**FY 2023 Comprehensive**

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

Wyoming Occupational Safety and Health Administration

(Wyoming OSHA)



**Evaluation Period: October 1, 2022 – September 30, 2023**

Initial Approval Date: May 3, 1973

State Plan Certification Date: December 18, 1980

Final Approval Date: June 27, 1985

**Prepared by:**

**U. S. Department of Labor**

**Occupational Safety and Health Administration**

**Region VIII**

**Denver, CO**



**Contents**

1. **Executive Summary**………………………………………...………..….................... **3**
2. **State Plan Background**………………………………………………….................... **3**
3. Background……………………………………………………………………......................... 3
4. New Issues…………………………………………………………………….......................... 4
5. **Assessment of State Plan Performance**………………………………............. **4**
6. Data and Methodology……………………………………………………...….................. 4
7. Review of State Plan Performance ……………………………………………............. 6
8. Program Administration……………………………………................................ 6
9. Enforcement………………………………………………………………....................... 7
10. Review Procedures………………………………………………………..................... 15
11. Standards and Federal Program Changes (FPCs) Adoption…………….... 16
12. Variances…………………………………………………………………......................... 20
13. State and Local Government Worker Program…………………………........ 20
14. Whistleblower Program………………………………………………...…................ 21
15. Complaint About State Program Administration (CASPA)……………..... 23
16. Voluntary Compliance Program…………………………………………............... 23
17. State and Local Government 23(g) On-Site Consultation Program…… 24
18. Private Sector 23(g) On-Site Consultation Program……………………....... 25

**Appendices**

Appendix A – New and Continued Findings and Recommendations………….. A-1

Appendix B – Observations and Federal Monitoring Plans………………........... B-1

Appendix C – Status of FY 2022 Findings and Recommendations…………...... C-1

Appendix D – FY 2023 State Activity Mandated Measures (SAMM) Report…………………………………………………………......................... D-1

1. **Executive Summary**

The purpose of this report is to assess the Wyoming State Plan’s performance for Fiscal Year (FY) 2023 and its progress in resolving the outstanding findings from the previous Federal Annual Monitoring Evaluation (FAME) Report.

Among Wyoming OSHA’s accomplishments during FY 2023 was addressing outstanding abatement of open inspections and phone/fax investigations. Wyoming OSHA focused on process improvement and provided training to staff during FY 2022. The State Plan began reducing the number of unabated open inspections and unabated phone/fax investigations during FY 2022, and by the end of FY 2023, the number of open phone/fax investigations was reduced by 76.64%, and the number of open inspections was reduced by 89.80% from FY 2021.

During FY 2023, the OSHA Regional Office provided several opportunities for Wyoming OSHA to partner with Area Offices in Colorado to allow State Plan health compliance officers to observe industrial hygiene practices during health inspections.

An area that challenged the State Plan was its safety and health inspection in-compliance percentages. This FY 2023 Comprehensive FAME Report includes two new findings related to Wyoming OSHA’s in-compliance percentages for safety and health inspections. The State Plan’s in-compliance percentages have steadily climbed and were exceptionally high during FY 2023.

This FAME Report has five new observations. Those observations are related to addressing complaint allegations completely; closing complaint investigations and consultation visit cases prior to receiving complete abatement; documenting worker interviews in support of violations; and screening of whistleblower complaints.

Wyoming OSHA successfully addressed the previous two findings from the FY 2022 Follow-up FAME Report. The State Plan completed the findings related to abatement for phone/fax complaints and late abatement for open, non-contested inspections. The one observation from the FY 2022 FAME Report was closed. This observation involved follow-up inspections for fatality investigations.

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

**II. State Plan Background**

1. **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 Bebensee 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 2023. One of the safety compliance officer positions was filled by the whistleblower investigator. One of the health compliance officer positions became vacant during FY 2023, leaving six compliance safety and health officers (CSHOs). At the end of FY 2023, Wyoming OSHA employed 16 positions. In addition to the six CSHOs, management and staff consisted of the deputy administrator, a compliance program supervisor, a consultation program area director, a program operations manager, two compliance assistance specialists (CAS), one whistleblower investigator, two administrative personnel, and an accountant.

Wyoming OSHA’s federal funding award in FY 2023 was $778,800 that the State Plan matched. The State Plan contributed an additional $557,200 and received one-time money of $18,500 that the State Plan also matched, bringing the total funding amount to $2,151,800. Wyoming OSHA’s total contribution of 62.95 percent was slightly less than that of FY 2022 when the State Plan’s contribution was 65.59 percent.

The departure of one health compliance officer during FY 2023 may have impacted operations. The State Plan was unable to meet its inspection goal of 190 inspections by approximately 21.05%. The inspection total, 150 inspections, consisted of 135 safety inspections and 15 health inspections. In total, 276 compliance interventions, including the 150 inspections, 27 state and local government consultation visits, and 99 compliance assistance activities in the private sector and state and local government workplaces, took place during FY 2023. These interventions identified and abated 241 hazards and impacted over 5,000 workers.

1. **New Issues**

None.

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

1. **Data and Methodology**

OSHA has established a two-year cycle for the FAME process. The two-year cycle consists of a comprehensive FAME with a subsequent follow-up FAME. The comprehensive FAME examines elements of the State Plan program, including but not limited to program administration, standards adoption, the enforcement program, the whistleblower program, complaints about state program administration (CASPAs), and the consultation program. The follow-up evaluation focuses on correcting deficiencies identified in the most recent comprehensive FAME. FY 2023 was a comprehensive FAME year, and as such, OSHA was required to conduct an evaluation and case file review. A six-person OSHA team, including two whistleblower investigators, was assembled to conduct the case file review. The review team conducted the case file review remotely from December 4, 2023, to December 21, 2023. Interviews of management and workers were also held remotely during that period. A total of 127 case files for fatalities, safety and health inspections, unprogrammed activity (UPA) investigations, 23(g) consultation visits, VPP audits, and whistleblower investigations were reviewed. The UPA investigation case files, safety and health inspection case files, and whistleblower case files were randomly selected from closed cases conducted during the evaluation period (October 1, 2022, through September 30, 2023). The fatality case files reviewed included all fatalities investigated and closed during FY 2022 and FY 2023. The selected population consisted of:

* Four (4) fatality case files
* Forty-two (42) UPA case files, including both valid and not valid complaints, referrals, and fatalities/catastrophes reported
* Thirty (30) safety case files
* Nine (9) health case files
* Twenty (20) whistleblower case files
* Twenty (20) 23(g) state and local government consultation case files
* Two (2) VPP case files

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

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

Each SAMM has an agreed-upon further review level (FRL) that can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2023 SAMM Report and includes the FRL for each measure.

1. **Review of State Plan Performance**

**1. PROGRAM Administration**

1. Training

During FY 2023, Wyoming OSHA CSHOs attended OSHA Training Institute (OTI) training courses both at the facility in Arlington Heights, Illinois, and at road courses in Wyoming and Colorado. In addition to OTI courses, in-house training that covered State Plan processes, case file development, directives, and CSHO safety was provided by experienced staff. Periodically, the compliance program supervisor assessed CSHOs’ skills in the field to determine if they needed additional training. The State Plan collaborated with the OSHA Regional Office to obtain additional training for CSHOs and consultants through regional technical training webinars, shadowing opportunities for four health compliance officers, and focused training provided by OSHA Regional Office staff to eight CSHOs and consultants.

1. 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. Wyoming OSHA also uses OIS for monitoring the State Plan’s operations.

Several years ago, the State Plan moved from paper case files to electronic case files for enforcement cases, and during FY 2023, whistleblower case files became fully electronic. Wyoming OSHA uses OIS as the repository for both enforcement and whistleblower case files, and documents generated or collected during inspection activity are uploaded to OIS. Case files for 23(g) state and local government consultation case files, however, are maintained outside OIS.

1. State Internal Evaluation Program Report (SIEP)

The SIEP was developed to ensure that program operations conform to policies and procedures established by the State Plan and to identify areas in which additional procedures should be developed in response to the demands of the organization.

For FY 2023, Wyoming OSHA’s SIEP examined closure of abatement; case file closure; case file coding; Darden factor documentation; and policy and procedure availability. Wyoming OSHA focused on examining SIR 3B, which noted the number of open inspections older than 60 days with incomplete abatement, as well as SIR 9, which calculated the number of open phone/fax complaint investigations older than 30 days. The State Plan provided a copy of the SIEP to OSHA.

1. Staffing

During FY 2023, the State Plan added a second CAS position. A health compliance officer was promoted to this position. The vacant health compliance officer position was not filled by the end of FY 2023, making the State Plan understaffed by one health compliance officer. Wyoming OSHA provided training to two safety compliance officers to perform health inspections. The State Plan has fortunately been able to retain staff, including management and whistleblower staff, adding stability to the program.

**2. ENFORCEMENT**

* 1. Complaints

As part of Wyoming OSHA’s effort to improve its complaint and referral processing, the State Plan centralized the intake 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 beginning to end, processing 183 complaints and conducting 36 complaint inspections and 86 complaint investigations during FY 2023. The compliance program supervisor also ran a report weekly to monitor complaint statuses.

The State Plan adopted the OSHA Field Operations Manual (FOM), with the exception of guidance for informal conferences, requests for public records, and minor administrative differences for handling complaints and referrals. The State Plan modified Chapter 9 of the FOM to address internal policies when handling complaints or referrals. The State Plan’s Chapter 9, Section I.I.6 notes that the complainant will be informed of the employer’s response to complaint investigations. Similar criteria are in place for complaint inspections. The State Plan’s modified Chapter 9 notes that if an inspection is to occur, Wyoming OSHA will inform the complainant of the intent to schedule an inspection and will advise the complainant of the results. The modified Chapter 9 further directs that after the inspection, Wyoming OSHA 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 42 closed UPA case files included 33 complaints. Of those 33 complaints, 18 were handled as phone/fax investigations, nine resulted in inspections, and six were assessed as invalid. The complainants for the 18 phone/fax investigations consisted of five workers, nine former workers, and two “others” while two were anonymous complaints. Upon receipt of a complaint, Wyoming OSHA contacted the complainant to obtain additional information and determine if the complainant would like to receive the employer’s response for phone/fax complaints. The State Plan typically documented the complainant’s response in the case file. In six case files, documentation indicated that the complainant requested a copy of the employer’s response. In the majority of case files, a letter to the complainant with the employer’s response was found in the case file. In one of six (16.67%) case files, the State Plan documented in OIS that a letter was sent to the complainant, but the letter was not found in the case file. The review team discussed this concern with the State Plan but did not elevate this to an observation.

The FY 2023 closed complaint case files included six complaints that were classified as not valid. The determinations were reasonable and documented appropriately in OIS.

Nine complaint case files reviewed resulted in inspections. Upon receipt of a complaint that was to be inspected, Wyoming OSHA contacted the complainant to obtain additional information and determine if the complainant would like to receive the result of the inspection. The State Plan typically documented the complainant’s response in the case file. In five case files, documentation indicated that the complainant requested the inspection result. In the majority of case files, a letter to the complainant with the inspection result was found in the case file. However, in one of five (20%) complaint case files, documentation was not found that an inspection result letter was sent or attempted to be sent to the complainant. The review team discussed this concern with the State Plan but did not elevate this to an observation.

Wyoming OSHA did not meet the FRL for SAMM 1A, the average number of workdays to initiate a complaint inspection. OSHA and the State Plan negotiated the FRL to be 16 days. In FY 2023, Wyoming OSHA took an average of 17.94 days to initiate a complaint inspection. The State Plan explained that it discovered during an audit that two FY 2022 complaint investigations had not been closed due to incomplete responses from the employers. The two investigations were assigned to CSHOs to inspect, significantly impacting SAMM 1A for FY 2023. Wyoming OSHA met the SAMM 1A FRL in both FY 2021 and FY 2022. The review team did not elevate this to an observation as it is believed that the FY 2023 SAMM 1A was an aberration, and the State Plan put in place a process to prevent this from recurring.

SAMM 2A measured the average number of workdays to initiate a complaint investigation. OSHA and the State Plan negotiated the FRL of five days for SAMM 2A. In FY 2023, Wyoming OSHA took an average of 4.44 days to initiate a complaint investigation. The State Plan met the FRL. The State Plan improved its responsiveness, reducing the number of days to initiate a complaint investigation from 5.20 days in FY 2022. This was a positive outcome.

Of the nine health inspections that were reviewed, eight were complaints, and one was a referral from a state agency. Documentation that all complaint or referral allegations were addressed was not found in several case files. The State Plan’s modified Chapter 9, Section I.H.5 notes that “as a general rule, the scope of a complaint/referral inspection must bear an appropriate relationship to the alleged violative conditions,” and the modified Chapter 9, Section I.H.3.b directs that a letter will be sent to the complainant addressing each complaint item.

**Observation FY 2023-OB-01:** In FY 2023, three of nine (33.33%) case files reviewed did not contain documentation that all complaint or referral allegations were addressed. Wyoming OSHA did not follow the guidance in its modified Chapter 9, Section I.H.5 of the FOM.

**Federal Monitoring Plan FY 2023-OB-01:** The OSHA Regional Office will monitor Wyoming OSHA’s performance in this area during quarterly meetings throughout FY 2024.

**Status FY 2023-OB-01:** This observation is new.

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

SAMM 4 measured the number of inspections where employers denied entry and the State Plan did not gain access to the worksite. Wyoming OSHA met the fixed FRL of zero in FY 2023.

* 1. Fatalities

During FY 2023, Wyoming OSHA investigated six work-related deaths. Of these six deaths, two (33.33%) were struck-by accidents, one (16.67%) was fall-related, one (16.67%) was vehicle-related, one (16.67%) was drowning-related, and one (16.67%) was due to crushing. Three fatalities involved construction work while three occurred in general industry workplaces.

SAMM 10 measured the percentage of work-related fatalities responded to within one workday. All State Plans had a fixed FRL of 100% for this measure. Wyoming OSHA responded to one of two (50%) work-related fatalities in one workday. The State Plan did not meet the FRL. However, the SAMM 10 metric’s algorithm required for inclusion that the investigation report be final or draft and that the inspection be final. At the time of the report, only two fatalities were final and were included in the count. Of the six fatalities investigated by Wyoming OSHA during FY 2023, four of six (66.67%) were opened the same day as the fatality was reported or one day later. One of six (16.67%) fatalities was opened two days after the report of the fatality which may have been due to resource availability. The final fatality involved jurisdictional issues that were not resolved quickly. In addition, delays due to the availability of an employer representative resulted in the inspection not being opened until the twenty-first day after receiving notice of the worker’s death. Given the circumstances, the review team did not elevate this issue to an observation.

At the time of the case file review, only one FY 2023 fatality had been closed; therefore, the case file selection was expanded to fatality cases from FY 2022. Wyoming OSHA conducted fatality inspections in accordance with established policies and procedures.

Three of four (75%) fatality case files reviewed contained documentation that a next-of-kin notification letter was sent. Wyoming OSHA adopted identically the compliance directive “Communicating OSHA Fatality Inspection Procedures to a Victim’s Family,” CPL 02-00-166, that directs that the next-of-kin will be contacted to request work-related information concerning the fatality and to encourage the next-of-kin to provide any additional information. The directive also instructs that a letter to the next-of-kin will be sent as noted in Section IX.A.4.

None of the four (0%) fatality case files contained a closure letter to the next-of-kin or documentation of communication with the next-of-kin following the inspection. Following an inspection, Section IX.C of the directive instructs that the next-of-kin will be contacted to explain findings and answer questions. The directive does not mandate that periodic communication occur with the next-of-kin or that a closure letter be sent to the next-of-kin, however. The review team suggested that a closure letter be sent to the next-of-kin for each fatality inspected.

The six FY 2023 work-related fatalities resulted in an approximate work-related fatality rate of 2.22 fatalities per 100,000 workers for employers that were under Wyoming OSHA’s jurisdiction. The fatality rate for workers under Wyoming OSHA’s jurisdiction was below the Bureau of Labor Statistics’ 2020 - 2022 Wyoming all-worker fatality rate of 12.03 fatalities per 100,000 workers.

c. Targeting and Programmed Inspection

SAMM 7 measured the number of safety and health inspections conducted during the evaluation period. The FRL range for safety inspections was from 166.25 to 183.75, and the FRL range for health inspections was from 14.25 to 15.75. Wyoming OSHA conducted 135 safety inspections and 15 health inspections during FY 2023. The State Plan met the FRL for health inspections but was significantly below the FRL for safety inspections. The promotion of an experienced health compliance officer to the second CAS position impacted their safety inspection numbers.

SAMMs 9A and 9B calculated Wyoming OSHA’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. For SAMM 9A, the safety inspection in-compliance percentage of 69.09% exceeded the FRL range of 25.38% to 38.08%; and for SAMM 9B, the health inspection in-compliance percentage of 72.73% exceeded the FRL range of 35.06% to 52.58%.

The safety inspection in-compliance percentages have steadily increased since 2017 and have been significantly above the FRL since FY 2021. The health inspection in-compliance percentages were significantly above the FRL during FY 2019, FY 2020, FY 2022, and FY 2023. One factor that may have impacted the in-compliance percentage for safety inspections is multi-employer worksites when inspections were opened with every employer onsite. Wyoming OSHA believed a large contributor to the high safety inspection in-compliance percentage was programmed safety inspections, in particular Dodge List inspections. Wyoming OSHA addressed this issue by training CSHOs. A high in-compliance percentage may also reflect a need to develop additional hazard recognition skills. As noted below, there are opportunities to address additional hazards found by CSHOs during inspections. While there is no certainty that all hazards found will result in violations, additional hazards found during inspections should be addressed.

**Finding FY 2023-01:** In FY 2023, Wyoming OSHA’s safety inspection in-compliance percentage of 69.09% significantly exceeded the FRL range of 25.38% to 38.08%.

**Recommendation FY 2023-01:** Wyoming OSHA should determine the cause and take action to decrease its high in-compliance percentage for safety inspections.

**Status FY 2023-01:** This finding is new.

**Finding FY 2023-02:** In FY 2023, Wyoming OSHA’s health inspection in-compliance percentage of 72.73% significantly exceeded the FRL range of 35.06% to 52.58%.

**Recommendation FY 2023-02:** Wyoming OSHA should determine the cause and take action to decrease its high in-compliance percentage for health inspections.

**Status FY 2023-02:** This finding is new.

SAMM 17 measured the percentage of enforcement presence in the state. The FRL range was from 0.70% to 1.17%. Wyoming OSHA met the FRL with a result of 0.85%.

The State Plan maintained Local Emphasis Programs (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 50.67% of their inspection total. The Construction LEP was established to help reduce hazards to which construction workers are exposed. According to an OIS Scan Summary Report run for FY 2023, the Construction LEP contributed 76 inspections with 64 hazards identified, classified as 44 serious, willful, or repeat violations and 20 other-than-serious (OTS) violations.

The LEP that the State Plan developed for oil and gas servicing and drilling hazards accounted for approximately 8.67% of their inspection total. Inspection activity in FY 2023 was generally in response to accidents or 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 Scan Summary report run for FY 2023, the Oil and Gas Servicing and Drilling LEP contributed 13 inspections with seven hazards identified.

SAMM 11 measured lapse time, the number of work days from the opening conference date to the earliest issuance date. For FY 2023, Wyoming OSHA had a lapse time of 60.84 days for safety inspections, which was within the FRL of 44.18 to 66.28 days. The State Plan also met the FRL of 55.78 to 83.66 days with an average of 75.40 days for health inspections. Both outcomes were positive.

There were no significant cases during FY 2023.

Narratives and notes in the inspection case files were detailed and provided well-written descriptions of the observations and activity during the walk-arounds. Alleged hazards stemming from complaints, referrals, or accidents were identified in notes and the narratives and, in many cases, described how these hazards were evaluated by the CSHOs. CSHOs frequently identified additional hazards observed during walk-arounds. In five of nine (55.56%) health inspection case files, in three of 30 (10%) safety inspection case files, and in one of four (25%) fatality investigation case files, however, documentation of the evaluation of these additional hazards identified or noted by the CSHO was not found. The review team suggested that CSHOs document in their case files how additional hazards noted during walk-arounds were evaluated.

d. Citations and Penalties

Wyoming OSHA typically classified violations appropriately. The lead safety compliance officer reviewed cases for appropriateness of standards cited, how a violation was cited, and how a case file was assembled. The deputy administrator or the compliance program supervisor reviewed each case file prior to the issuance of a citation. The review team agreed with Wyoming OSHA’s assessment of the severity of hazards.

An OIS Standards Cited Report run for the period October 1, 2022, to September 30, 2023, showed that Wyoming OSHA issued a total of 97 violations during FY 2023. Of those violations, 74 (76.29%) were serious, 20 (20.62%) were OTS, and three (3.09%) were repeat. There were no willful violations issued, nor were there any failure-to-abate violations issued during FY 2023.

When comparing FY 2023 to the two previous fiscal years, a review of Standards Cited Reports showed that during FY 2023, Wyoming OSHA issued fewer serious, willful, and OTS violations than in FY 2022 or FY 2021. While the total number of inspections and violations decreased during FY 2023, the average number of violations per inspection was similar to that of FY 2022.

SAMM 5A data showed that the State Plan was within the FRL range for the average number of serious, willful, repeat, and unclassified (SWRU) violations per inspection in FY 2023. The average number of SWRU violations per inspection was 1.49 while the FRL range was from 1.40 to 2.10. However, the State Plan was slightly below the FRL range for SAMM 5B, which measured the average number of OTS violations per inspection in FY 2023. Wyoming OSHA’s average was 0.43 while the FRL range was from 0.71 to 1.07. The average number of OTS violations per inspection remained consistent from FY 2022 to FY 2023. The review team did not consider this to be a concern.

Wyoming OSHA performed well regarding penalties. SAMM 8 calculated the average current serious penalty in the private sector. The FY 2023 FRL range was from $2,718.91 to $4,531.51 for all employers. In FY 2023, the average serious penalty issued by Wyoming OSHA was $5,086.30.

Wyoming OSHA also excelled with penalty retention. The State Plan retained 90.30% of penalties issued. The FRL range for SAMM 12, retention of penalties, was from 61.06% to 82.62%. This was a positive outcome.

1. Abatement

CSHOs attempted to obtain abatement of hazards at the inspection site. For those violations where abatement was not accomplished at the inspection site, the CSHO reviewed the abatement provided by the employer. Once acceptable abatement was received, the CSHO informed the compliance program supervisor for closure of the case.

Wyoming OSHA established appropriate time periods for abatement. For FY 2023 case files reviewed, abatement was provided by employers prior to the abatement deadlines, with the exception of one health inspection case file. Abatement certification was found in each case file except one case involving an employer that sold the business prior to final order. The FOM, Chapter 7, Section IV.A.1.b notes that when abatement was not complete, the reason(s) for incomplete abatement be noted in the case file. Wyoming OSHA followed the requirement in the FOM.

Abatement documentation was typically found in case files, as well. Abatement was adequate in five of six (83.33%) case files with violations, including three of three (100%) fatality case files with violations and two of two (100%) safety inspection case files with violations. The abatement for the single health case file with a violation was not completed as previously mentioned. The employer sold the business prior to the final order date and did not provide documentation of abatement. Documentation was not found in the case file regarding abatement of the hazard by the new owner of the business. However, the State Plan included documentation of the sale of the business and closed the case in accordance with the FOM.

Wyoming OSHA’s policy and the FOM’s guidance was to perform follow-up inspections of fatality investigations resulting in serious violations. The State Plan’s policy and the FOM provide some flexibility, including when construction fatalities take place at a short-term or transient location. Per the FOM and the State Plan’s policy, a follow-up inspection may be waived for transient worksites if adequate documentation of abatement was provided by the employer. Of four fatality cases, two cases resulted in the issuance of serious violations, and a third case resulted in the issuance of an OTS violation. The first case involved a short-term construction site, and the State Plan did not conduct a follow-up inspection per its policy. The second case involved the employer not reporting a worker’s death within eight hours. Wyoming OSHA conducted a follow-up inspection of the third case to verify abatement.

**Observation FY 2022-OB-01 (previously FY 2021-OB-01, 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.

**Status:** During FY 2022, Wyoming OSHA provided training to its staff on the FOM’s guidance regarding follow-up inspections of fatality cases. Management re-emphasized that follow-up inspections would occur after the final order date to verify abatement. There were limited opportunities to perform follow-up inspections of fatality investigations resulting in serious violations. Wyoming OSHA conducted a follow-up inspection of a fatality investigation closed during FY 2023 to ensure abatement although the employer received only an OTS violation. This observation was closed.

In response to a previous finding, Wyoming OSHA began reviewing OIS reports, such as the UPA Auditing Report, the UPA Tracking Report, and the SIR, on a weekly basis to address open abatement and to close complaint investigations. The State Plan developed an operational strategy to include both compliance and administrative staff in obtaining abatement and closing complaint investigation cases. Wyoming OSHA also provided training to staff regarding its Rules of Practice and Procedure (ROPP) and the FOM concerning abatement and closure of phone/fax investigations.

**Finding FY 2022-01 (previously 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.

**Status:** Wyoming OSHAreduced the number of phone/fax investigations that had been open for at least 30 days from 107 phone/fax investigations at the end of FY 2021 to 25 phone/fax investigations at the end of FY 2023, an improvement of 76.64%. Additionally, all 25 remaining phone/fax investigations were from FY 2023, and only nine of the 25 (36%) were older than 60 days. This finding was completed.

In response to another finding, the State Plan began reviewing supporting OIS reports, such as the Abatement Tracking Report and the SIR, as well as the Open Inspection Report, on a weekly basis to address open abatement and to close inspection cases. Wyoming OSHA again developed an operational strategy to include both compliance and administrative staff in obtaining abatement and closing inspection cases. The State Plan provided training to staff regarding Wyoming OSHA’s ROPP and the FOM concerning abatement and closure of cases.

**Finding FY 2022-02 (previously** **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.

**Status:** Wyoming OSHAreduced the number of open, non-contested cases with abatement incomplete for more than 60 calendar days from 49 cases at the end of FY 2021 to five cases at the end of FY 2023, an improvement of 89.80%. Only two of the five (40%) open cases pre-date FY 2023. This finding was completed.

On the other hand, several complaint investigation case files from the current evaluation period did not contain documentation that abatement was completed. Employer responses indicated that abatement was pending in many cases, and in some cases, responses were not provided for all complaint allegations. The State Plan’s modified FOM Chapter 9, Section I.I.9 directs that for a phone/fax inquiry, the complaint must not be closed until there is verification that the hazard has been abated.

**Observation FY 2023-OB-02:** In FY 2023, six of 18 (33.33%) complaint investigations reviewed were closed prior to completion of abatement. Wyoming OSHA did not follow the guidance in its modified Chapter 9, Section I.I.9 of the FOM.

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

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

1. Worker and Union Involvement

According to the SAMM Report, Wyoming OSHA included workers or worker representatives in initial inspections during FY 2023. SAMM 13 measured the percentage of initial inspections with worker walk-around representation or worker interview. All State Plans had a fixed FRL of 100% for this measure. The SAMM data showed that Wyoming OSHA met the FRL in FY 2023.

Documentation of worker participation in the inspection process was present in 38 of 43 (88.37%) of the FY 2023 case files reviewed. This was a reduction from FY 2021, when the result was 97.37%. Documentation of worker interviews was present in 27 of 43 (62.79%) of the inspection case files. This was a slight decrease from FY 2021.

Six of 43 (13.95%) case files reviewed resulted in violations being issued, but not all case files resulting in violations contained documentation of worker interviews or statements regarding facts pertinent to the violations. With regard to recording facts pertinent to a violation, Chapter 5, Section VII.A of the FOM directs that interview statements of workers shall be obtained to document a potential violation. Chapter 3, Section VII.C directs that CSHOs will document interview statements, including names, dates, times, locations, types of materials, positions of pertinent articles and witnesses. Chapter 3, Section VII.I.5.b instructs that interview statements of workers or other persons shall be obtained whenever such information would be useful in documenting potential violations.

**Observation FY 2023-OB-03:** In FY 2023, of the six case files reviewed that resulted in violations, two (33.33%) did not contain documentation of worker interviews or statements regarding facts pertinent to a violation. Wyoming OSHA did not follow the guidance in Chapter 5, Section VII.A; Chapter 3, Section VII.C; and Chapter 3, Section VII.I.5.b of the FOM.

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

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

Only one inspection case file involved a union. The inspection was the result of a formal complaint lodged by a union representative. Wyoming OSHA followed its policy for union participation during the inspection. The inspection did not identify a violation. A union representative was present at the closing conference.

**3. REVIEW PROCEDURES**

1. Informal Conferences

Of the 43 closed FY 2023 inspection case files reviewed, Wyoming OSHA conducted two informal conferences. While there were not any deviations from the State Plan’s protocol for conducting informal conferences, in one of two (50%) cases, there was inconsistency with documentation of informal conferences. In the one case, the informal conference notes were found in the case file, but the information was not entered in OIS. This was not a concern to the review team.

The State Plan adhered to the FOM guidance in that citations became final order after 15 working days following receipt of the citation unless a notice of contest was received. Wyoming OSHA’s citation language specified to the employer that the running of this contest period was not interrupted by an informal conference. However, Wyoming OSHA modified its application of the FOM to allow employers to schedule informal conferences after the 15-working day contest time without a notice of contest. There were no cases 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.

Wyoming OSHA does not utilize an informal settlement program like the OSHA Expedited Informal Settlement Agreement.

SIR 5A measured the percentage of violations vacated pre-contest, for which the State Plan achieved 0.97%. SIR 6A measured the percentage of violations re-classified pre-contest, for which Wyoming OSHA achieved 0%. These were positive outcomes.

1. 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 in 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 inspections opened during FY 2023, four of 51 (7.84%) cases with citations issued were contested. At the time of the report, the contested cases were not final order. SIR 5B, which measured the percentage of violations vacated post-contest, and SIR 6B, which measured the percentage of violations re-classified post-contest, showed that none of the violations were vacated post-contest at the time of the report, and none of the violations were re-classified post-contest at the time of the report. These data points indicated that there were, at the time of the report, no adverse decisions against Wyoming OSHA. SIR 7B measured the percentage of penalty retention post-contest; however, there was no data available to calculate SIR 7B.

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

1. 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 Wyoming OSHA 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, and 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 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.

Of the six standards promulgated by OSHA between November 20, 2021, and September 21, 2023, Wyoming OSHA registered its intent to adopt five of six standards. The State Plan did not register its intent to adopt one standard, the COVID Vaccination and Testing Emergency Temporary Standard (ETS), which was later withdrawn by OSHA on December 27, 2021. The Updated COVID-19 Vaccination and Testing ETS was also withdrawn by OSHA. Wyoming OSHA registered its intent timely for four of the four (100%) standards that were not withdrawn by OSHA.

Excluding the issuance of the COVID ETSs, there were nine standards promulgated during the period FY 2020 through FY 2023. One non-mandatory standard was not adopted by Wyoming OSHA. The State Plan registered its intent to adopt the remaining eight mandatory standards. State Plans are required to adopt mandatory standards within six months of promulgation by OSHA or show that they have an existing at least as effective standard. Five standards, including the Final Rule on the Implementation of the 2023 Annual Adjustment to Civil Penalties for Inflation, the Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation, the Final Rule on the Beryllium Standard for Construction and Shipyards, the Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work, and the Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation did not become effective within six months of promulgation by OSHA as a result of Wyoming OSHA’s adoption process.

The timeliness of the adoption of standards for the period FY 2022 through FY 2023 was not a concern. Wyoming OSHA implemented a process to ensure that standards were adopted in a timely manner.

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

**Table A**

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

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | N/A |  |  | 12/5/2021 |  |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910  (11/5/2021) | 1/7/2022 | 1/7/2022 | Yes | Yes | 1/24/2022 |  |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022  29 CFR 1903  (1/15/2022) | 3/15/2022 | 2/18/2022 | Yes | Yes | 7/15/2022 | 7/20/2022 |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions  29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)  (2/14/2022) | 4/14/2022 | 4/8/2022 | Yes | Yes | 8/14/2022 | 9/28/2022 |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023  29 CFR 1903  (1/15/2023) | 3/15/2023 | 3/15/2023 | Yes | Yes | 7/15/2023 | 8/18/2023 |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | 9/8/2023 | Yes | Yes | 1/21/2024 | 9/8/2023 |

1. Federal Program Change Adoption

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

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 10 directives created by OSHA between December 22, 2021, and September 29, 2023, two were “adoption required,” six were “equivalency required,” and two were “adoption encouraged.” Wyoming OSHA registered its intent to adopt nine of 10 directives. Of those nine, all were adopted identically. Nine of ten (90%) directives were adopted prior to their adoption due dates. Directive CPL 02-01-064 was adopted approximately one month after its adoption due date. This was not a concern to the review team.

The following tables show the status of FPCs, including any delinquent FPCs, due during the evaluation period.

**Table B**

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

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Revised Combustible Dust National Emphasis Program  CPL 03-00-008  (1/30/2023) | 3/31/2023 | 3/17/2023 | Yes | Yes | 7/30/2023 | 3/17/2023 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026  (7/13/2023) | 9/11/2023 | 9/8/2023 | Yes | Yes | 1/9/2024 | 9/8/2023 |

**Table C**

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

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 6/24/2022 | Yes | Yes | 11/3/2022 | 6/24/2022 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 9/23/2022 | Yes | Yes | 2/11/2023 | 9/23/2022 |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 9/23/2022 | Yes | Yes | 3/15/2023 | 9/23/2022 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 4/17/2023 | Yes | Yes | 8/6/2023 | 9/8/2023 |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | 6/15/2023 | Yes | Yes | 10/28/2023 | 6/16/2023 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | 11/17/2023 | Yes | Yes | 3/27/2024 | 11/17/2023 |

**Table D**

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

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- |
| OSHA’s Use of Small Unmanned Aircraft Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 2/18/2022 | Yes | Yes | 2/18/2022 |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024  (4/8/2022) | 6/8/2022 | 6/22/2022 | No |  |  |

**Table E**

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

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

**5. Variances**

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

**6. STATE AND LOCAL government WORKER Program**

Five state and local government inspections took place during FY 2023, the same number as in FY 2022. Four of the five inspections were closed, or a citation was issued by the end of FY 2023. A citation was issued in one of four (25%) state and local government workplace inspections. No serious, willful, or repeat (SWR) violations were issued to state and local government entities in FY 2023, but there was one OTS violation issued in one inspection, an average of 0.25 OTS violations per inspection. During FY 2022, the State Plan conducted five state and local government inspections, resulting in four SWR violations and one OTS violation issued. For FY 2022, the average number of SWR violations per inspection was 0.80, while the average number of OTS violations per inspection was 0.20. While FY 2023 showed a significant decrease in the number of SWR violations issued per inspection for state and local government workplaces, the average number of SWR violations per inspection in previous years was comparable to that in FY 2022. The review team did not raise this as a concern.

The State Plan’s modified Chapter 9, Section I.H.3.b of the FOM advises that a complainant is to be sent a letter following an inspection addressing each complaint item. Wyoming OSHA’s policy was to send an inspection result letter to complainants who requested the result of the inspection. Documentation of an inspection result letter sent to the complainant was not found in two of two (100%) case files resulting from formal complaints. However, the State Plan sent inspection result letters to the majority of complainants where the allegations involved the private sector. The review team discussed this concern with Wyoming OSHA but did not elevate this to an observation.

Wyoming OSHA 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.

SAMM 6 measured the percentage of total inspections in state and local government workplaces. The SAMM 6 FRL range was from 2.00% to 2.21%, and in FY 2023, 3.33% of Wyoming OSHA’s inspections were in state and local government workplaces. Wyoming OSHA exceeded its goal.

**7. WHISTLEBLOWER Program**

During FY 2023, Wyoming OSHA had one dedicated whistleblower investigator. The State Plan’s deputy administrator was the whistleblower program supervisor.

The review team evaluated the overall whistleblower program, including its policies and procedures. There were 11 closed investigative case files and nine administratively closed case files, totaling 20 case files.

Intake and Evaluation of Complaints:

Wyoming OSHA 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 the deputy administrator.

The complaint intake process involved the whistleblower investigator conducting an initial screening with the complainant that included sending the complainant a worksheet to complete and return to the whistleblower investigator. After the worksheet was reviewed, the whistleblower investigator and deputy administrator reviewed the elements of the case. Then, the deputy administrator approved the case for investigation or recommended the case for administrative closure. Wyoming OSHA has a mechanism in place for the intake and evaluation of new complaints.

Of the nine administratively closed cases reviewed, two cases contained information that the complainant had engaged in protected activity and that there had been adverse action by the employer. The cases were administratively closed, noting that there was not protected activity, not adverse action, or not a nexus. There was sufficient information of a prima facie case for these two complaints, and the complaints should have been docketed and investigated.

**Observation FY 2023-OB-04:** In FY 2023, two of nine (22.22%) administratively closed cases contained sufficient information of prima facie cases, and Wyoming OSHA did not docket and investigate the cases.

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

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

Investigations:

In FY 2023, Wyoming OSHA performed 11 whistleblower investigations, including three cases that were settled, six cases that were withdrawn, and two cases that were dismissed. There were no merit cases. Upon completion of an investigation, the whistleblower investigator presented the investigation findings and recommendations to the deputy administrator. The deputy administrator reviewed the recommendations and documented approval through an email to the investigator. Final action, or determination, was documented in a findings letter. A determination may be withdrawal, dismissal, merit, or settlement.

Notification of investigation and closure letters were sent to the complainant and the respondent. While notification of investigation and closure letters were found in case files, documentation of receipt of letters was not found in nine of 11 (81.82%) docketed case files. Wyoming OSHA adopted the OSHA Whistleblower Investigations Manual (WIM) identically. Chapter 3, Section IX.A and Section IX.B direct that the complainant and the respondent will be notified of the whistleblower investigation using a method that permits tracking. Additionally, the findings of an investigation must be sent to the complainant and respondent by a method that may be tracked. The WIM requires that proof of delivery be maintained in the case file. The review team discussed this concern with the State Plan but did not elevate this to an observation.

Documentation and Report Writing:

Wyoming OSHA maintained electronic case files that were well-organized and well-documented. The deputy administrator’s review and approval of docketing or administrative closure of complaints was documented, as was review and approval of settlement agreements.

Settlements:

Wyoming OSHA had three settled cases in FY 2023. Copies of the completed settlement agreements were found in three of three (100%) settled case files. Documentation of the deputy administrator’s approval of the settlement was found in three of three (100%) settled case files.

Of the whistleblower investigations open at the end of FY 2023, only one had been open for more than one year.

In FY 2022, Wyoming OSHA began entering whistleblower data into OIS as a result of OSHA transitioning from an older whistleblower legacy software system. Data from the legacy system was not completely merged with OIS. As a result, older whistleblower cases that remained in IMIS could not be included in the calculations of SAMMs 14, 15, and 16. These measures are not being reported for FY 2023 due to the transition of whistleblower data from IMIS to OIS.

**8. Complaint About State Program Administration**

Wyoming OSHA did not receive any CASPAs during FY 2022 or FY 2023.

**9. Voluntary Compliance Program**

Wyoming OSHA had four sites participating in the VPP at the end of FY 2023. During FY 2023, there was one new applicant to the VPP which will receive its onsite evaluation during FY 2024. The list of establishments participating in the VPP may be found in the FY 2023 Wyoming OSHA SOAR.

The State Plan worked to promote the VPP through presentations with the assistance of existing VPP members and workers. Wyoming OSHA also promoted 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’ conferences. 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 continued to honor an agreement with OSHA to utilize “Special Government Employees” to support the State Plan’s staff in the completion of VPP audits. OSHA Directive CSP 03-01-003 provides guidance for the proper implementation of VPP policies and procedures. Wyoming OSHA did not report any changes to the VPP.

**10. STATE AND LOCAL GOVERNMENT 23(g) On-site CONSULTATION PROGRAM**

Wyoming OSHA operated a consultation program for state and local government workplaces. In FY 2023, this program conducted 27 visits statewide, which was a significant increase from the 13 visits performed during FY 2022. The goal for FY 2023 was 45 state and local government consultation visits. Wyoming OSHA accomplished 60% of its goal. Because of these visits, the State Plan identified and abated 132 hazards or regulatory issues. Approximately 4.89 serious hazards were identified per visit, which was an indication of a thorough evaluation of the workplace. Sixteen of twenty (80%) case files reviewed had hazards or regulatory issues abated in a timely manner. Abatement was received in three of the four (75%) cases when the assigned correction date was missed. One of twenty (5%) case files reviewed did not contain documentation of abatement of all hazards. Of the four consultation visit case files where abatement extensions were granted, one (25%) case file had documentation of the request and interim protections in place.

Of the twenty FY 2023 state and local government consultation visit case files reviewed, several case files did not contain documentation that abatement was completed. In two instances, a purchase record of equipment prior to possession or installation at the worksite was accepted as abatement. The Consultation Policies and Procedures Manual (CPPM) Chapter 4, Section IV.A.2.b notes that when the consultant is unable to verify abatement during the consultation visit, the consultant must inform the employer that written verification of abatement must be provided. Section IV.A.2.b.ii notes that the written verification from the employer must include the date the hazard(s) was corrected, as well as a description and/or picture (s) of the abatement.

**Observation FY 2023-OB-05:** In FY 2023, abatement of hazards was closed in five of twenty (25%) state and local government consultation case files when abatement was not completed. Wyoming OSHA did not follow the guidance in Chapter 4, Section IV.A.2.b and Chapter 4, Section IV.A.2.b.ii of the CPPM.

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

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

Wyoming OSHA’s state and local government consultation program also conducted 24 compliance assistance activities in FY 2023. 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. Wyoming OSHA has set a goal of onboarding one new SHARP member during FY 2024.

* + 1. **Private Sector 23(g) On-site Consultation Program**

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

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or**  **FY 2022-OB-#** |
| --- | --- | --- | --- |
| FY 2023-01 | In FY 2023, Wyoming OSHA’s safety inspection in-compliance percentage of 69.09% significantly exceeded the FRL range of 25.38% to 38.08%. | Wyoming OSHA should determine the cause and take action to decrease its high in-compliance percentage for safety inspections. |  |
| FY 2023-02 | In FY 2023, Wyoming OSHA’s health inspection in-compliance percentage of 72.73% significantly exceeded the FRL range of 35.06% to 52.58%. | Wyoming OSHA should determine the cause and take action to decrease its high in-compliance percentage for health inspections. |  |

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 2022-OB-# *or* FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 |  | In FY 2023, three of nine (33.33%) case files reviewed did not contain documentation that all complaint or referral allegations were addressed. Wyoming OSHA did not follow the guidance in its modified Chapter 9, Section I.H.5 of the FOM. | The OSHA Regional Office will monitor Wyoming OSHA’s performance in this area during quarterly meetings throughout FY 2024. | New |
| FY 2023-OB-02 |  | In FY 2023, six of 18 (33.33%) complaint investigations reviewed were closed prior to completion of abatement. Wyoming OSHA did not follow the guidance in its modified Chapter 9, Section I.I.9 of the FOM. | The OSHA Regional Office will monitor Wyoming OSHA’s performance in this area during quarterly meetings throughout FY 2024. | New |
| FY 2023-OB-03 |  | In FY 2023, of the six case files reviewed that resulted in violations, two (33.33%) did not contain documentation of worker interviews or statements regarding facts pertinent to a violation. Wyoming OSHA did not follow the guidance in Chapter 5, Section VII.A; Chapter 3, Section VII.C; and Chapter 3, Section VII.I.5.b of the FOM. | The OSHA Regional Office will monitor Wyoming OSHA’s performance in this area during quarterly meetings throughout FY 2024. | New |
| FY 2023-OB-04 |  | In FY 2023, two of nine (22.22%) administratively closed cases contained sufficient information of prima facie cases, and Wyoming OSHA did not docket and investigate the cases. | The OSHA Regional Office will monitor Wyoming OSHA’s performance in this area during quarterly meetings throughout FY 2024. | New |
| FY 2023-OB-05 |  | In FY 2023, abatement of hazards was closed in five of twenty (25%) state and local government consultation case files when abatement was not completed. Wyoming OSHA did not follow the guidance in Chapter 4, Section IV.A.2.b and Chapter 4, Section IV.A.2.b.ii of the CPPM. | The OSHA Regional Office will monitor Wyoming OSHA’s performance in this area during quarterly meetings throughout FY 2024. | New |
|  | FY 2022-OB-01  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. |  | Closed |

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status**  **(and Date if Item is**  **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
| FY 2022-01 | 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 (21.49%) 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 (9.35%) 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. | During FY 2022, Wyoming OSHA began reviewing OIS reports, such as the UPA Auditing Report, the UPA Tracking Report, and the SIR, on a weekly basis to address open abatement and to close complaint investigations. The State Plan developed an operational strategy to include both compliance and administrative staff in obtaining abatement and closing complaint investigation cases. Wyoming OSHA provided training to staff regarding its Rules of Practice and Procedure (ROPP) and the FOM guidance concerning abatement and closure of phone/fax investigations. | February 22, 2023 | Completed |
| FY 2022-02 | 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. | During FY 2022, Wyoming OSHA began reviewing supporting OIS reports, such as the Abatement Tracking Report and the SIR, as well as the Open Inspection Report, on a weekly basis to address open abatement and to close inspection cases. The State Plan developed an operational strategy to include both compliance and administrative staff in obtaining abatement and closing inspection cases. Wyoming OSHA provided training to staff regarding the ROPP and the FOM guidance concerning abatement and closure of cases. | February 22, 2023 | Completed |

| State Plan: SAMM Number | State Plan: SAMM Name | State Plan: Data | FY 2023 Further Review Level | FY 2023 Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 17.94 | 16 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of work days to initiate complaint inspections (federal formula) | 12.53 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of work days to initiate complaint investigations (state formula) | 4.44 | 5 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | 3.09 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 3 | Percent of complaints and referrals responded to within one workday (imminent danger) | 100% | 100% | The further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 0 | 0 | The further review level is fixed for all State Plans. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 1.49 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.43 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 3.33% | +/- 5% of  2.11% | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 2.00 to 2.21%. |
| 7a | Planned v. actual inspections (safety) | 135 | +/- 5% of  175 | 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 166.25 to 183.75 for safety. |
| 7b | Planned v. actual inspections (health) | 15 | +/- 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. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $5,086.30 | +/- 25% of  $3,625.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. |
| 8a | Average current serious penalty in private sector  (1-25 workers) | $3,433.00 | +/- 25% of  $2,348.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. |
| 8b | Average current serious penalty in private sector  (26-100 workers**)** | $5,293.95 | +/- 25% of  $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. |
| 8c | Average current serious penalty in private sector  (101-250 workers) | $7,458.67 | +/- 25% of  $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. |
| 8d | Average current serious penalty in private sector  (greater than 250 workers) | $8,684.20 | +/- 25% of  $7,331.41 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| 9a | Percent in compliance (safety) | 69.09% | +/- 20% of  31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in compliance (health) | 72.73% | +/- 20% of  43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 50% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 60.84 | +/- 20% of 55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 75.40 | +/- 20% of 69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | 90.30% | +/- 15% of  71.84% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 100% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | 0.85% | +/- 25% of  0.93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 14, 2023, as part of OSHA’s official end-of-year data run.

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