

# **FY 2019 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report**

**Wyoming Occupational Safety and Health Administration (Wyoming OSHA)**



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## **I. Executive Summary**

The purpose of this report is to assess Wyoming OSHA's performance for Fiscal Year (FY) 2019 and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) Reports.

During the evaluation period, Wyoming OSHA experienced the departure of several compliance safety and health officers (CSHOs) and the compliance assistance specialist (CAS), as well as two lead CSHOs who played a large role in field and supervisory duties. Staffing turnover forced the State Plan to dedicate significant time and resources to training and mentoring new workers at the entry and management levels.

Despite the challenges in staffing, Wyoming OSHA was able to exceed their overall inspection goals for FY 2019 and perform at a high level with respect to many of the mandated measures. A specific area of success for Wyoming OSHA was their commitment to providing formal training and education to their staff.

The State Plan made significant progress in addressing the four findings and one observation from the FY 2018 Follow-up FAME Report. Wyoming OSHA put considerable effort into processing complaints, addressing health hazards, improving the whistleblower program, and documenting willful citations. Therefore, the State Plan was able to complete all four findings and close one of the two observations. These findings and observations involved deficiencies in identifying and documenting hazards.

This FY 2019 Comprehensive FAME Report includes one finding related to giving complainants the opportunity to evaluate whether the employer has corrected hazards. This report also includes eight observations related to: conducting state and local government inspections, coding in the OSHA Information System (OIS), lapse time, conducting follow-up inspections, mailing copies of citations to unions, conducting informal conferences after the final contest date, conducting comprehensive general industry inspections, and processing whistleblower cases. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plans. Appendix C describes the status of previous findings with associated completed corrective actions.

## **II. State Plan Background**

### **A. Background**

The Wyoming Department of Workforce Services, Office of Workforce Standards and Compliance houses Wyoming OSHA. The State Plan designee is Jason Wolfe, who also serves as the Acting Administrator of the Office of Workforce Standards and Compliance. Karen Godman is the Deputy Administrator of Wyoming OSHA and has been in this position since December 2018. The Compliance Project's main office is located in Cheyenne, Wyoming. Wyoming OSHA also has field offices located in Casper, Gillette, and Rock Springs.

Wyoming OSHA closely mirrors the OSHA 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 includes 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 21(d) cooperative agreement provides funding for consultation in the private sector.

The Wyoming OSHA staff consists of the acting administrator, the deputy administrator, the compliance program area director, a lead compliance officer, a CAS, a whistleblower investigator, four safety compliance officers, two health compliance officers, and three administrative personnel. In total, Wyoming OSHA employs 15 people. The 23(g) grant funds all compliance assistance work, including the Voluntary Protection Program (VPP), and whistleblower investigations. The benchmarked positions for the State Plan include six safety and two health compliance officers.

The following table shows the federal award levels, State Plan matching funds, and one-time money from FY 2017 through FY 2019.

<b>Fiscal Year</b>	<b>Federal Award</b>	<b>State Plan Match</b>	<b>100% State Funds</b>	<b>Total Funding</b>	<b>% of State Plan Contribution</b>	<b>One-time Money</b>
2019	\$541,700	\$541,700	\$1,216,576	\$2,299,976	76%	\$14,075
2018	\$531,200	\$531,200	\$1,215,333	\$2,277,733	76%	\$32,767
2017	\$531,200	\$531,200	\$1,046,041	\$2,108,441	75%	N/A

A highlight of the Wyoming OSHA program is the improvement in the whistleblower program. With continuity of staffing, the State Plan was able to review and assess the whistleblower program more effectively and incorporate the changes into standard operating procedures. As a result, the backlog of whistleblower cases went from 30 cases to two. The number of days to complete investigations decreased by 50%. The percent of meritorious cases went from 6% to 47%, and the settlement value went from one case for \$8,600 to eight cases with a settlement value of \$557,797.

**B. New Issues**

None.

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

**A. Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2019 was a comprehensive year, and as such, OSHA was required to conduct an on-site evaluation and case file review. The

review team involved six OSHA personnel, including a whistleblower investigator. The team conducted the case file review at the Wyoming State Plan office during the timeframe of January 27 through 31, 2020. A total of 68 safety, health, and whistleblower inspection case files were reviewed, and 36 complaint and referral files were reviewed. The team randomly selected safety and health inspection files from closed inspections conducted during the evaluation period (October 1, 2018, through September 30, 2019). The selected population included:

- Six (6) fatality files
- Thirty-seven (37) safety and health inspection files
- Twenty-five (25) whistleblower case files
- Thirty-six (36) informal complaint and referral files

This report bases analyses and conclusions on information obtained from a variety of monitoring sources, including:

- State Activity Mandated Measures (SAMM) Report (Appendix D)
- State Information Report (SIR)
- Inspection Summary Report
- State OSHA Annual Report (SOAR) (Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Interviews of Wyoming OSHA staff
- Case file review

Each SAMM has an agreed-upon further review level (FRL) which can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2019 SAMM Report and includes the FRL for each measure.

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

### **1. PROGRAM ADMINISTRATION**

#### **a) Training**

Throughout FY 2019, Wyoming OSHA provided training to its staff by several means. The staff took 12 OSHA Training Institute (OTI) courses, including three that OTI instructors actually brought to Wyoming OSHA. State Plan personnel also benefited from 20 webinars and other online courses. Wyoming OSHA's ability to close observations and complete findings from the

FY 2018 FAME Report is largely attributed to the extensive training its staff received over the course of FY 2019.

b) OSHA Information System (OIS)

Wyoming OSHA has a contract with OSHA for the use of OIS as its primary inspection database. The use of OIS contributed to efficiencies in the program by providing standardized input, processing, and reports. The State Plan typically used OIS to monitor the State Plan's operations by periodically reviewing reports, including: 1) the Open Inspection Report, which tracks citations pending and outstanding abatement; and 2) the UPA Tracking Report, which presents the status of unprogrammed activities, including complaints, referrals, and accidents reported to Wyoming OSHA.

Still, Wyoming OSHA had problems with accurate coding in OIS in FY 2019. The State Plan coded six of 22 self-referral inspections under emphasis programs as unprogrammed-other rather than programmed-planned. OSHA also noted that the State Plan improperly coded three non-work-related fatalities as referrals in OIS.

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

**Federal Monitoring Plan:** The OSHA Regional Office will continue to monitor the State Plan's performance in this area during the quarterly meetings throughout FY 2020.

**Status:** This observation is new.

c) State Internal Evaluation Program (SIEP) Report

The purpose of the SIEP is to ensure that the State Plan is performing internal audits of their operations and organizational functions. The following are some of the aspects that Wyoming OSHA has included in the SIEP:

Orientation of New CSHOs	Formal Training for All CSHOs
On-the-Job Evaluations of Field Staff	Review of Work Products
Communicating with Employers	Employer Obligations
Hazard Identification	Abatement Verification
Corrective Advice	Written Policies
Program Management	Individual Accountability
Communication	Staff Meetings

Two areas of greater focus in FY 2019 were on-the-job evaluations and the review of work products. The compliance program area director and the lead compliance officer provided on-

the-job evaluations to ensure that CSHOs were conducting proper inspections. Wyoming OSHA will continue to focus on this aspect of their internal auditing in FY 2020. The compliance program area director and the lead compliance officer also reviewed work products to develop and maintain consistency in the case file review and citation review processes.

#### d) Staffing

FY 2019 was a year of personnel changes for the State Plan. The Wyoming OSHA Deputy Administrator separated from the program, and the State Plan hired Karen Godman to fill this position. Next, the operations manager retired, and Wyoming OSHA filled this vacancy in August 2019. When the lead compliance officer separated from the program, the State Plan backfilled this position with another compliance officer, which in turn, created another vacancy. The CAS also left the program, but the State Plan was able to fill the position. Finally, Wyoming OSHA filled the open compliance officer position in October 2019.

## 2. ENFORCEMENT

#### a) Complaints

Wyoming OSHA conducted 75 complaint inspections and processed 74 informal complaint investigations during FY 2019. SAMMs 1, 2, and 3 measure State Plan performance regarding responses to complaints throughout the year. OSHA and the State Plan negotiate the FRLs for SAMMs 1 and 2. SAMM 1 measures the average number of workdays to initiate a complaint inspection. In FY 2019, the FRL for SAMM 1 was 16 days, and the State Plan took an average of 5.84 days to initiate a complaint inspection. Next, SAMM 2 accounts for the average number of workdays to initiate a complaint investigation. In FY 2019, the FRL for this SAMM was one day. Wyoming OSHA took an average of 1.73 workdays to initiate a complaint investigation. Moreover, SAMM 3 measures the percent of imminent danger complaints and referrals that the State Plan responds to within one workday. The FRL of 100% is fixed for all State Plans, and Wyoming OSHA responded to 100% of imminent danger complaints within one workday for FY 2019.

Complaint processing has been an issue for the State Plan in the past. The FY 2018 FAME Report included a continued finding on the processing and disposition of informal complaints.

**Finding FY 2018-01 (previously FY 2017-01):** In FY 2017, there were significant deficiencies with the processing and disposition of informal complaints. Of the 30 informal complaint files reviewed, it was determined that eight (26%) were processed, signed, and closed by CSHOs; four (12%) allowed for an excessive employer response time; 10 (33%) did not include a closeout letter; seven (23%) lacked an adequate response or documentation to close the file; and eight (26%) contained information that could have justified an inspection.

**Status:** Of the 23 informal complaint files that OSHA reviewed from FY 2019, there were two (9%) cases in which the employer did not provide a timely response, the files lacked adequate

response or documentation to close the files, or the complaints contained information potentially justifying an inspection. This represents a significant improvement over FY 2017, and as a result, this finding is completed.

As part of Wyoming OSHA's efforts to improve its complaint and referral processing, the State Plan centralized the review of complaints and referrals with the compliance program area director. OSHA found that the compliance program area director signed and closed FY 2019 complaints. Compliance officers need some additional training to process complaint investigations timely, but the documentation used to support complaint and referral responses was generally adequate, with the exception of two cases involving excavations that could have been referred for inspection.

Next, OSHA noted that the State Plan typically did not give complainants an opportunity to evaluate the response to complaints. In 20 of the 23 complaint investigation files reviewed, Wyoming OSHA did not provide a letter to the complainant. The case files did not contain evidence that the complainants' identity was requested or reasons why letters were not sent to the complainants.

Wyoming OSHA adopted OSHA's Field Operations Manual (FOM) identically and, therefore, follows its guidance. Chapter 9 of the FOM provides that for processing complaints and referrals, "[t]he complainant will be advised of the employer's response, as well as the complainant's rights to dispute that response and, if the alleged hazard persists, of the right to request an inspection." Similar criteria is in place for complaint inspections. Specifically, the FOM states that if an inspection is to occur, the Area Office will inform the complainant of the intent to schedule an inspection and will advise them of the results. The FOM further provides that after the inspection, the Area Office will send a letter to the complainant addressing each complaint item, with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued. This is the basis for a new finding.

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

**Recommendation:** Wyoming OSHA should follow the guidance in Chapter 9 of the FOM to notify both formal and non-formal complainants of pending investigations and inspections and then of the results of the investigations and inspections.

**Status:** This finding is new.

OSHA also noted that three of the 23 complaint investigations reviewed were still open in OIS information. Given the low frequency of this issue, OSHA discussed closing the complaints with Wyoming OSHA management but did not raise this topic as an observation.

Finally, SAMM 4 addresses the number of inspections where the employer denied entry to Wyoming OSHA to conduct an inspection. The FRL for this SAMM is zero for all State Plans. The State Plan met the FRL in FY 2019.



## b) Fatalities

Wyoming OSHA conducted six fatality/catastrophe inspections in FY 2019, which is lower than in most previous years. Wyoming OSHA's first strategic goal is to reduce fatalities. The State Plan compares the number of fatalities to a 20-year average. The 20-year average from 1999 to 2019 was 7.7. The six fatalities investigated in 2019 was a 22% reduction compared to the 20-year average.

OSHA found that while Wyoming OSHA performed satisfactorily when conducting fatality investigations and addressing the appropriate hazards, the State Plan did not conduct any follow-up inspections to verify fatality abatement. Chapter 11 of the FOM provides that "[w]here the worksite continues to exist, OSHA will normally conduct a follow-up inspection if serious citations have been issued." While several of the worksites no longer existed, some sites were still in operation and were therefore deserving of follow-up inspections to verify abatement. This issue is included in Observation FY 2019-OB-04 regarding the need for follow-up inspections.

Of the six fatality inspections conducted, the State Plan did not send either the initial letter or the final letter to the next-of-kin on four inspections. In two of the cases, unusual circumstances played a role, and the State Plan could not locate the next-of-kin. (In one case, it was because the next-of-kin was incarcerated.) In the third case, the Wyoming OSHA Compliance Program Manager had multiple telephone conversations with the next-of-kin and was able to convey the information that way. In the fourth case, there were no unusual circumstances, and State Plan should have sent a next-of-kin letter. However, this single case did not warrant an observation. OSHA Directive CPL 02-00-153, Communicating OSHA Fatality Inspection Procedures to a Victim's Family, prescribes the need for initial and final letters to the next-of-kin. During the closing conference, OSHA suggested that Wyoming OSHA use a fatality log or checklist to ensure that next-of-kin letters are sent out timely in accordance with CPL 02-00-153.

SAMM 10 measures the percent of work-related fatalities the State Plan responded to within one workday. The FRL is fixed at 100% for all State Plans. In FY 2019, Wyoming OSHA met the FRL by responding to all of their fatalities within one workday.

## c) Targeting and Programmed Inspection

The State Plan and OSHA negotiated the FRL for SAMM 7, which compares the actual number of inspections to the planned number of inspections. Wyoming OSHA planned to conduct 153 safety inspections and 15 health inspections in FY 2019. The State Plan met both FRLs by conducting 176 safety inspections and 15 health inspections.

For its Workers Compensation Local Emphasis Program (LEP), Wyoming OSHA has begun using a 20-year average of fatalities as a baseline to help identify employers in high-risk industries. The highest risk industries in Wyoming are, in order: mining; construction; transportation and warehousing; agriculture, forestry, fishing, and hunting; and other services. The State Plan identifies sites using the workers compensation data for inspections. Although

the bulk of Wyoming OSHA's FY 2019 inspections were in response to accidents, complaints, and referrals, the State Plan also conducted some programmed inspections to identify hazards in high-risk industries.

Over the course of FY 2019, 130 (68%) of the State Plan's 191 inspections were in the construction industry. Only about 7.85% (15/191) of the State Plan's inspection activity was health-related. During the closing conference, OSHA suggested that Wyoming OSHA develop health-focused emphasis programs to increase the number of health inspections over the next several years.

Next, SAMM 9 measures the percent of inspections in compliance, i.e., the percent of inspections without violations. For FY 2019, the FRL range for safety inspections was from 24.24% to 36.36%. The State Plan's percent in compliance for safety inspections was 35.85%, which is within the FRL range. The FRL range for in-compliance health inspections was from 28.90% to 43.35%. The State Plan's in-compliance rate was outside (above) the FRL range with 58.33%, which was a negative outcome, in FY 2019.

OSHA attributed the Wyoming State Plan's high in-compliance rate for health inspections in FY 2019 to several factors, including staff turnover and inexperienced health compliance officers. Additionally, Wyoming OSHA did not have any health emphasis programs to target health inspections with a greater potential for health hazards. Compliance officers also missed a couple of opportunities to conduct full-shift sampling, such as sampling for hexavalent chromium, on inspections related to health national emphasis programs. The State Plan recognized the need for health hazard training and sent two compliance officers to OTI to complete Course #1250, Health Standards for Industrial Hygienists, and two other compliance officers to OTI to complete Course #1080, Health Hazards Awareness for Safety Officers, during FY 2019.

An area of concern for Wyoming OSHA in previous years was their lack of attention to health hazards, specifically their failure to conduct industrial hygiene sampling for exposures to noise or air contaminants. The State Plan did not collect full-shift personal air samples during the FY 2017 evaluation period, and noise measurements only consisted of screening. Wyoming OSHA has struggled in the past to hire and maintain health compliance officers, and at the end of FY 2017, the State Plan was operating with only one health compliance officer. The previous FAME Report addressed this condition in a continued finding.

**Finding FY 2018-02 (previously FY 2017-02, FY 2016-03, and FY 2015-06):** Wyoming OSHA does not consistently address health hazards. During FY 2018, no full-shift personal noise samples or full-shift personal samples for exposures to air contaminants were taken.

**Status:** In addition to sending CSHOs to OTI to complete the courses mentioned above, Wyoming OSHA conducted full-shift sampling on six inspections in 2019, resulting in nine serious health violations. The State Plan has improved on this finding by consistently citing health standards. The deputy administrator and compliance manager also review complaints to identify potential health monitoring opportunities. This finding is completed.

Next, SAMM 5 measures the average number of serious, willful, repeat, or unclassified (SWRU) and other-than-serious (OTS) violations per inspection. For FY 2019, the SWRU FRL range was from 1.43 to 2.15. Wyoming OSHA's average of 1.84 was within the FRL. On the other hand, the OTS FRL range was from 0.78 to 1.16 in FY 2019, and the State Plan was outside (below) the FRL range with an average of 0.64 OTS violations per inspection.

Since safety inspections represented the predominant percentage of inspections in FY 2019 (92%), these data points show that the State Plan is identifying safety hazards, largely in response to accidents, complaints, referrals, and imminent danger inspections (fall hazards and trenching hazards). The FY 2019 Inspection Summary Report states that Wyoming OSHA identified 218 hazards (155 SWRU and 63 OTS). This compares to 493 hazards in FY 2018, according to the FY 2019 SOAR, when the State Plan was operating with three more experienced compliance officers. The State Plan did not have any significant cases in FY 2019.

Additionally, SAMM 17 measures the State Plan's enforcement presence. This percentage is a ratio of the total number of inspections to the total number of establishments. This SAMM does not include state and local government establishments or establishments in low-hazard private sector industries in the total establishment count. Wyoming OSHA performed well for SAMM 17 in FY 2019. The FRL range was from 0.92% to 1.54%, and the State Plan operated with an enforcement presence of 1.12%.

#### d) Citations and Penalties

The Inspection Summary Report shows that Wyoming OSHA issued 118 citations throughout the course of FY 2019. Of these citations, approximately 83% (94) were classified as serious, 12% (13) were classified as OTS, 7% (nine) were classified as repeat, and 2% (two) were classified as willful. The State Plan did not issue any failure-to-abate citations.

Historically, the review team has identified several areas of concern and addressed these with a finding.

**Finding FY 2018-03 (previously FY 2017-03, FY 2016-02, FY 2015-05, FY 2016-OB-04, and FY 2015-OB-06):** It was determined that prior to the issuance of citations, Wyoming OSHA does not sufficiently review case file documentation related to: the identification of all apparent violations, necessary evidence to support violations, accurate hazard classification, and the proper justification of severity and probability. This deficiency at the review level affects Wyoming OSHA's ability to make appropriate changes during the informal conference and settlement process.

**Status:** Management and CSHOs completed Legal Aspects and Advanced Legal Aspects in April 2018, as well as Initial Compliance in July 2018, to get a better understanding of the elements of a legally sufficient case. Since completing the courses, managers have reviewed information received and applied that knowledge to current cases to ensure that the elements of a legally sufficient case have been established, as well as the proper justifications, when reviewing case files and holding informal conferences. Management has also provided a worksheet to

CSHOs to assist during onsite inspections. Training for use of the worksheet was completed in August 2018. Also, the review team found that in FY 2019, 20 of 22 safety inspection case files included citations that were classified correctly with the appropriate severity and probability justified. The review team did not identify issues related to grouping citations. This finding is completed.

Next, the FY 2018 FAME Report included a continued observation related to willful citations.

**Observation FY 2018-OB-01 (previously FY 2017-OB-01):** When potentially willful conditions are observed, Wyoming OSHA does not thoroughly document why a willful citation is unable to be substantiated.

**Status:** The State Plan issued two willful citations in FY 2019. OSHA found that Wyoming OSHA correctly classified and supported citations and penalties. This observation is closed.

The time from the opening conference to citation issuance is called lapse time, which SAMM 11 measures. Lapse time is important because citations establish abatement dates, and shorter lapse times demonstrate to the employer the importance of correcting hazards promptly. The average lapse time for health inspections is typically longer because it may include sampling and lab response times. In FY 2019, Wyoming OSHA's health inspection lapse time was 57.17 days, which is within the FRL range of 45.78 days to 68.68 days.

However, Wyoming OSHA was outside (above) the FRL for safety inspections in FY 2019. The State Plan's lapse time for safety inspections was 70.88 days while the FRL ranged from 38.08 days to 57.13 days. This result was 24% higher than the upper end of the FRL range.

As a result, this report includes a new observation.

**Observation FY 2019-OB-03:** The lapse time for safety inspections exceeded the FRL by 24%.

**Federal Monitoring Plan:** The OSHA Regional Office will continue to monitor the State Plan's performance in this area during the quarterly meetings throughout FY 2020.

**Status:** This observation is new.

In FY 2017 and FY 2018, the State Plan lowered lapse times by directing the compliance officers to submit cases for review within 45 days unless mitigating circumstances occurred, and the lead CSHO took a greater responsibility for timely processing of cases. This approach may help in FY 2020, as well.

Finally, SAMM 8 calculates the average current serious penalty in the private sector, and Wyoming OSHA has performed very well on SAMM 8 in recent years, primarily due to legislation. 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 could be implemented by the Wyoming Occupational Safety and Health Commission without having to go through the legislative process. For FY 2019, the FRL range

was from \$2,153.97 to \$3,589.05. Wyoming OSHA was near the upper end of the FRL range with an average current serious penalty of \$3,464.38 in FY 2019.

e) Abatement

OSHA found that, not including fatalities, five of 37 (13.5%) safety and health inspections did not include evidence of abatement. Four of the five inspections were for roofing companies that did not provide a certification of abatement. Besides the case file review, OIS data also shows cases with outstanding abatement. According to the FY 2019 SIR, there were 56 inspections with outstanding abatement in excess of 60 calendar days. Forty-five of these were older inspections that occurred prior to FY 2019 and further demonstrate the need for follow-up inspections. Since the State Plan failed to conduct follow-up inspections to confirm abatement for safety and health inspections, in addition to the fatality inspections as discussed earlier, OSHA will monitor this as an observation.

**Observation FY 2019-OB-04:** In FY 2019, Wyoming OSHA did not conduct enough follow-up inspections to confirm abatement for safety and health inspections and fatality inspections.

**Federal Monitoring Plan:** The OSHA Regional Office will continue to monitor the State Plan's performance in this area during the quarterly meetings throughout FY 2020.

**Status:** This observation is new.

However, the case file review showed that when the State Plan sent citations, the citations allowed an appropriate time for abatement and collected appropriately documented abatement.

f) Worker and Union Involvement

Wyoming OSHA has adequate policies and procedures pertaining to worker involvement during an inspection. They follow OTI instruction, as well as the guidance in the FOM. SAMM 13 calculates the percent of initial inspections with worker walk around representation or worker interview. The FRL is fixed at 100% for all State Plans. In FY 2019, Wyoming OSHA included workers in 98.43% of all inspections, meaning that workers were not involved in three inspections. The review included two of the three files that did not include workers. In both cases, management also served as workers at these small establishments. The State Plan input the data into OIS as interviewing only management. OSHA advised the State Plan to include workers in all inspections and to code OIS for worker involvement if workers are appropriately included.

Regarding union involvement, there were only three sites with unions, and the unions actively participated in the inspections at two of the three sites. For each site, the State Plan did not send letters and/or copies of citations to the union. Chapter 5 of the FOM provides that "[c]itations are to be mailed to employee representatives after the certified mail receipt card is received by the Area Office." OSHA will monitor this as an observation.

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

**Federal Monitoring Plan:** The OSHA Regional Office will continue to monitor the State Plan's performance in this area during quarterly meetings throughout FY 2019.

**Status:** This observation is new.

### 3. REVIEW PROCEDURES

#### a) Informal Conferences

According to SAMM 12 data, the State Plan retained 89.20% of its initial penalties while the penalty retention FRL range was from 56.42% to 76.33%. The case file review showed that the informal settlement agreements were appropriate given the circumstances involved. Wyoming OSHA typically followed their informal settlement agreement procedures and rarely reclassified violations. The modifications were justified, and there were no patterns of settlements. These FY 2019 statistics show that with the exception of lapse times, the State Plan has been able to manage citations both before and after issuance.

Wyoming OSHA follows the OSHA FOM in that citations become a final order in 15 working days after receipt unless a Notice of Contest is received. The State Plan's citation specifies to the employer that the running of this contest period is not interrupted by an informal conference. However, Wyoming OSHA allowed employers to schedule informal conferences after the 15-working day contest time without a Notice of Contest. The review team identified three cases where the informal conference was scheduled after the citation had become a final order without a Notice of Contest. In some of these cases, Wyoming OSHA worked with the employer to obtain verification of abatement even though abatement was due earlier. Conducting an informal conference after the citation has become a final order sends a mixed message to the employer and is the basis for a new observation.

**Observation FY 2019-OB-06:** In FY 2019, Wyoming OSHA conducted informal conferences after the 15-working day contest period for three of 37 (8%) inspections.

**Federal Monitoring Plan:** The OSHA Regional Office will continue to monitor the State Plan's performance in this area during quarterly meetings throughout FY 2020.

**Status:** This observation is new.

#### b) Formal Review of Citations

When an employer contests violations, penalties, or proposed abatement periods for violations, Wyoming OSHA refers the case to an independent hearing officer. The hearing officer shall

submit written findings of fact, conclusions of law, and a recommended decision to the Wyoming OSHA Commission. The commission shall have 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 shall render its decision. The decision of the commission shall be 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 Inspection Summary Report, no cases were contested in FY 2019. None of Wyoming OSHA’s reported cases proceeded to the formal review process in FY 2019.

#### 4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

The standards adoption process in Wyoming begins once the State Plan receives electronic notification of the promulgation of a new federal standard. Once this occurs, Wyoming OSHA has a multi-step process to promulgate the rule. Wyoming OSHA forwards the new requirement to the Wyoming OSHA Commission for approval. Once approved, the State Plan 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 where a 45-day period for public comments begins. After the 45 days have passed, the Wyoming OSHA Commission meets to review public comments and vote on the adoption of the standard. Once the commission approves the standard, they send it to the attorney general’s office and the Legislative Service Office for a final review before sending it to the governor’s office for his or her approval and signature. The governor has 75 days to accept the federally promulgated standard, and once signed, it becomes law in the State of Wyoming.

##### Standards

The table below shows the State Plan’s progress in adopting standards promulgated by OSHA since the last on-site review.

Standard Number	Standard Title	Adoption Status
29 CFR 1926	Final Rule on Crane Operator Certification Requirements	The State Plan has not yet adopted this final rule.
29 CFR 1904, 1910, 1915, 1926	Final Rule on the Standards Improvement Process – Phase IV	The State Plan has not yet adopted this final rule.
29 CFR 1902, 1904, 2016-180	Improve Tracking of Workplace Injuries and Illnesses	The State Plan anticipates identical adoption on 02/01/2020.
29 CFR 1910, 1915, 1926	Final Rule on Occupational Exposure to Beryllium	The State Plan adopted this final rule identically on 12/11/2018.

This chart reflects that Wyoming OSHA has adopted the beryllium rule but has not yet adopted the other standards. State Plans inform OSHA of their intent to adopt via the State Plan Application (SPA), an online tool that also allows State Plans to provide additional information about adoption status. OSHA discussed with the State Plan the importance of updating the SPA website in a timely manner to disclose the status of the standards.

### Federal Program Changes (FPC)

Due to a staffing change in FY 2019, records were not available to confirm the adoption of some of the directives listed in the following chart. Wyoming OSHA has implemented procedures to ensure tracking of federal directive adoption in the future. Out of the six directives, Wyoming OSHA has responded to two of them, and the three for shipyard employment do not apply, leaving one directive with a response pending on the SPA website. The State Plan has adopted the site-specific targeting (SST) directive, but not identically, because Wyoming OSHA wants to base site selection on more specific and current workers compensation data.

Wyoming OSHA adopted the following FPCs since the last on-site review.

FPC Number	FPC Title	Adoption Status
CPL 02-00-161	National Emphasis Program on Trenching and Excavation	The State Plan adopted identically on 12/04/2018.
CPL 02-00-061	Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment	The State Plan will not adopt because the directive does not apply.
CPL 02-03-008	Alternative Dispute Resolution for Whistleblower Protection Program	The State Plan does not intend to adopt. Date of response is not available.
CPL 02-00-162	Shipyard Employment “Tool Bag” Directive	The State Plan will not adopt because the directive does not apply.
CPL 02-00-060	Enforcement Guidance for Personal Protective Equipment (PPE) in Shipyard Employment	The State Plan will not adopt because the directive does not apply.
CPL 02-18-001	SST Directive	The State Plan adopted not identically on 12/14/2018.

Wyoming OSHA adopted the SST directive by incorporating it into its Workers Compensation LEP. However, the Workers Compensation LEP does not provide for comprehensive inspections. As a result, Wyoming OSHA was not conducting comprehensive programmed general industry inspections. This resulted in a new observation.

**Observation FY 2019-OB-07:** Although Wyoming OSHA adopted the SST directive by incorporating it into the Workers Compensation LEP, the LEP does not provide for



comprehensive inspections. As a result, Wyoming OSHA was not conducting comprehensive programmed general industry inspections.

**Federal Monitoring Plan:** The OSHA Regional Office will monitor the State Plan's performance in this area during quarterly meetings throughout FY 2020.

**Status:** This observation is new.

## 5. VARIANCES

Wyoming OSHA does not have any variances at this time.

## 6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

During the evaluation period, Wyoming OSHA was significantly outside (below) the FRL range of 19.23% to 21.25% for SAMM 6, which measures the percent of total inspections in state and local government workplaces. Wyoming conducted only 3.66% of their inspections in state and local government workplaces. The review team attributes the low percentage in this particular performance measure to CSHO turnover throughout the evaluation period. There was also an increased focus on high-hazard conditions in the construction industry. Both factors took time and resources away from state and local government inspections.

**Observation FY 2019-OB-01 (previously FY 2018-OB-02 and FY 2017-OB-02):** Wyoming OSHA was significantly below the FRL for SAMM 6, which measures the percent of total inspections conducted in state and local government workplaces. At 3.66%, Wyoming OSHA was outside the FRL range of 19.23% to 21.25%.

**Federal Monitoring Plan:** The OSHA Regional Office will continue to monitor the State Plan's performance in this area during quarterly meetings throughout FY 2019.

**Status:** This observation is continued.

## 7. WHISTLEBLOWER PROGRAM

In early August 2018, the newly hired investigator resigned in order to take a higher paying position. On August 20, 2018, Wyoming OSHA filled this vacancy by hiring an experienced investigator who has a background in law enforcement investigations and labor standards whistleblower investigations. The investigator completed Whistleblower Investigation Fundamentals at OTI in May 2019.

The Wyoming OSHA SOAR lists several accomplishments for FY 2019. The new investigator was able to address and process whistleblower complaints in a timelier manner. The State Plan was also able to review and assess the whistleblower program more effectively and incorporate

necessary changes into the whistleblower standard operating procedures. As stated earlier, the case backlog went from 30 cases to two, and the settlement value went from one case for \$8,600 to eight cases with a settlement value of \$557,797.

The SAMM Report supports these conclusions. SAMM 14 measures the percent of investigations completed within 90 days, and the FRL is 100% for all State Plans. In FY 2019, Wyoming OSHA completed 100% of investigations within 90 days, which is a significant improvement compared to 0% in FY 2018. Next, SAMM 15 measures the percent of complaints that were meritorious, with an FRL range from 18.40% to 27.60%. Wyoming OSHA was positively outside the FRL by having 47% of their whistleblower complaints, including settled cases, with merit. Again, this was an improvement compared to FY 2018, when only 7% of the State Plan’s whistleblower complaints were meritorious. Lastly, SAMM 16 calculates the average number of calendar days to complete an investigation, with an FRL of 90 days for all State Plans. In FY 2019, the State Plan took an average of 219 days to complete an investigation, which shows progress compared to 429 days in FY 2018.

The on-site review included an evaluation of the whistleblower program, including policies and procedures, as well as investigative files. The review team evaluated all of the 17 closed investigative case files and eight administratively closed files from FY 2019. Given this small sample size, the ability to identify trends was limited. Thus, recommendations on these types of case files were based upon potential trends and significant observations.

The following table provides a summary of whistleblower complaints during FY 2019.

<b>Disposition</b>	<b>Totals</b>
Total cases from FY 2019	25
Cases completed in FY 2019	17
Cases completed timely	24%
Overage cases (cases pending over 90 days	20%
~ Withdrawn	3
~ Dismissed	6
~ Merit	-
~ Settled	6
~ Settled other	2
~ Litigated	-
Administratively closed	8
Investigator on staff	1
Managers on staff	1 + 1

Wyoming OSHA reviewed all potential whistleblower complaints for appropriate coverage requirements, timely filing, and the presence of a prima facie allegation. Wyoming OSHA received new complaints in three forms: an internal health and safety complaint, telephonic/facsimile complaint, or referrals from OSHA. The investigator completed the intake, screening, and the remainder of the complaint process. The complaint intake process involves the investigator conducting an initial screening, which includes sending the complainant a worksheet to complete and return to the investigator. After the worksheet is reviewed, the

investigator and program manager or compliance manager discuss the elements of the case. Then, the program manager or compliance manager approves the case for investigation or recommends administrative closure.

The review team found some deficiencies in the intake of whistleblower cases. In 16 of the 25 cases OSHA reviewed, OSHA was unable to determine whether a manager was involved in the review and approval of the complaints during the complaint intake process for both docketed and administratively closed cases. In three cases, OSHA was unable to locate a complaint intake form or one similar to the OSHA-87 Form. In nine cases, OSHA was unable to locate a copy of the notification letters to the complainant and/or respondent. In most cases, the investigator did not follow the organizational structure for case files in accordance with the Whistleblower Investigations Manual.

There were also deficiencies in the processing and disposition of whistleblower investigative files. Wyoming OSHA closed 17 whistleblower investigations in FY 2019, and of these, the State Plan settled eight cases. In three of the settled cases, OSHA could not verify if the settlement had been reviewed and approved by the supervisor. In three cases, OSHA could not locate a copy of the executed settlement agreement or check (if applicable). In five cases, OSHA could not locate the supporting settlement justifications details. In two cases, the Whistleblower IMIS Summary Sheet noted only one respondent; however, the State Plan notified two respondents of the complaint.

Wyoming OSHA missed one potential referral of a federal statute case; however, they had procedures in place to notify complainants of the right to concurrently dual file Section 11(c) complaints with the OSHA Denver Regional Office.

Previous findings have documented deficiencies in the whistleblower program.

**Finding FY 2018-04 (formerly FY 2017-04, FY 2016-6, and FY 2015-9):** Throughout FY 2017, the whistleblower program had deficiencies involving the receipt, processing, and disposition of whistleblower cases.

**Status:** Although there are still some issues in the whistleblower program, as stated earlier, the sample size was too small to identify potential trends. Also, SAMM data and the accomplishments listed in the FY 2019 SOAR indicate that Wyoming OSHA has taken actions to improve the whistleblower program. For these reasons, this finding is converted to an observation subject to further monitoring.

**New Observation FY 2019-OB-08 (previously Finding FY 2018-04):** Throughout FY 2019, the whistleblower program had deficiencies involving the receipt, processing, and disposition of whistleblower cases. Of the 25 whistleblower case files reviewed, there were 16 cases where OSHA was unable to determine whether a manager was involved in the review and approval of the complaints during the complaint intake process for both docketed or administratively closed cases (64%); there were three cases where OSHA was unable to locate a complaint intake form or one similar to the OSHA-87 Form (12%); and in nine cases, OSHA was unable to locate a copy of the notification letters to the complainant and/or respondent (36%). Of the eight settled

cases, there were three cases where OSHA could not determine whether the settlement was reviewed and approved (38%); in three cases, OSHA could not locate a copy of the executed settlement agreement or check (38%); and in five cases, OSHA could not locate supporting settlement details (63%).

**Federal Monitoring Plan:** The OSHA Regional Office will continue to monitor the State Plan's performance in this area during quarterly meetings throughout FY 2020.

**Status:** This observation is new.

## **8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)**

The State Plan did not have any CASPAs in FY 2019 or 2018.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

The State Plan has policies and procedures in place for its voluntary compliance program. Wyoming OSHA continues to promote VPP in Wyoming using the Department of Workforce Services' website and the Workers' Compensation Quarterly Connection Newsletter, as well as through participation in conferences and professional associations. In addition to the three existing VPP participants, the State Plan received one new VPP application in FY 2019. For more information on the State Plan's VPP promotion efforts, see the SOAR.

## **10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM**

The State Plan conducted five state and local government consultation visits in response to requests for industrial hygiene services. These visits are separate from the compliance assistance activities discussed in the SOAR, and they are not entered into OIS. The Wyoming State Plan had set a goal of 48 consultation visits in the FY 2019 grant proposal, but reaching this goal became very difficult when the CAS departed Wyoming OSHA.

## **11. PRIVATE SECTOR 21(d) ON-SITE CONSULTATION PROGRAM**

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

## Appendix A – New and Continued Findings and Recommendations

### FY 2019 WYOMING OSHA Comprehensive FAME Report

FY 2019-#	Finding	Recommendation	FY 2018-# or FY 2018-OB-#
FY 2019-01	The State Plan did not give complainants the opportunity to evaluate whether the employer corrected the hazards in 20 of 23 (87%) complaint investigation files reviewed.	Wyoming OSHA should follow the guidance in Chapter 9 of the FOM to notify both formal and non-formal complainants of pending investigations and inspections and then of the results of the investigations and inspections.	

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

### FY 2019 WYOMING OSHA Comprehensive FAME Report

Observation # FY 2019-OB-#	Observation# FY 2018-OB-# or FY 2018-#	Observation	Federal Monitoring Plan	Current Status
FY 2019-OB-01	FY 2018-OB-02 FY 2017-OB-02	Wyoming OSHA was significantly below the FRL for SAMM 6, which measures the percent of inspections conducted in state and local government workplaces. At 3.66%, Wyoming OSHA was outside the FRL range of 19.23% to 21.25%.	The OSHA Regional Office will continue to monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.	Continued
FY 2019-OB-02		The State Plan coded some referrals and fatality inspections in OIS incorrectly. Six of 22 (27%) self-referral inspections under emphasis programs were coded as unprogrammed-other when they should have been coded as programmed-planned. Three non-work-related fatalities were coded as referrals instead of fatality – non-work-related.	The OSHA Regional Office will continue to monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.	New
FY 2019-OB-03		The lapse time for safety inspections exceeded the FRL by 24%.	The OSHA Regional Office will continue to monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.	New
FY 2019-OB-04		In FY 2019, Wyoming OSHA did not conduct enough follow-up inspections to confirm abatement for safety and health inspections and fatality inspections.	The OSHA Regional Office will continue to monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.	New
FY 2019-OB-05		Wyoming OSHA did not mail a copy of the citation to the union in three of three (100%) inspections that involved unions.	The OSHA Regional Office will continue to monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.	New

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

### FY 2019 WYOMING OSHA Comprehensive FAME Report

FY 2019-OB-06		In FY 2019, Wyoming OSHA conducted informal conferences after the 15-working day contest period for three of 37 (8%) inspections.	The OSHA Regional Office will continue to monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.	New
FY 2019-OB-07		Although Wyoming OSHA adopted the SST directive by incorporating it into the Workers Compensation LEP, the LEP does not provide for comprehensive inspections. As a result, Wyoming OSHA was not conducting comprehensive programmed general industry inspections.	The OSHA Regional Office will continue to monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.	New
FY 2019-OB-08	FY 2018-04	Throughout FY 2019, the whistleblower program had deficiencies involving the receipt, processing, and disposition of whistleblower cases. Of the 25 whistleblower case files reviewed, there were 16 cases where OSHA was unable to determine whether a manager was involved in the review and approval of the complaints during the complaint intake process for both docketed or administratively closed cases (64%); there were three cases where OSHA was unable to locate a complaint intake form or one similar to the OSHA-87 Form (12%); and in nine cases, OSHA was unable to locate a copy of the notification letters to the complainant and/or respondent (36%). Of the eight settled cases, there were three cases where OSHA could not determine whether the settlement was reviewed and approved (38%); in three cases, OSHA could not locate a copy of the executed settlement agreement or check	The OSHA Regional Office will continue to monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2020.	New

**Appendix B – Observations Subject to New and Continued Monitoring**  
 FY 2019 WYOMING OSHA Comprehensive FAME Report

		(38%); and in five cases, OSHA could not locate supporting settlement details (63%).		
	FY 2018-OB-01 FY 2017-OB-01	When potentially willful conditions are observed, Wyoming OSHA does not thoroughly document why a willful citation is unable to be substantiated.		Closed



## Appendix C - Status of FY 2018 Findings and Recommendations

### FY 2019 WYOMING OSHA Comprehensive FAME Report

FY 2018-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (If Applicable)	Current Status (And Date if Item is Not Completed)
FY 2018-1	<p>In FY 2017, there were significant deficiencies with the processing and disposition of informal complaints. Of the 30 informal complaint files reviewed, it was determined that eight (26%) were processed, signed, and closed by CSHOs; four (12%) allowed for an excessive employer response time; 10 (33%) did not include a close-out letter; seven (23%) lacked an adequate response or documentation to close the file; and eight (26%) contained information that could have justified an inspection.</p>	<p>Wyoming OSHA should implement in-depth training for compliance officers and the management team specific to complaint processing. The training should be followed up with a quarterly review of complaint files.</p>	<p>The State Plan provided training on complaint processing to managers and CSHOs in August 2018. Wyoming OSHA also developed a standard operating procedure (SOP) for processing complaints, and CSHOs began implementing the SOP by mid-August 2018. The compliance program manager and lead CSHO provided additional on-the-job training on the SOP to all CSHOs in the field in February 2019. In addition, management conducted an internal review on a quarterly basis as a quality check on complaint processing.</p> <p>Of the 23 informal complaint files that OSHA reviewed, there were two (9%) cases in which the employer did not provide a timely response, the files lacked adequate response or documentation to close the files, or the complaints contained information potentially justifying an inspection.</p>	February 28, 2019	Completed January 31, 2020
FY 2018-2	<p>Wyoming OSHA does not consistently address health hazards. During FY 2018, no full-shift personal noise samples or full-shift personal</p>	<p>In addition to training health CSHOs, Wyoming OSHA should research, develop, and implement an</p>	<p>In FY 2019, Wyoming OSHA sent two health CSHOs to OTI Course #1250, Health Standards for Industrial Hygienists, and two safety CSHOs to OTI Course # 1080, Health Hazard Awareness for Safety Officers. Wyoming OSHA conducted full-shift sampling on six inspections in 2019, resulting</p>	September 30, 2019	Completed January 31, 2020

## Appendix C - Status of FY 2018 Findings and Recommendations

### FY 2019 WYOMING OSHA Comprehensive FAME Report

	samples for exposures to air contaminants were taken.	emphasis program to specifically identify and assess health hazards.	in nine serious health violations. The State Plan has improved on this finding by consistently citing health standards. The deputy administrator and compliance manager also review complaints to identify potential health monitoring opportunities.		
FY 2018-3	It was determined that prior to the issuance of citations, Wyoming OSHA does not sufficiently review case file documentation related to: the identification of all apparent violations, necessary evidence to support violations,	Wyoming OSHA should ensure those individuals who are reviewing case files and holding informal conferences receive additional training to better understand the elements of a legally sufficient	Management and CSHOs completed Legal Aspects and Advanced Legal Aspects in April 2018, as well as Initial Compliance in July 2018 to get a better understanding of the elements of a legally sufficient case. Since completing the courses, managers have reviewed information received and applied that knowledge to current cases to ensure that the elements of a legally sufficient case have been established, as well as the proper justifications, when reviewing case files and holding informal conferences.	August 31, 2018	Completed January 31, 2020

## Appendix C - Status of FY 2018 Findings and Recommendations

### FY 2019 WYOMING OSHA Comprehensive FAME Report

	<p>accurate hazard classification, and the proper justification of severity and probability. This deficiency at the review level impacts Wyoming OSHA's ability to make appropriate changes during the informal conference and settlement process.</p>	<p>case, as well as the proper justifications for citation modification.</p>	<p>Management has also provided a worksheet to CSHOs to assist during onsite inspections. Training for use of the worksheet was completed in August 2018.</p> <p>The OSHA review team found that in FY 2019, 20 of 22 safety inspection case files included citations that were classified correctly with the appropriate severity and probability justified. The review team did not identify issues related to grouping citations.</p>		
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## Appendix C - Status of FY 2018 Findings and Recommendations

### FY 2019 WYOMING OSHA Comprehensive FAME Report

FY 2018-4	In FY 2017, in 12 of 32 whistleblower cases, there were deficiencies involving the receipt, processing, and case disposition.	Wyoming OSHA should improve program oversight, as well as ensure the sufficient training of managers and investigators.	Although OSHA still found deficiencies involving the receipt, processing, and disposition of whistleblower cases, the sample size for the case file review was too limited to identify significant trends. On the other hand, the whistleblower program demonstrated improvement by reducing the backlog of cases from 30 cases to two. The State Plan also met the FRLs for SAMMs 14 and 15 and showed great improvement on SAMM 16. With a new investigator who has already contributed to the program's success, OSHA believes the State Plan is on the road to correcting the deficiencies in this finding.	September 30, 2019	Converted to an Observation January 31, 2020
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## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

FY 2019 WYOMING OSHA Comprehensive FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Wyoming – WYOMING OSHA			FY 2019	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	5.84	16	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	3.57	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	1.73	1	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	0.89	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
<b>5</b>	Average number of violations per inspection	SWRU: 1.84	+/- 20% of SWRU: 1.79	The further review level is based on a three-year national average. The range of acceptable data not requiring further

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

### FY 2019 WYOMING OSHA Comprehensive FAME Report

	with violations by violation type			review is from 1.43 to 2.15 for SWRU and from 0.78 to 1.16 for OTS.
		Other: 0.64	+/- 20% of Other: 0.97	
<b>6</b>	Percent of total inspections in state and local government workplaces	3.66%	+/- 5% of 20.24%	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 19.23% to 21.25%.
<b>7</b>	Planned v. actual inspections – safety/health	S: 176	+/- 5% of S: 153	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 145.35 to 160.65 for safety and from 14.25 to 15.75 for health.
		H: 15	+/- 5% of H: 15	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$3,464.38	+/- 25% of \$2,871.96	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,153.97 to \$3,589.95.
	a. Average current serious penalty in private sector (1-25 workers)	\$2,621.99	+/- 25% of \$1,915.86	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,436.89 to \$2,394.82.
	b. Average current serious penalty in private sector (26-100 workers)	\$5,854.86	+/- 25% of \$3,390.30	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,542.73 to \$4,237.88.
	c. Average current serious penalty in private sector (101-250 workers)	\$4,758.11	+/- 25% of \$4,803.09	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,602.31 to \$6,003.86.

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

FY 2019 WYOMING OSHA Comprehensive FAME Report

	d. Average current serious penalty in private sector (greater than 250 workers)	\$7,377.30	+/- 25% of \$5,938.59	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,453.94 to \$7,423.23.
9	Percent in compliance	S: 35.85%	+/- 20% of S: 30.30%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 24.24% to 36.36% for safety and from 28.90% to 43.35% for health.
		H: 58.33%	+/- 20% of H: 36.12%	
10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.
11	Average lapse time	S: 70.88	+/- 20% of S: 47.61	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 38.08 to 57.13 for safety and from 45.78 to 68.68 for health.
		H: 57.17	+/- 20% of H: 57.23	
12	Percent penalty retained	89.20%	+/- 15% of 66.38%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 56.42% to 76.33%.
13	Percent of initial inspections with worker walk around representation or worker interview	98.43%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	100%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	47%	+/- 20% of 23%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 18.40% to 27.60%.
16	Average number of calendar days to complete an 11(c) investigation	219	90	The further review level is fixed for all State Plans.

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

### FY 2019 WYOMING OSHA Comprehensive FAME Report

17	Percent of enforcement presence	1.12%	+/- 25% of 1.23%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.92% to 1.54%.
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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 12, 2019, as part of OSHA's official end-of-year data run.



**Appendix E - FY 2019 State OSHA Annual Report (SOAR)**

**State of Wyoming  
Office of Standards and Compliance  
OSHA Division**

**FY 2019 Annual Report  
State Operations Annual Report  
(SOAR)**



**Evaluation Period: October 1, 2018 – September 30, 2019**

**Prepared by: Karen Godman and Christian Graham**

**Submitted: December 13, 2019**

**Karen Godman  
Deputy Administrator**

**Christian Graham  
Compliance Program Manager**

**Mission:**

**We bridge human and economic development for Wyoming's future.**

**Vision:**

**We envision a Wyoming with a well-prepared, economically self-sufficient workforce that empowers employees and employers to enjoy an improved quality of life.**

**Values:**

**Customer Service |  
Professional Development &  
Empowerment  
Collaboration |  
Communication | Trust &  
Honesty | Respect**

## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

### Executive Summary

The Wyoming State Plan is a joint Compliance/Consultation effort to provide a safe and healthy workplace for every worker in the State of Wyoming through either the enforcement of the WY OSHA standards by Compliance and/or the assistance to employers through Compliance Assistance/ Consultation.

Wyoming operates a state plan occupational safety and health program under Section 18 of the federal Occupational Safety and Health Act of 1970 (the Act). The State plan began in 1973, received initial approval May 3, 1974 and final approval on June 27, 1985. Wyoming state plan currently operates under Department of Workforce Services (DWS) through the State of Wyoming. Funding for this program is provided in accordance with Section 23 of the Act and includes both federal funds and state funds from the Wyoming Industrial Accident Fund under Workers' Compensation. Establishment and enforcement of state occupational safety and health standards form the primary goal of this program. Wyoming provides a consultation program in accordance with 29 CFR 1908 and the Consultation Policies and Procedures Manual (CSP 02-00-003). This program is also designed to operate within the requirements established in Section 21 of the Act and in accordance with the Wyoming Occupational Health and Safety Act and Rules of Practice and Procedures.

The Compliance Project's main office is located in the North East corner of the Cheyenne Workforce Center, 5221 Yellowstone Rd, Cheyenne, Wyoming 82009. For Federal Fiscal Year (FY) 2019 the program had three (3) field offices, which are located in Casper, Gillette and Rock Springs. Over FY 2019, the Compliance Program has continued to undergo changes at the staffing level, positions and staff duties.

WY OSHA is still working under its developed 5-year Strategic Performance Plan that will be in effect from FY 2015 through FY 2020. This five-year Strategic Performance Plan was developed on the basis that occupational safety and health in Wyoming is an integrated process with Compliance and Consultation working together to accomplish a common goal.

This report is a performance report of WY OSHA Compliance activities accomplished for the fulfillment of requirements within the FY 2019 23(g) Cooperative Agreement and which include the Strategic Plan (FY 2015 - 2020).

## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

### Summary of Annual Performance Plan Results

<b>Strategic Goal #1 - Reduce Fatalities</b>			
Performance Goal #1.1	Reduce fatalities by inspecting/visiting workplaces (identified through WC data, Wyoming fatality data, and Bureau of Labor Statistics (BLS) data and State Epidemiologist) and working to promote a safety and health culture through participation with Compliance Assistance, VPP		
Strategy	To reduce fatalities, WY OSHA will focus inspections/visits with employers in NAICS Codes from fatalities from previous years and our local emphasis programs (LEP) and use company specific WSCD data. Industries that have a high number of fatalities, as well as a high WC base rate will be placed in our LEP. Company specific WC data identifies individual employers with the highest experience modification rating, claims to employee ratio, cost of injury to premium		
Performance Indicator(s)	Activity Measures: * Number of fatalities investigated * Number of enforcement inspections * Number of training	Intermediate Outcome Measures: Number of inspection hazards identified	Primary Outcome Measure: Reduction of workplace fatalities
Baseline - Average annual number of fatalities for the 20 year period FY1999 through FY2019 = 7.7 <i>Total number of fatalities investigated for FY1999 through FY2019 = 145. The average</i>			

## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

Activity Measures	2019 Target	2019 Results	
Number of fatalities investigated	N/A	6	
Number of enforcement inspections	168	191	
Safety	153	176	
Health	15	15	
Number of training sessions	N/A	150	
Number of Compliance Assistance outreach activities with alliances/Coalitions:	N/A	29	
Intermediate Outcome			
	FY2018	FY2019	% Change
Number of inspection hazards identified	493	292	-41%
	FY2018	FY2019	% Change
Serious	252	204	-19%
Willful	3	1	-67%
Repeat	7	7	0%
Unclassified	15	7	-50%

<b>Strategic Goal #2 – Improve workplace safety and health for all Wyoming workers as evidenced by fewer injuries and illnesses.</b>			
Performance Goal #2.1	Reduce injuries and illnesses of employers receiving comprehensive compliance inspections by focusing on workplaces identified through Workers' Compensation data, by direct observation, fielding complaints & referrals and through reporting requirements associated with in-patient hospitalizations,		
Strategy	Employers will be screened and selected using their WC data. Four parameters: claims to employee ratio, experience modification rating, claims' cost to premium ratio, and average claims cost will be used. During the inspection or visit, a cost benefit analysis will be given, hazards will be identified, and inspection penalties will be assessed if applicable. The employers that are measured for claims frequency and cost changes are those receiving comprehensive compliance inspections or full service consultation visit. Reported in-patient hospitalizations, amputations and losses of an eye is screened and depending on the nature of the issue, the status of an inspection will be determined. A pre-post analysis of		
Performance Indicator(s)	<i>Activity Measures:</i> * Number of enforcement inspections * Number of training sessions	Intermediate Outcome Measures: % Programmed inspections resulting in the	Primary Outcome Measure: % Reduction in WC claims for each
Baseline - Each FY WC data. (Our pre-post claims analysis is FY unique for inspections conducted that year: The post-visit claims either decreased or they increased.) Note: Always a year behind due WC data availability			

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Activity Measures	2019 Target	2019 Results	
Number of enforcement inspections	168	191	
Number of training sessions	48	150	
Number of Compliance Assistance outreach activities with Alliances/Coalitions:	25	29	
<b>Intermediate Outcome</b>			
% Programmed inspections resulting in the identification of hazard	7	100%	
<b>Primary Outcome Measure: By NAICS</b>			
	2018	2019	%
			Change
<b>Total dollar of employer premium for WC claims</b>	\$15,087,885.09	\$14,806,768.17	-1.9%
<b>Conclusion:</b> Based on inspections, training sessions, and CA activities, a reduction is reflected in WC premiums.			

<b>Strategic Goal #3 – Promote a safety and health culture in Wyoming through strong and effective Compliance Assistance through Cooperative programs.</b>			
Performance	Increase participation of clientele in industry health and safety alliances and consultation services		
Strategy	Increase marketing for participation in the Alliances, Associations and Coalitions and encourage VPP Recognition Programs by 2% percent by promoting a safety and health culture in Wyoming’s worksites. Solicit/market to businesses to increase requests for information and/or interfacing with our CA for the purpose of entering or creating an		
Performance Indicator(s)	<b>Activity Measures:</b> * Number of enforcement inspections * Number of CA outreach * Increase the membership numbers in Alliances, Associations, Coalitions participation * Assist in the creation of new Alliances, Associations and	<b>Intermediate Outcome Measures:</b> * Percent increase of membership in Alliances, Associations and Coalitions * Number of Employers that increase H&S Training per consent agreement. * Number of Employers that increase Risk Management Training per consent	<b>Primary Outcome Measure:</b> * Number of participants requesting enrollment information in VPP
Baseline - Number of members in alliances, associations, coalitions and VPP participants for previous FY			
<b>Activity Measures</b>	2019 Target	2019 Results	

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Number of enforcement inspections	168	191
Number of CA outreach	25	29
Increased membership numbers	N/A	15
Creation of new Alliances, Assoc., and	N/A	0

<b>Intermediate Outcome</b>	2019 Target	2019 Results
Percent increase of membership in Alliances, Assoc., and Coalitions	6	6
<i>*Number of Employers increase in H&amp;S training per consent agreement</i>	0	0
<i>*Number of employers with increase in Risk Management per consent agreement</i>	0	0
Number of employers that request CAS through Alliances and Coalitions	0	0

<b>Primary Outcome Measure</b>	2019 Target	2019 Results
Number of participants requesting enrollment information in VPP. General Industry/Construction	2	0
<b>Conclusion:</b> * The structure of informal conferences has since changed after the evaluation of the impact of having employers choose to work to increase H&S training and working with Risk Management. We found offering this incentive to not have an effective result in bolstering clientele and there are other means in which the employer can get this assistance through other		

### Progress Toward Strategic Plan Accomplishments

The WY OSHA program mirrors the federal program as closely as possible while still recognizing the autonomy and unique characteristics of the state of Wyoming.

WY OSHA has begun using a 20-year baseline average to help identify employers in high-risk industry. With this focus, we have reduced the average amount of fatalities by 22%. The top five (5) NAICS contributing industries are listed in the table below.

<b>Industry</b>	<b>Number of fatalities</b>
Mining	44
Construction	31
Transportation and Warehousing	13
Agriculture, Forestry, Fishing and Hunting	12
Other Services (except Public Administration)	6

In efforts to reduce injuries and illnesses of employers receiving comprehensive compliance inspections, we focus on workplaces identified through Workers' Compensation data, by direct observation, fielding complaints and referrals and through reporting requirements associated with in-patient hospitalizations, amputations and losses of an eye. We have had seven (7) programmed

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inspections resulting in the identification of hazards that were related to this focus. Unprogrammed inspections have been the main majority of inspections during this fiscal year.

For FY 2019, the Compliance Program projected 168 total compliance inspections and the Compliance Assistance Program completed 29 total public sector CA visits. The Compliance Program exceeded its goal by conducting 191 inspections. The CA Program conducted 10 public sector visits, which did not meet the goal of 48 visits; this was primarily due to CA turnover.

WY OSHA, in line with its strategic and performance plans, emphasized the prevention of fatalities and the reduction of the Wyoming fatality rate along with the prevention and reduction of accidents and injuries for industries under WY OSHA’s jurisdiction. WY OSHA also made a continued concerted effort to reduce the Wyoming Annual Recordable Case Rate in Oil & Gas through continued participation in Wyoming Oil & Gas Industry Safety Alliance (WOGISA). WY OSHA also has continued to promote a safety and health culture through participation in alliances, coalitions, and associations and through compliance interventions, presentations and through the states Safety Health Achievement Recognition Program (SHARP), Voluntary Protection Program (VPP) and Employer Voluntary Technical Assistance Program (EVTAP).

### Mandated Activities

Indicator	Data	Reference
Average number of work days to initiate complaint inspections	5.84	Negotiated to 16 days Negotiated
Average number of work days to initiate complaint investigations	1.73 days	1 day
Percent of complaints & referrals responded to within 1 work day	100%	100%
Number of denials where entry not obtained	0	0
Average number of violations per inspection with violations by	1.84	1.89
Average number of violations per inspection with violations by violation type OTC	0.64	0.38
Percent of total inspections in the public sector	3.66%	0.10% Projected
Actual inspections – safety/health	176/15	153/15
Percent of fatalities responded to in 1 work day	100 %	100%
*Average lapse time – Safety	70.88	49.25
Average lapse time – Health	57.17	62.44
Percent penalty retained	89.20%	65.36%

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Percent of initial inspections with employee walk around representation or employee interview	98.43%	97.11%
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*\*Average lapse time has increased due to a turnover of three seasoned CSHOs that had major contributions to the inspection goal. In addition there was also turnover with the Lead Compliance Officer responsible for completing case file review, as well as informal conferences.*

### Special Measures of Effectiveness/Special Accomplishments:

#### Compliance Outreach

##### WY Safety Summit

On July 9-10, 2019, Wyoming held its seventh “Wyoming Safety and Workforce Summit” in Cheyenne, Wyoming. This meeting consisted of presentations and breakouts for attendees on July 9<sup>th</sup> and formal training with attached Certified Education Units (CEUs) on July 10<sup>th</sup>.

July 9<sup>th</sup> not only started the first day of the Summit, but was also memorialized by Wyoming Governor? Mark Gordon through the signing of the proclamation that Everyday is Workplace Safety Day in Wyoming. Approximately 345 people attended the one-day conference awards lunch and 41 breakout training seminars, On July 10<sup>th</sup>, two formal OSHA courses with accompanying Continuing Education Units (CEUs) for completion were provided by the OSHA Training Institute partner, Rocky Mountain Education Center. These courses were Breathing New Life into the Control of Respirable Silica (Susan Harwood Grant Program) and Excavation, Trenching and Soil Mechanics. Forty-four people attended and completed these two courses.

The Summit also offered two OSHA safety awards for large and small employer. Awards were presented by the Workforce Standards Administrator, Jason Wolfe. The OSHA awards were presented to outstanding employers in safety and health, Wyoming Machinery and Continental Field Services. In addition, the Wyoming Oil and Gas Industry Safety Alliance (WOGISA) presented an award for Stop Work Authority (SWA) Award, which recognizes an employee that stopped work due to an unsafe act or work condition that could have resulted in workers being injured or killed.

Alliance, Coalition and Association participation continues to be another venue used by Wyoming OSHA Compliance Assistance and Consultation to promote a safety and health culture in Wyoming. These groups work to empower alliances, coalitions and associations to address health and safety within their industry and supplies services as requested. Currently, WY OSHA participates with six existing alliances/coalitions. They include Wyoming Oil & Gas Industry Safety Alliance (WOGISA), Wyoming Construction Safety Alliance (WCSA) and Transportation Safety Coalition (TSC), Cheyenne Roofing Alliance (CRA), Wyoming Construction Coalition (WCC) and Wyoming Contractor’s Association (WCA).



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### Alliances

WOGISA - Wyoming Oil & Gas Industry Safety Alliance. The goal of this Alliance is to promote, communicate, educate, and train employees and employers to reduce fatality and injury rate in the Oil & Gas Industry. WOGISA general membership has decreased in response to economic decline to approximately 481 members, to include producers, drilling contractors, servicing contractors, anchor installers/testers and industry support employers. The combination of downturn in economy, changes in board of directors and direction have created challenges and reduced membership. Alliance members meet quarterly, while board members meet on a monthly basis. This alliance and OSHA work cooperatively to provide valuable communication to industry and update Wyoming's Oil and Gas Rules and Standards and to address issues of constituents. Training opportunities offered through other industry groups and community colleges were shared with the alliance for member consideration throughout the year to include the Rocky Mountain Education Center – OSHA Training Institute Education Center in partnership with the Wyoming - Montana Safety Council.

WY OSHA is working with this group to understand concerns and gather additional information to redraft the Oil & Gas Rules into one rule set with different chapters for type of activity and evaluating a Simops (multiple oil and gas trades working at the same time at the same location, i.e. drilling and servicing) along with the anchor chapter revisions.

WCSA - Wyoming Construction Safety Alliance. The goal of this alliance is to promote, communicate, educate, and train employees and employers to ultimately reduce fatality and injury rates within the Construction Industry. WCSA general membership has increased to sixteen construction companies operating in Wyoming.

TSC – Transportation Safety Coalition. The mission of the Transportation Safety Coalition is to reduce work related transportation fatalities through education, training and working relationships with entities charged with overseeing transportation in Wyoming. A proactive organization working to develop processes which will aid in reducing transportation fatalities on Wyoming's roadways. The coalition has spent time reviewing fatal crash data, identifying specific roadways in Wyoming, identifying the causes and contributing factors to those crashes and implementing initial low-cost, high-yield efforts for crash mitigation efforts, while making recommendations for long-term solutions. Currently, this coalition consists of 59 members.

WRSA - Wyoming Refinery Safety Alliance. This alliance was discontinued since they now meet as a regional group (this includes Wyoming and bordering states). Their goal is to continue to promote, communicate, educate, and train employees and employers to reduce the fatality and injury rates within the Refining Industry. Their general membership consists of the four Wyoming refineries operating in the state and those operating in bordering states. This Alliance is now just a joint venture between refineries.

### **Safety Stand Down Events and Worker's Memorial**

There was also a cooperative effort to promote and participate in many safety events, to include Construction Safety / National Fall Protection Stand Down Week (May 6-10, 2019), which had

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two main events. WY OSHA also participated in Safe & Sound Week (August 12-18, 2019), through sharing of information and empowering alliances to participate. In addition, Department of Workforce Services Director, Robin Sessions-Cooley and WY OSHA Deputy Director, Karen Godman spoke at the Worker's Memorial hosted by the Wyoming Democratic Party on April 27, 2019 to honor those that have lost their lives in a workplace fatality.

### Voluntary Protection Participants & Current Status

WY OSHA works to train and promote VPP through presentations with the assistance of existing VPP members and employees. WY OSHA has experienced changes in the CAS & VPP Coordinator over this past year. With the position now filled, the program is working to train new staff to the VPP process and to increase awareness through the Compliance and Consultation staff to assist in identifying potential candidates. Wyoming continues to promote VPP in Wyoming using the Department of Workforce Services website, the Workers' Compensation Quarterly Connection newsletter, participation at conferences and through other professional associations.

### Voluntary Protection Participants Table

	Company Name	Since	Status
1	MillerCoors Brewing Co., Worland Elevator	November 28, 2007	Star
2	Phillips 66 Transportation LLC	March 29, 2012	Star
3	Phillips 66 Transportation LLC	April 28, 2015	Merit

## XIV. Special Accomplishments

### OSHA Penalty Collection

The Department of Workforce Services recognized the challenge of penalty collection for WY OSHA and other sections and has been working with a contract collections agency since FY 2017. The vendor is in place and is continuing to work the collection of penalties to recover penalties owed due to citations.

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### Discount Program

This FY 2019, the OSHA Division continued working with Workers' Compensation employers to get them enrolled in the Health and Safety Consultation Employer Discount Program, which encourages employers to request compliance assistance visits or enroll into an exemption program (SHARP and VPP). The OSHA Division continues to review third (3<sup>rd</sup>) party private consultant applications for approval. The 3<sup>rd</sup> party Safety Consultants once approved work with employers to get workers' compensation discounts.

There are four tiers in this program with possible discount rates of 3%, 5%, 7% and 10 %.

- **3 Percent Discount Tier I** -- Complete a full service, onsite survey and abate all hazards.
- **5 Percent Discount Tier II** -- Complete all requirements of the Tier I Health and Safety Program. The Tier II program includes (but may not be limited to) the full onsite survey and obtain a score of two (2) (zero to three scale) on each item on the HSC Tier II program requirements list.
- **7 Percent Discount Tier III** -- Complete all requirements of the Tier II Health and Safety Program. The Tier III program includes (but may not be limited to) the full onsite survey, a Workers' Compensation Experience Modification Rating (EMR) less than the Base Rate and obtain a score of two (2) (zero to three scale) on each item on the HSC Tier III program requirements list.
- **10 Percent Discount Tier IV** -- Complete all requirements of the Tier III Health and Safety Program. The Tier IV program includes (but may not be limited to) the full onsite survey, a Workers' Compensation Experience Modification Rating (EMR) less than the Base Rate and obtain a score of three (3) on 10 percent of the items on the Tier IV HSC program requirements list and a score of two (2) (zero to three scale) on the remainder of the items on the list.

For all four tiers, WY OSHA Compliance Assistance, WY OSHA Consultation, Wyoming State Mine Inspector's Office, Workers' Compensation Safety Specialist or a qualified 3<sup>rd</sup> party Health & Safety Consultants professional approved by the Wyoming Department of Workforce Services – OSHA Division, must conduct the survey.

In addition to the tiered requirements above, an employer must meet the following requirements:

- Have at least one employee
- Establish and maintain certificates of good standing with Wyoming Workers' Compensation, Unemployment Insurance and the Wyoming Secretary of State.

For FY 2018, three hundred and seventy-six (376) employers qualified for this discount program. For the close of FY2019, 278 employers qualified for this discount program

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### Adjustments or Other Issues

#### Public Sector

A continuing major issue for FY 2019 is the projected number of public sector inspections to be completed. Issues that continued to create challenges during FY 2019 for the Compliance Program were changes in personnel, loss of seasoned staff and specific complaint activities for public sector. The loss of the Compliance Assistance employee dramatically affected the visits conducted with public sector.

#### Informal Conferences

The informal conference process has been adjusted to be more effective in support of information that is relayed to employers to help educate not only themselves, but also their employees. The reductions that have been granted in the past were evaluated for their impact on industry during this fiscal year. We have learned that although the discount opportunities in relation to programs identified and offered during informal conferences for employers is fair, not all employers would take advantage of the opportunity to apply the suggested programs to help reduce premiums and potential reductions of injuries and illnesses for their employees.

We also considered this change to reduce the amount of time a case file is open. With the constraints of having an employer meet certain qualifications for discount programs, the amount of time case files were open was affected. With this minor change the reduction of time case files are open has been reduced. The other resulting impact of negotiating discount programs vs. reductions in penalty amounts is that employers traditionally felt that a discount would automatically be granted. Once this adjustment made applied to informal conferences, our penalty reduction increased. This did not have a negative outcome of an increase in contested cases as one would expect.

We do feel the best approach to this issue is to have the programs offered to employers via the Consultation program, while education of where to find these resources would be still be given to employers and employees by enforcement during inspections or our State's webpage.

#### Discrimination Issues

FY2019 was a positive year for the 11c, Whistleblower Program. The one State funded Investigator remained with the program, which provided consistency and an ability to address and process outstanding and new discrimination cases in a more timely manner. In addition, the program was able to review and understand inefficiencies and challenges to the program and address them in development of SOPs to assure consistency. Many positive results were seen, to include:

\*Backlog Eliminated: Open cases from previous years have been closed and only two open cases

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for FY2019 remain in process. There were thirty complaints filed for FY2019.

\*Decrease in days to complete investigations: FY2019 showed reduction of the Days to complete decreased by almost 50% between FY18 and FY19, from an average of 434 days to complete a case in FY18 to 126 days in FY19.

\* Merit investigations: FY18, 6% of complaints were found to be meritorious, but that increased to 47% in FY19.

\*Settlements: Settlements have increased from FY18, from one case with a settlement value of \$8,600.00 to eight cases with a total settlement value of \$557,797.00 in FY2019.

\*CASPA: It is the intent of the Whistleblower Program to protect complainants' appeal rights under 11C, as well as to create a defensible record and decision. CASPAs are one review process available to complainants who disagree with a determination. Region 8 upheld the Division's decision for two CASPAs in FY18 and FY19. Of note, the feedback provided from one of the CASPAs involved an alleged failure to inform the complainant of his right to dual filing with both State and Federal OSHA. This feedback was immediately addressed through revision of forms and process to assure employees understand their right to dual file.

### Funding

Wyoming has continued to provide excess funding to the program in the amount of \$1,153,000.00, which is 67% of the State's contribution, not the 50% / 50% agreed upon for compliance. In addition, Wyoming has received no funding for the 11c Whistleblower position, and currently uses one of the allotted safety positions to fill this position. Wyoming OSHA has not been provided funds equivalent to FY 2013. Wyoming OSHA should be funded at the 50% federal / 50% state so it can help pay staff more to help with retention, continuity, reduce FAME issues and decrease the states over match contributions.