

FY 2016 Follow-up Federal Annual Monitoring and Evaluation (FAME) Report

Wyoming Occupational Safety and Health Administration (Wyoming OSHA)



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I. Executive Summary

A. State Plan Activities, Themes, and Progress

The purpose of this report is to assess the Wyoming Occupational Safety and Health Administration (Wyoming OSHA) for Fiscal Year (FY) 2016 and its progress in resolving the outstanding findings and recommendations from the FY 2015 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report.

During FY 2016, Wyoming OSHA was able to maintain all of its management-level workers. At one point during the year, the program had two non-management-level lead compliance safety and health officers (CSHOs). Those two lead CSHOs opted to return solely to field work, and a new lead was announced. Due to significant turnover with the compliance officer positions, Wyoming OSHA continues to suffer from an experience gap with respect to their field investigators. Throughout FY 2016, Wyoming OSHA struggled to maintain its staffing benchmark of two health compliance officers. These staffing concerns may be a contributing factor to why Wyoming OSHA was unable to meet all of its annual performance goals for FY 2016.

The FY 2015 FAME Report yielded nine findings, six of which were continued from FY 2014. The FY 2015 FAME Report also identified seven observations related to various aspects of the Wyoming OSHA program, one of which was continued from the previous FAME Report. Throughout FY 2016, Wyoming OSHA's management team made significant progress in addressing the findings and observations noted during the FY 2015 FAME audit.

B. State Plan Introduction

Wyoming OSHA is housed in the Wyoming Department of Workforce Services under the Office of Workforce Standards and Compliance. The State Plan designee is John Ysebaert, the Administrator of the Office of Workforce Standards and Compliance. Daniel Bulkley is the Deputy Administrator of Wyoming OSHA and has been in this position since October of 2014. The Compliance Project's main office is located in Cheyenne, Wyoming. The project has a total of four field offices located in Casper, Gillette, Rock Springs, and Jackson.

The state of Wyoming encompasses 97,818 square miles and is a significant producer of both crude oil and natural gas. Many workplace accidents can be attributed to these industries, both directly and indirectly, including the transportation and refining of the products generated by these sectors. Wyoming OSHA has unique regulatory standards for oil and gas well drilling and servicing which address general operations at a well once it has been drilled; the State Plan also has and unique regulatory standards for special servicing which address special operations at a well site, including wireline operations, mobile pumping, and fracking, as well as drill-stem testing.

Wyoming OSHA closely mirrors the OSHA program. The enforcement program maintains jurisdiction over safety and health issues for workers in the state and local government and the private sector. The State Plan is benchmarked for six safety and two health compliance officers.

Complaints and accidents that occur in Wyoming, but fall under OSHA’s jurisdiction (e.g. National Park Service, post offices, military bases) are referred to OSHA's Denver Area Office for appropriate action. In addition to the CSHOs, the Wyoming OSHA staff consists of an operations manager, a compliance manager, a compliance assistance specialist, and three administrative personnel. State and local government consultation work and compliance assistance work are performed by the Section 21(d) consultants and funded through the Section 23(g) grant, enabling each consultant to do some work in the state and local government sector and in compliance assistance. The grant and the cooperative agreement reflect those splits. All compliance assistance work, including the Voluntary Protection Program (VPP), is funded through the 23(g) grant. Whistleblower investigations are also funded by the 23(g) grant.

The following table shows the federal award levels, State Plan matching funds, and one-time money from FY 2014 through FY 2016.

| Fiscal Year | Federal Award | State Plan Match | 100% State Funds | Total Funding | % of State Plan Contribution | One-time Money |
|-------------|---------------|------------------|------------------|---------------|------------------------------|----------------|
| 2016 | \$531,200 | \$531,200 | \$1,046,041 | \$2,108,441 | 75% | |
| 2015 | \$528,800 | \$528,800 | \$980,352 | \$2,037,952 | 74% | |
| 2014 | \$525,800 | \$525,800 | \$789,794 | \$1,841,394 | 71% | \$3,000 |

The 23(g) grant provided \$531,200, which the State Plan overmatched by \$1,046,041. This yielded an annual budget of \$2,108,441 for FY 2016. No one-time funds were provided by the National Office to augment the federal grant amount for FY 2016.

As previously mentioned, Wyoming OSHA faced challenges maintaining their benchmark for health compliance officers. At times during FY 2016, they had to operate with one health compliance officer. This gap in staffing was addressed by having safety compliance officers conduct some health-related inspections. Wyoming OSHA was able to meet their benchmark of six safety compliance officers. The staff also includes a full-time whistleblower investigator.

Wyoming OSHA is managed by the Wyoming Occupational Safety and Health Commission. This body consists of seven members, each appointed by the governor to devise, formulate, adopt, amend, repeal, and enforce rules that impact workplace health and safety. The commission meets four times per year and has special meetings when necessary. For a federal rule to be adopted in Wyoming, the rule must be approved by the commission.

C. Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year, and as such, OSHA did not perform the level of case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME.

The following data sources were used to support the information in this FAME Report:

- FY 2016 State Operations Annual Report
- FY 2016 State Plan Grant Application
- FY 2016 State Activity Mandated Measures (SAMM) Report
- Mandated Activities Report for Consultation
- Minutes from quarterly meetings
- Information gathered from informal meetings with the State Plan
- FY 2016 State Information Report

D. Findings and Observations

The FY 2015 FAME yielded nine findings and seven observations, all related to various aspects of the Wyoming OSHA program. Three findings were completed, and six findings were continued. While two FY 2015 observations were closed, five were continued in the FY 2016 FAME Report.

The FY 2016 FAME identified one new finding and one new observation. The new finding is related to the elevated lapse time for health cases. The new observation pertains to the lack of whistleblower data available for tracking and review. Six of the findings and five of the observations from the FY 2015 FAME Report are continued into this report. Of those six findings, Wyoming OSHA has implemented corrective action for three, but verification via the next case file review is necessary to officially complete each of the findings. The next case file review is part of the FY 2017 FAME. With regard to the FY 2015 observations that are continued in FY 2016, each has been addressed through the development of new policies and procedures and by conducting internal training for the compliance staff. As with the findings, verification of the effectiveness of the federal monitoring plan will take place during the next case file review.

II. Assessment of State Plan Performance

A. Major New Issues

With the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA raised its maximum penalties effective August of 2016 and again increased penalties according to the consumer price index (CPI) in January of 2017. As required by law, OSHA will continue to raise maximum penalties each year according to the CPI. State Plans are required to adopt both the catch-up increase and the annual increase.

Wyoming was the first state to pass legislation to enable an increase in maximum penalties issued by its State Plan. The bill also included language to ensure that the annual increase due to inflation (CPI) could be implemented by the Wyoming Occupational Safety and Health Commission without having to go through the legislative process. The commission increased maximum penalties as of May 16, 2017, and is expected to approve the additional increase based on the annual CPI during the summer of 2017.

Also, on April 1, 2016, a new program, the Worker's Compensation Safety and Risk Unit (WCSRU), was started under the Office of Standards and Compliance. The focus of this unit is to conduct safety and health surveys, much like the Consultation group, but concentrating on employers with elevated injury and illness rates. The WCSRU is a state entity which has no affiliation with Wyoming OSHA. When the WCSRU was formed, three of Wyoming OSHA's CSHOs moved over to the new unit. In addition, two other CSHOs left the division during the course of FY 2016. As has been noted in previous years, Wyoming OSHA continues to struggle with maintaining an experienced compliance staff.

B. Assessment of State Plan Progress in Achieving Annual Performance Goals

Wyoming OSHA has established three annual performance goals.

Goal 1: The first of these goals is to reduce the number of workplace fatalities. Because of the statistically small number of fatalities per year, Wyoming OSHA compares the number of fatalities against a 10-year rate which the State Plan considers the baseline. The baseline from FY 2007 through FY 2016 was 8.9.

Result 1: During FY 2016, Wyoming OSHA investigated 10 workplace fatalities. Unfortunately, there was an increase in the number of fatalities in comparison to the 10-year rate, so the State Plan did not meet this goal. Wyoming OSHA will continue to focus a large portion of their inspection activity on Local Emphasis Programs (LEPs) and National Emphasis Programs in order to target those industries with the highest injury, illness, and fatality rates.

Goal 2: The second annual performance goal is to improve workplace safety and health for all Wyoming workers as evidenced by fewer hazards, reduced exposures, and fewer injuries and illnesses. During FY 2016, Wyoming OSHA did conduct more imminent danger inspections than at any other time in their history. Wyoming OSHA continues to issue a high average of citations per inspection, averaging 4.97 citations per health inspection and 3.83 citations per safety inspection.

Result 2: Over the course of FY 2016, Wyoming OSHA continued to work with the Worker's Compensation Division to obtain Experience Modification Rating (EMR) data for Wyoming employers to determine if injury and illness rates are decreasing. Data used by the Consultation staff does indicate that the average EMR has decreased for FY 2016. However, the Wyoming OSHA Compliance Division is unable to access data specific to their functions (e.g., pre- and post-inspection data) and is, therefore, unable to clearly determine their progress on this annual performance goal. The inability to access this information is an issue that has been noted in previous reports. The State Plan recognizes the need to resolve this matter in FY 2017.

Goal 3: The third annual performance goal is to increase marketing for participation in the VPP and the Public Sector Safety and Health Achievement Recognition Program (SHARP) by five percent by developing relationships with companies applying safety and health best practices.

Result 3: Wyoming OSHA has worked diligently to maintain and increase new participation in cooperative programs and continue involvement with health and safety Alliances and coalitions within the state. The division worked to increase participation in compliance assistance and consultation through the Health and Safety Consultation Employer Discount Program; prestige programs, such as VPP, SHARP, and Employer Voluntary Technical Assistance Program (EVTAP); Alliance involvement; and the 2016 National Fall Protection Stand Down. With over 350 attendees, the 2016 Safety Summit proved to be a productive and beneficial experience for the promotion of Wyoming OSHA's compliance assistance and awards programs (e.g. VPP and SHARP). Over the course of FY 2016, Wyoming OSHA maintained four employers in VPP, provided two presentations detailing VPP, conducted one pre-audit, and conducted one re-certification audit. No new VPP applications were received.

The majority of Wyoming OSHA's efforts to reach this goal involved the promotion of the Health and Safety Consultation Employer Discount Program, which encourages employers to request consultation visits or enroll into an exemption program, such as EVTAP or SHARP. Information packets were distributed on all visits conducted, and information was posted on the Wyoming OSHA website. In addition, information was shared and presented by management and staff at Alliance meetings and presentations. An online application was also created to assist employers in participating in this program. Through participation in the Workers' Compensation - Health and Safety Consultation Employer Discount Program, employers may receive a premium base rate workers' compensation insurance discount. For FY 2016, Wyoming OSHA reported a 33% increase in the number of employers that qualified for this discount program.

Wyoming OSHA exceeded expectations for the third annual performance goal.

C. Highlights from the State Activity Mandated Measures (SAMM)

Wyoming OSHA's average current penalty per serious violation in the private sector (SAMM 8: 1-250+ workers) was \$2,665.34 in FY 2016. The further review level (FRL) is -25% of the national average (\$2,279.03), which equals \$1,709.27. Penalties are one component of effective enforcement, and State Plans are required to adopt penalty policies and procedures that are at least as effective (ALAE) as those contained in OSHA's Field Operations Manual, which was revised on August 2, 2016, to include changes to the penalty structure in Chapter 6 – Penalty and Debt Collection. OSHA will continue to explore ALAE analysis of State Plan penalty structures to include evaluation of average current penalty per serious violation data.

Two measures that were not outside the FRL in FY 2015, but were for FY 2016 are SAMM 7 and 12. SAMM 7 is a measure of the State Plan's inspection total against the projected goal for the year. In the initial FY 2016 grant, Wyoming OSHA projected their overall inspection total would be 305. Their goal was to complete 258 safety-related inspections and 47 health-related inspections. According to the SAMM data, Wyoming OSHA was approximately 13% below their projected total for safety-related inspections at 224 and 15% below their projected total for health-related inspections at 40. It is important to note that the projected totals utilized for this comparison were based on the inspection goals provided by Wyoming OSHA prior to the development of the WCSRU. Wyoming OSHA adjusted their inspection goals during the course of the year due to the creation of the WCSRU and the loss of other CSHOs for various reasons.

According to SAMM 11, the lapse time for health-related inspections in FY 2016 was 80.69 days, which is significantly outside the further review level of 68.74 days (+20% of the national average of 57.28 days). As stated earlier, Wyoming OSHA has struggled to maintain its benchmark of two health compliance officers. As a result, it takes longer than usual to respond to and complete health inspections.

SAMM 12 indicates the percentage of issued penalty that is retained once a case is settled. According to the SAMM data, Wyoming OSHA retained 50.58% of their penalties, which is approximately 20% below the national average and 8.80% outside the FRL. Wyoming OSHA believes they are outside the FRL largely due to the penalty reductions they grant for employers who agree to enhanced abatement concessions during their informal conferences. A small percentage of reductions may also be attributed to citations that were vacated during the settlement process.

Although the problems with the whistleblower program are being resolved (see FY 2015-09), it is important to note that the FY 2016 SAMM Report did not have any data for Measures 14, 15, and 16 related to the whistleblower program. The lack of data reflects a data entry issue that occurred throughout FY 2016. Wyoming OSHA has since hired a whistleblower investigator and is implementing steps to ensure data is properly entered and tracked in the whistleblower database.

An area where Wyoming OSHA performed well was SAMM 9, which is a measure of the percentage of inspections that are closed as in-compliance. With respect to both safety- and health-related inspections, Wyoming OSHA was situated within the FRL.

Section III of this report addresses several of the measures related to findings and observations detailed in the FY 2015 FAME Report.

III. Assessment of State Plan Corrective Actions

The FY 2015 FAME Report for Wyoming OSHA identified nine findings and seven observations. Wyoming OSHA has reported that it has implemented corrective action for each of the findings and observations. Three FY 2015 findings are now completed; three other FY 2015 findings are awaiting verification (verification will take place during the FY 2017 case file review); and the remaining three FY 2015 findings are still open. The assessment of Wyoming OSHA's corrective action is as follows:

FY 2015-01: Wyoming OSHA has not developed and implemented a formal internal evaluation program or process.

Recommendation: Wyoming OSHA should formalize its State Internal Evaluation Program.

Status: Wyoming OSHA completed a formal internal evaluation plan and has implemented it. This corrective action was completed by the State Plan in February 2016 and has been verified by Region VIII.

FY 2015-02: Wyoming does not consistently follow the policies and procedures for handling complaints.

Recommendation: The division should implement a training program for all the compliance staff to ensure everyone is capable of processing, reviewing, and recommending complaints for closure.

Status: Wyoming OSHA has conducted internal training for their compliance staff and will continue to monitor the proper handling of complaints. Newly hired CSHOs are provided guidance on how to properly apply the existing complaint policies and procedures. During case file reviews, management personnel, as well as the lead CSHO, will ensure workers follow procedures. This corrective action was completed by the State Plan in September 2016 and has been verified by Region VIII.

FY 2015-03: The development of LEPs is not formalized to include written LEPs, the reason for the LEPs, how to target the LEPs, how to determine if the LEPs are effective, and whether to continue the LEPs.

Recommendation: Wyoming OSHA should formalize its LEPs and conduct regular evaluations of its targeting and LEPs to determine if its LEPs are effective.

Status: Wyoming OSHA formalized two LEPs and implemented them. This corrective action was completed by the State Plan in February 2016 and has been verified by Region VIII.

FY 2015-04 (currently FY 2016-1): Wyoming OSHA has not developed an effective system to account for the collection of penalties.

Recommendation: Wyoming OSHA should implement a debt collection system to ensure employers are held accountable for paying penalties associated with any citations they receive.

Status: Wyoming OSHA has dedicated a significant amount of time and resources into addressing this finding. The division has secured a contract with an outside vendor to assist with the collection of issued penalties. Wyoming OSHA anticipates the vendor will be operating by the end of the first half of FY 2017. This finding is open.

FY 2015-05 (currently FY 2016-2): Wyoming OSHA does not consistently review case files to ensure legal sufficiency. Information to legally support citations (e.g. employer knowledge, measurements, worker interviews, and worker exposure data) were missing from 30 of the 60 case files reviewed.

Recommendation: Wyoming OSHA should provide in-depth training specific to the case file review process to the management staff.

Status: Wyoming OSHA has placed a higher level of emphasis on the mandatory training required for Wyoming OSHA personnel. Those workers, including the lead CSHO, who had not attended the OSHA Training Institute (OTI) Course 1410, Inspection Techniques and Legal Aspects, were provided the training in FY 2016. The compliance manager is registered to attend the course in late FY 2017. The lead CSHO and compliance manager will also focus on legal sufficiency when reviewing case files and ensure CSHOs are responsible for obtaining adequate information prior to closing an investigation. This finding is open.

FY 2015-06 (currently FY 2016-3): Wyoming OSHA does not consistently address health hazards. During FY 2015, no noise samples were taken during inspection activity, and no overexposures to air contaminants were captured. Industrial hygiene sampling equipment is not maintained, calibrated, nor capable of being used in the field.

Recommendation: Wyoming OSHA should focus management and worker training on recognizing and addressing health-related hazards.

Status: Wyoming OSHA sent CSHOs to OTI in order to attend health-related compliance courses. The management team has conducted meetings with CSHOs in order to increase awareness of health hazards. A calibration and maintenance log, which will be managed by the operations manager, has been developed for industrial hygiene sampling equipment. CSHOs will maintain their equipment to ensure it is field ready for inspection activity. The State Plan has taken corrective action with respect to training; however, addressing health hazards through personal sampling is still an area that needs to be addressed. This finding is open.

FY 2015-07 (currently FY 2016-4): The lapse time for safety inspections in FY 2015, 62.07 days, is significantly above the reference standard of 42.78 days.

Recommendation: Wyoming OSHA should reduce lapse time by ensuring inspections are completed and citations are issued in a timely manner.

Status: Wyoming OSHA has directed their CSHOs to submit their safety-related inspections for review within 30 days of the opening conference unless the complexity of the case (e.g. a fatality) would warrant a longer investigation period. The lead CSHO and the compliance manager are working together to avoid the lapse time issues that have existed in previous years. As of the end of FY 2016, lapse time for safety cases continues to be higher than the reference standard (SAMM #11). This finding is open.

FY 2015-08 (currently FY 2016-5): Wyoming OSHA does not promptly obtain abatement from employers post-contest. Of the 35 cases reviewed which required abatement, 27 of them lacked adequate verification or evidence of abatement.

Recommendation: Wyoming OSHA should implement a system to ensure informal conferences are held timely so abatement is promptly obtained.

Status: Wyoming OSHA has implemented the requirement that CSHOs collect abatement for their case files. The lead CSHO and the compliance manager are responsible for obtaining abatement during informal conferences and for managing open abatement on a weekly basis. A greater emphasis has been placed on scheduling informal conferences within 30 days of citation issuance. The State Plan has taken corrective action, and completion of this corrective action will be verified during the FY 2017 onsite comprehensive audit (awaiting verification).

FY 2015-09 (currently FY 2016-6): Throughout 2015, the whistleblower program had significant programmatic deficiencies involving the receipt, processing, and disposition of whistleblower complaints.

Recommendation: Wyoming OSHA should ensure that the program has proper management oversight and appropriate training for managers and investigators.

Status: Wyoming OSHA has designated a new person to handle the whistleblower program. This individual has attended the whistleblower course at OTI and has also

received training while spending a week in the Regional Office. Both the operations manager and the compliance manager have attended the OTI whistleblower course within the last year. Each of these management-level positions will have oversight responsibilities for the program. The State Plan has taken corrective action, and completion of this corrective action will be verified during the FY 2017 onsite comprehensive audit (awaiting verification).

With regard to the seven observations from the FY 2015 FAME Report, two have been closed while the remaining five observations are continued. Wyoming OSHA performed internal training for their entire staff and implemented new policies and procedures for the handling of case files. Each of the observations related to case file management or information contained within the inspection files or inquiry files will be verified in the FY 2017 onsite audit to be conducted in the first or second quarter of FY 2018. The status of the FY 2015 observations can be found below and in Appendix B of this document.

FY 2015-OB-1: Wyoming OSHA continues to work toward developing and implementing a formal training program for new compliance officers.

Federal Monitoring Plan: The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2017.

Status: Wyoming OSHA has adopted OSHA's training and education directive for the training and development of new CSHOs. They are following the three-year and five-year training tracks. This observation is closed.

FY 2015-OB-2 (currently FY 2016-OB-1): Wyoming OSHA does not consistently request, evaluate, or enter OSHA-300 information as part of their inspection process.

Federal Monitoring Plan: The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2017.

Status: Wyoming OSHA ensures CSHOs are collecting the OSHA-300 logs as part of each investigation. This observation is continued and will be monitored during the next comprehensive onsite audit.

FY 2015-OB-3 (formerly FY 2014-OB-3 and FY 2013-OB-3): Wyoming OSHA does not consistently follow policies and procedures necessary to complete an adequate fatality investigation. None of the Wyoming OSHA compliance officers have completed training associated with fatalities.

Federal Monitoring Plan: The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2017.

Status: All compliance officers attended fatality investigation training provided by OTI in April 2016, and Region VIII has verified this. This observation is closed.

FY 2015-OB-4 (currently FY 2016-OB-2): Wyoming OSHA does not conduct follow-up inspections to obtain abatement. In cases where abatement was not obtained, (27 out

of 35 cases) Wyoming OSHA did not verify that the violative condition had been corrected.

Federal Monitoring Plan: The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2017.

Status: Wyoming OSHA has committed to conducting follow-up inspections in FY 2017. This observation is continued and will be monitored during the next comprehensive onsite audit.

FY 2015-OB-5 (currently FY 2016-OB-3): Wyoming OSHA does not ensure policies and procedures are followed with respect to inspections that involve worksites with union representation. Only two cases involved a union, and in one of those cases, a fatality, the union was not involved in the walkaround or the closing conference.

Federal Monitoring Plan: The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2017.

Status: Wyoming OSHA has provided training to all CSHOs regarding the proper methods to conduct inspections; the union representation and involvement were covered in the training. This observation is continued and will be monitored during the next comprehensive onsite audit.

FY 2015-OB-6 (currently FY 2016-OB-4): Wyoming OSHA did not consistently document why modifications were made to citations during the informal conference. Documentation was not provided for 11 of the 25 cases where modifications were made during the informal conference.

Federal Monitoring Plan: The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2017.

Status: Wyoming OSHA reviewed this issue with their staff during their semi-annual training meeting. This observation is continued and will be monitored during the next comprehensive onsite audit.

FY 2015-OB-7 (currently FY 2016-OB-5): Wyoming OSHA does not consistently use a case file diary sheet. It was observed that 45 case files did not include a diary sheet. The diary sheet provides organization and helpful information on the progress and disposition of the case.

Federal Monitoring Plan: The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2017.

Status: Wyoming OSHA has implemented the use of a diary sheet for all case files. This observation is continued and will be monitored during the next comprehensive onsite audit.

Appendix A – New and Continued Findings and Recommendations

FY 2016 Wyoming Follow-up FAME Report

| FY 2016-# | Finding | Recommendation | FY 20XX-# or FY 20XX-OB-# |
|-----------|---|---|------------------------------|
| FY 2016-1 | Wyoming OSHA has not developed an effective system to account for the collection of penalties. | Wyoming OSHA should implement a debt collection system to ensure employers are held accountable for paying penalties associated with any citations they receive. | FY 2015-4 |
| FY 2016-2 | Wyoming OSHA does not consistently review case files to ensure legal sufficiency. Information to legally support citations (e.g., employer knowledge, measurements, worker interviews, and worker exposure data) were missing from 30 of the 60 case files reviewed. | Wyoming OSHA should provide in-depth training specific to the case file review process to the management staff. | FY 2015-5 |
| FY 2016-3 | Wyoming OSHA does not consistently address health hazards. During FY 2015, no noise samples were taken during inspection activity, and no overexposures to air contaminants were captured. Industrial hygiene sampling equipment is not maintained, calibrated, nor capable of being used in the field. | Wyoming OSHA should focus management and worker training on recognizing and addressing health-related hazards. | FY 2015-6 |
| FY 2016-4 | The lapse time for safety inspections in FY 2016, 75.05 days, is significantly above the reference standard of 45.16 days. | Wyoming OSHA should reduce lapse time by ensuring inspections are completed and citations issued in a timely manner. | FY 2015-7 |
| FY 2016-5 | Wyoming OSHA does not promptly obtain abatement from employers post-contest. Of the 35 cases reviewed which required abatement, 27 of them lacked adequate verification or evidence of abatement. | Wyoming OSHA should implement a system to ensure informal conferences are held timely so abatement is promptly obtained. <i>Corrective action complete, awaiting verification.</i> | FY 2015-8 |
| FY 2016-6 | Throughout 2015, the whistleblower program had significant programmatic deficiencies involving | Wyoming OSHA should ensure that the program has proper management oversight and appropriate | FY 2015-9 |

Appendix A – New and Continued Findings and Recommendations

FY 2016 Wyoming Follow-up FAME Report

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|-----------|--|--|--|
| | the receipt, processing, and disposition of whistleblower complaints. | training for managers and investigators. <i>Corrective action complete, awaiting verification.</i> | |
| FY 2016-7 | The lapse time for health inspections in FY 2016, 80.69 days, is significantly above the reference standard of 57.28 days. | Wyoming OSHA should reduce lapse time by ensuring inspections are completed and citations issued in a timely manner. | |

Appendix B – Observations Subject to New and Continued Monitoring

FY 2016 Wyoming Follow-up FAME Report

| Observation # FY 2016-OB-# | Observation# FY 20XX-OB-# or FY 20XX-# | Observation | Federal Monitoring Plan | Current Status |
|-------------------------------|--|---|---|----------------|
| FY 2016-OB-1 | FY 2015-OB-2 | Wyoming OSHA does not consistently request, evaluate, or enter OSHA-300 information as part of their inspection process. | The OSHA Regional Office will continue to effectively monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2017. | Continued |
| FY 2016-OB-2 | FY 2015-OB-4 | Wyoming OSHA does not conduct follow-up inspections to obtain abatement. In cases where abatement was not obtained (27 out of 35 cases reviewed), Wyoming OSHA did not verify that the violative condition had been corrected. | The OSHA Regional Office will continue to effectively monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2017. | Continued |
| FY 2016-OB-3 | FY 2015-OB-5 | Wyoming OSHA does not ensure policies and procedures are followed with respect to inspections that involve worksites with union representation. Only two cases involved a union, and in one of those cases, a fatality, the union was not involved in the walkaround or the closing conference. | The OSHA Regional Office will continue to effectively monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2017. | Continued |
| FY 2016-OB-4 | FY 2015-OB-6 | Wyoming OSHA did not consistently document why modifications were made to citations during the informal conference. Documentation was not provided for 11 of the 25 cases where modifications were made during the informal conference. | The OSHA Regional Office will continue to effectively monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2017. | Continued |
| FY 2016-OB-5 | FY 2015-OB-7 | Wyoming OSHA does not consistently use a case file diary sheet. It was observed that 45 case files did not include a diary sheet. The diary sheet provides organization and helpful information on the progress and disposition of the case. | The OSHA Regional Office will continue to effectively monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2017. | Continued |
| FY 2016-OB-6 | | Wyoming OSHA does not consistently track and enter whistleblower data into the whistleblower | The OSHA Regional Office will continue to effectively monitor the State Plan’s | New |

Appendix B – Observations Subject to New and Continued Monitoring

FY 2016 Wyoming Follow-up FAME Report

| | | | | |
|-----------------------|--|--|--|--------|
| | | database. | performance in this area during quarterly meetings throughout FY 2017. | |
| PREVIOUS FAMES | | | | |
| | FY 2015-OB-1 | Wyoming OSHA continues to work toward developing and implementing a formal training program for new compliance officers. | | Closed |
| | FY 2015-OB-3 FY 2014-OB-3 FY 2013-OB-3 | Wyoming OSHA does not consistently follow policies and procedures necessary to complete an adequate fatality investigation. None of the Wyoming OSHA compliance officers have completed training associated with fatalities. | | Closed |

Appendix C - Status of FY 2015 Findings and Recommendations

FY 2016 Wyoming Follow-up FAME Report

| FY 2015-# | Finding | Recommendation | State Plan Response/Corrective Action | Completion Date | Current Status and Date |
|-----------|---|--|---|--------------------|---------------------------------|
| FY 2015-1 | Wyoming OSHA has not developed and implemented a formal internal evaluation program or process. | Wyoming OSHA should formalize its State Internal Evaluation Program. | Wyoming OSHA completed a formal internal evaluation plan and has implemented and submitted it to Region VIII. | February 24, 2016 | Completed, March 10, 2016 |
| FY 2015-2 | Wyoming OSHA does not consistently follow the policies and procedures for handling complaints. | The division should implement a training program for all of the compliance staff to ensure everyone is capable of processing (intake), reviewing, and recommending complaints for closure. | Wyoming OSHA has conducted internal training for their compliance staff and will continue to monitor the proper handling of complaints. Newly hired CSHOs are provided guidance on how to properly apply the existing complaint policies and procedures. During case file reviews, management personnel, as well as the lead CSHO, will ensure workers follow procedures. | September 19, 2016 | Completed, February 10, 2017 |
| FY 2015-3 | The development of LEPs is not formalized to include written LEPs, the reason for the LEPs, how to target the LEPs, how to determine if the LEPs are effective, and whether to continue the LEPs. | Wyoming OSHA should formalize its LEPs and conduct regular evaluation of its targeting and LEPs to determine that its LEPs are effective. | Wyoming OSHA formalized two LEPs and implemented and submitted them to Region VIII. | February 24, 2016 | Completed, March 10, 2016 |
| FY 2015-4 | Wyoming OSHA has not developed an effective system to account for the collection of penalties. | Wyoming OSHA should implement a debt collection system to ensure employers are held accountable for paying penalties | The division has secured a contract with an outside vendor to assist with the collection of issued penalties. Wyoming OSHA anticipates the vendor will be operating by the end of the first half of FY 2017. | Not Applicable | Open, January 19, 2017 |

Appendix C - Status of FY 2015 Findings and Recommendations

FY 2016 Wyoming Follow-up FAME Report

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| | | associated with any citations they receive. | | | |
| FY 2015-5 | Wyoming OSHA does not consistently review case files to ensure legal sufficiency. Information to legally support citations (e.g. employer knowledge, measurements, worker interviews, and worker exposure data) were missing from 30 of the 60 case files reviewed. | Wyoming OSHA should provide in-depth training specific to the case file review process to the management staff. | Those workers, including the lead CSHO, who had not attended the OSHA Training Institute (OTI) Course 1410, Inspection Techniques and Legal Aspects, were provided the training in FY 2016. The compliance manager is registered to attend the course in late FY 2017. The lead CSHO and compliance manager will also focus on legal sufficiency when reviewing case files and ensure CSHOs are responsible for obtaining adequate information prior to closing an investigation. | Not Applicable | Open, January 19, 2017 |
| FY 2015-6 | Wyoming OSHA does not consistently address health hazards. During FY 2015, no noise samples were taken during inspection activity, and no overexposures to air contaminants were captured. Industrial hygiene sampling equipment is not maintained, calibrated, nor capable of being used in the field. | Wyoming OSHA should focus management and worker training on recognizing and addressing health-related hazards. | Wyoming OSHA sent CSHOs to OTI in order to attend health-related compliance courses. The management team has conducted meetings with CSHOs in order to increase awareness of health hazards. A calibration and maintenance log, which will be managed by the operations manager, has been developed for industrial hygiene sampling equipment. CSHOs will maintain their equipment to ensure it is field ready for inspection activity. The State Plan has taken corrective action with respect to training; however, addressing health hazards through personal sampling is still an area that needs to be addressed. | Not Applicable | Open, January 19, 2017 |
| FY 2015-7 | The lapse time for safety inspections in FY 2015, 62.07 days, | Wyoming OSHA should reduce lapse time by ensuring | Wyoming OSHA has directed their CSHOs to submit their safety-related inspections for review within 30 days of | Not Applicable | Open, January 19, 2017 |

Appendix C - Status of FY 2015 Findings and Recommendations

FY 2016 Wyoming Follow-up FAME Report

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| | is significantly above the reference standard of 42.78 days. | inspections are completed and citations issued in a timely manner. | the opening conference unless the complexity of the case (e.g. fatality) would warrant a longer investigation period. The lead CSHO and the compliance manager are working together to avoid the lapse time issues that have existed in previous years. As of the end of FY 2016, lapse time for safety cases continues to be higher than the reference standard (SAMM #11). | | |
| FY 2015-8 | Wyoming OSHA does not promptly obtain abatement from employers post-contest. Of the 35 cases reviewed which required abatement, 27 of them lacked adequate verification or evidence of abatement. | Wyoming OSHA should implement a system to ensure informal conferences are held timely so abatement is promptly obtained. | Wyoming OSHA has implemented the requirement that CSHOs collect abatement for their case files. The lead CSHO and the compliance manager are responsible for obtaining abatement during informal conferences and for managing open abatement on a weekly basis. A greater emphasis has been placed on scheduling informal conferences within 30 days of citation issuance. Completion of this finding will be verified during the FY 2017 onsite comprehensive audit. | September 19, 2016 | Awaiting Verification, January 19, 2017 |
| FY 2015-9 | Throughout 2015, the whistleblower program had significant programmatic deficiencies involving the receipt, processing, and disposition of whistleblower complaints. | Wyoming OSHA should ensure that the program has proper management oversight and appropriate training for managers and investigators. | Wyoming OSHA has designated a new person to handle the whistleblower program. This individual has attended the whistleblower course at the OTI and has also received training while spending a week in the Regional Office. Both the operations manager and the compliance manager have attended the OTI whistleblower course within the last year. Each of these management-level positions will have oversight responsibilities for the | September 30, 2016 | Awaiting Verification, January 19, 2017 |

Appendix C - Status of FY 2015 Findings and Recommendations

FY 2016 Wyoming Follow-up FAME Report

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| | | program. Completion of this finding will be verified during the FY 2017 onsite comprehensive audit. | | |
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Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report

FY 2016 WYOMING OSHA Follow-up FAME Report

Fiscal Year 2016 is the first year since the transition from the NCR (OSHA's legacy data system) began that all State Plan enforcement data has been captured in OSHA's Information System (OIS). All State Plan and federal whistleblower data continues to be captured in OSHA's WebIMIS System. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report and State Plan WebIMIS report run on November 14, 2016, as part of OSHA's official end-of-year data runs. The further review levels for SAMMs 5, 8, 9, 11, 12, 15, and 17 have been negotiated to rely on a three-year national average. However, due to the recent transition to OIS, the further review levels for these SAMMs will rely on a one-year national average for one more year.

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report

FY 2016 Wyoming Follow-up FAME Report

| U.S. Department of Labor | | | | |
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| Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs) | | | | |
| State Plan: Wyoming – WYOMING OSHA | | | FY 2016 | |
| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 5.89 | 16 | Further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of work days to initiate complaint inspections (federal formula) | 2.00 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of work days to initiate complaint investigations (state formula) | 3.00 | 1 | Further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | 1.80 | 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% | Further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 0 | 0 | Further review level is fixed for all State Plans. |
| 5 | Average number of violations per inspection | SWRU: 2.52 | +/- 20% of SWRU: 1.87 | Further review level is based on a one-year national rate. |

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report

FY 2016 Wyoming Follow-up FAME Report

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| | with violations by violation type | Other: 1.02 | +/- 20% of Other: .99 | |
| 6 | Percent of total inspections in state and local government workplaces | 10.98% | +/- 5% of 6.56% | Further review level is based on a number negotiated by OSHA and the State Plan through the grant application. |
| 7 | Planned v. actual inspections – safety/health | S: 224 | +/- 5% of S: 258 | Further review level is based on a number negotiated by OSHA and the State Plan through the grant application. |
| | | H: 40 | +/- 5% of H: 47 | |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | \$2,665.34 | +/- 25% of \$2,279.03 | Further review level is based on a one-year national rate. |
| | a. Average current serious penalty in private sector (1-25 workers) | \$1,739.14 | +/- 25% of \$1,558.96 | Further review level is based on a one-year national rate. |
| | b. Average current serious penalty in private sector (26-100 workers) | \$2,912.72 | +/- 25% of \$2,549.14 | Further review level is based on a one-year national rate. |
| | c. Average current serious penalty in private sector (101-250 workers) | \$4,307.06 | +/- 25% of \$3,494.20 | Further review level is based on a one-year national rate. |
| | d. Average current serious penalty in private sector (greater than 250 workers) | \$8,558.48 | +/- 25% of \$4,436.04 | Further review level is based on a one-year national rate. |
| 9 | Percent in compliance | S: 28.22% | +/- 20% of S: 28.85% | Further review level is based on a one-year national rate. |
| | | H: 27.78% | +/- 20% of H: 35.68% | |

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report

FY 2016 Wyoming Follow-up FAME Report

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| 10 | Percent of work-related fatalities responded to in one workday | 85.71% | 100% | Further review level is fixed for all State Plans. |
| 11 | Average lapse time | S: 75.05 | +/- 20% of S: 45.16 | Further review level is based on a one-year national rate. |
| | | H: 80.69 | +/- 20% of H: 57.28 | |
| 12 | Percent penalty retained | 50.58% | +/- 15% of 69.86% | Further review level is based on a one-year national rate. |
| 13 | Percent of initial inspections with worker walk around representation or worker interview | 100% | 100% | Further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | 0% | 100% | Further review level is fixed for all State Plans. |
| 15 | Percent of 11(c) complaints that are meritorious | 0% | +/- 20% of 24% | Further review level is based on a three-year national average. |
| 16 | Average number of calendar days to complete an 11(c) investigation | 0 | 90 | Further review level is fixed for all State Plans. |
| 17 | Percent of enforcement presence | 1.57% | +/- 25% of 1.26% | Further review level is based on a one-year national rate. |