021.

## **9. Voluntary Compliance Program**

The State Plan had four active sites participating in the VPP at the end of FY 2021. Wyoming OSHA celebrated significant progress with the renewal of all three previous VPP participants and the addition of a new VPP participant. This was the first new VPP participant in over a decade. The list of establishments participating in the VPP may be found in the SOAR.

The State Plan worked to train and promote the VPP through presentations with the assistance of existing VPP members and workers. While the COVID-19 pandemic impacted the program, Wyoming OSHA utilized hybrid visits of VPP sites that helped to set the standard for visits during the pandemic. The State Plan also used a hybrid model for VPP ceremonies. Wyoming OSHA continued to promote the VPP in Wyoming through the Department of Workforce Services website, the Workers' Compensation Quarterly Connection Newsletter, participation at conferences, and through other professional associations. The State Plan also looked to increase VPP membership through recruitment of Safety and Health Recognition Program (SHARP) members and through the evaluation of Wyoming workers compensation data to recruit high performing employers.

Wyoming OSHA continues to honor an agreement with OSHA to utilize "Special Government Employees" to support State Plan staff in the completion of VPP audits. OSHA Directive CSP 03-01-003 provides guidance for the proper implementation of policies and procedures. The State Plan did not report any changes to the VPP.

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

The State Plan operated a Public Sector Consultation Program for state and local government workplaces. In FY 2021, this program conducted 25 visits statewide, including nine initial visits, six limited health or safety consultations, and one follow-up visit.

As a result of these visits, Wyoming OSHA identified and abated 72 hazards or regulatory issues. Approximately 4.8 serious or OTS hazards were identified per inspection, which was an indicator of a thorough evaluation of the workplace.

The review of closed consultation visit case files noted that a single worker at the state or local government worksite was interviewed in most cases. The State Plan indicated that onsite interviews of workers were limited due to COVID-19 protocols to minimize contact and exposure to the virus. Wyoming OSHA also explained to the review team that some state and local government worksites were in isolated, rural locations and had a small workforce. The review team recognized these factors but also noted that interviews of state or local government workers could have been conducted over the telephone.

Chapter 4, Section III.B.3.b. of the Consultation Policy and Procedures Manual directs that “[c]onferring with employees is an important tool for adequately assessing hazards and the safety and health program at an establishment. Therefore, the consultant must interview a representative number of randomly selected employees at different times during the consultation visit (e.g., opening conference, walkthrough, training, closing conference).” The review team discussed this requirement with the State Plan managers. The minimal interviews of state and local government workers during consultation visits were a concern; however, the review team did not raise this issue as an observation.

The Consultation Program also conducted 14 compliance assistance activities in FY 2021. These activities included attendance at conferences, workshops, and Alliance meetings.

At the time of the evaluation, there were no state or local government SHARP entities.

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

The private sector on-site consultation program in Wyoming receives funds through the 21(d) grant and is subject to evaluation under that program.

## Appendix A – New and Continued Findings and Recommendations

### FY 2021 Wyoming OSHA Comprehensive FAME Report

<b>FY 2021-#</b>	<b>Finding</b>	<b>Recommendation</b>	<b>FY 2020-# or FY 2020-OB-#</b>
FY 2021-01	The State Plan did not obtain complete abatement and review the abatement for phone/fax investigations to ensure timely closure of complaints. Twenty-three of 107 (21.4%) phone/fax investigations that had been open for at least 30 days and remained open at the end of FY 2021 did not have complete abatement, with 10 (9.3%) of those investigations being open since FY 2017 through FY 2020.	The State Plan should evaluate the existing process for receiving and reviewing abatement to determine appropriate short-term and long-term modifications to expedite abatement and closure.	
FY 2021-02	The number of open, non-contested cases with abatement incomplete for more than 60 calendar days has remained significantly high with 56 cases in 2019, 70 cases in 2020, and 49 cases in 2021.	The State Plan should evaluate the existing process for receiving and reviewing abatement to determine appropriate short-term and long-term modifications to expedite abatement and closure.	



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

### FY 2021 Wyoming OSHA Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB- # or FY 2020- #	Observation	Federal Monitoring Plan	Current Status
FY 2021-OB-01	FY 2020-OB-04 FY 2019-OB-04	In FY 2021, the State Plan did not conduct follow-up inspections to confirm abatement for fatality inspections.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2022.	Continued
FY 2021-OB-02		The State Plan does not have an adequate SIEP, as required by Chapter 6, Section III.B.1. of the State Plan Policies and Procedures Manual.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2022.	New
FY 2021-OB-03		The State Plan did not ensure that settlement case files included documentation regarding why the settlement was fair and equitable in six (75%) of eight settled cases, as required by Chapter 6, Section XII of the Whistleblower Investigations Manual.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2022.	New
	FY 2020-OB-01 FY 2019-OB-01 FY 2018-OB-02 FY 2017-OB-02	The State Plan was significantly below the FRL for SAMM 6, which measures the percent of inspections conducted in state and local government workplaces. At 4.76%, the State Plan was outside the FRL range of 19.23% to 21.25%.		Closed
	FY 2020-OB-02 FY 2019-OB-02	The State Plan coded some referrals and fatality inspections in OIS incorrectly in FY 2019. Six of 22 (27%) self-referral inspections under emphasis programs were coded as unprogrammed-other when they should have been coded as programmed-planned. Three non-work-related fatalities were coded as referrals instead of fatalities – non-work-related.		Closed

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

### FY 2021 Wyoming OSHA Comprehensive FAME Report

	FY 2020-OB-03 FY 2019-OB-03	The lapse time for safety inspections exceeded the FRL by 27% in FY 2020.		Closed
	FY 2020-OB-05 FY 2019-OB-05	Wyoming OSHA did not mail a copy of the citation to the union in three of three (100%) inspections that involved unions in FY 2019.		Closed
	FY 2020-OB-06 FY 2019-OB-07	Although Wyoming OSHA adopted the SST Directive by incorporating it into the Workers Compensation LEP, the LEP does not provide for comprehensive inspections. As a result, Wyoming OSHA was not conducting comprehensive programmed general industry inspections.		Closed
	FY 2020-OB-07 FY 2019-OB-08 FY 2018-OB-04	Throughout FY 2019, the whistleblower program had deficiencies involving the receipt, processing, and disposition of whistleblower cases. Of the 25 whistleblower case files reviewed, there were 16 cases where OSHA was unable to determine whether a manager was involved in the review and approval of the complaints during the complaint intake process for both docketed or administratively closed cases (64%); there were three cases where OSHA was unable to locate a complaint intake form or one similar to the OSHA-87 Form (12%); and in nine cases, OSHA was unable to locate a copy of the notification letters to the complainant and/or respondent (36%). Of the eight settled cases, there were three cases where OSHA could not determine whether the settlement was reviewed and approved (38%); in three cases, OSHA		Closed

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

### FY 2021 Wyoming OSHA Comprehensive FAME Report

		could not locate a copy of the executed settlement agreement or check (38%); and in five cases, OSHA could not locate supporting settlement details (63%).		
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## Appendix C - Status of FY 2020 Findings and Recommendations

### FY 2021 Wyoming OSHA Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item Is Not Completed)
FY 2020-01 FY 2019-01	The State Plan did not give complainants the opportunity to evaluate whether the employer corrected the hazards in 20 of 23 (87%) complaint investigation files reviewed in FY 2019.	The State Plan should follow the FOM Chapter 9 to notify both formal and non-formal complainants of pending investigations and inspections and then of the results of the investigations and inspections.	<p>In August 2020, Wyoming OSHA began following the guidance in Chapter 9 of the FOM to notify both formal and non-formal complainants of pending investigations and inspections and then of the results of the investigations and inspections whenever contact information is available. However, if during the intake process, the complainant indicated that a response was not required, the State Plan did not send information to the complainant. The State Plan indicated this by completing the “Source Response Required” field in the OSHA Information System.</p> <p>The FY 2021 FAME review team determined that the complainant received a copy of the employer’s response to a phone/fax complaint or a copy of the inspection result when requested (three of three cases, 100%).</p>	August 3, 2020	Completed

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

### FY 2021 Wyoming OSHA Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	2.72	16	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	1.61	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	4.87	1	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	3.58	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
<b>5a</b>	Average number of violations per inspection with violations by violation type (SWRU)	1.69	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
<b>5b</b>	Average number of violations per inspection with violations by violation type (other)	0.27	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
<b>6</b>	Percent of total inspections in state and local government workplaces	4.76%	+/- 5% of 2.13%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 2.02% to 2.23%.
<b>7a</b>	Planned v. actual inspections (safety)	133	+/- 5% of 153	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The

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SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
				range of acceptable data not requiring further review is from 145.35 to 160.65 for safety.
<b>7b</b>	Planned v. actual inspections (health)	14	+/- 5% of 15	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 14.25 to 15.75 for health.
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$3,476.73	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
	<b>a.</b> Average current serious penalty in private sector (1-25 workers)	\$2,827.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	\$5,044.25	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.
	<b>c.</b> Average current serious penalty in private sector (101-250 workers)	\$9,260.67	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,990.12 to \$6,650.20.
	<b>d.</b> Average current serious penalty in private sector (greater than 250 workers)	\$7,669.63	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
<b>9a</b>	Percent in compliance (safety)	49.15%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
<b>9b</b>	Percent in compliance (health)	0%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
<b>10</b>	Percent of work-related fatalities responded to in one workday	20%	100%	The further review level is fixed for all State Plans.
<b>11a</b>	Average lapse time (safety)	48.79	+/- 20% of	The further review level is based on a three-year national

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SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
			52.42	average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
<b>11b</b>	Average lapse time (health)	55.67	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
<b>12</b>	Percent penalty retained	97.07%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.
<b>13</b>	Percent of initial inspections with worker walk-around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	0%	100%	The further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	75%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	100	90	The further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	0.86%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.

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