

FY 2020
Follow-up Federal Annual Monitoring Evaluation (FAME) Report

Wyoming Occupational Safety and Health Administration (Wyoming OSHA)



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Table of Contents

I. Executive Summary.....	1
II. State Plan Background	1
III. Assessment of State Plan Progress and Performance.....	2
A. Data and Methodology	2
B. Findings and Observations.....	3
C. State Activity Mandated Measures (SAMM) Highlights	5

Appendices

Appendix A – New and Continued Findings and Recommendations.....	A-1
Appendix B – Observations and Federal Monitoring Plans.....	B-1
Appendix C – Status of FY 2019 Findings and Recommendations.....	C-1
Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report.....	D-1
Appendix E – FY 2020 State OSHA Annual Report (SOAR).....	E-1

I. Executive Summary

The primary purpose of this report is to assess the Wyoming State Plan's (Wyoming OSHA's) progress in Fiscal Year (FY) 2020 in resolving outstanding findings from the previous FY 2019 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report.

Despite the pandemic, Wyoming OSHA performed at a high level for mandated measures. Some areas where the State Plan performed particularly well included meeting its inspections goals, assessing and retaining serious penalties, completing whistleblower investigations in a timely manner, and concluding meritorious whistleblower complaints.

Wyoming OSHA made progress addressing the one finding and eight observations previously noted in the FY 2019 Comprehensive FAME Report. The State Plan has taken corrective action on the one finding and on four of the eight observations. Pandemic restrictions prevented the State Plan from taking corrective action on three observations. For the final observation, Wyoming OSHA is still considering a course of action to resolve the issue. OSHA closed one observation. The one finding and remaining seven observations will remain open until OSHA can conduct a case file review in the FY 2021 Comprehensive FAME process to verify the corrective actions. There are no new findings or observations in this report.

II. State Plan Background

Wyoming OSHA is housed in the Wyoming Department of Workforce Services, Office of Workforce Standards and Compliance. 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 main office is located in Cheyenne, with field offices 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. All compliance assistance, public sector consultation, the Voluntary Protection Program (VPP), and whistleblower investigations are funded through the 23(g) grant. The private sector consultation program is funded separately through the 21(d) cooperative agreement. Wyoming OSHA enforces unique regulatory standards for oil and gas well drilling and servicing, including anchor testing, drill-stem testing, wireline operations, hydraulic fracturing, and mobile pumping.

The State Plan is benchmarked for six safety and two health compliance officers. In addition to the compliance officers, Wyoming OSHA management and staff consists of a deputy administrator, compliance program director, operations manager, compliance assistance specialist, one whistleblower investigator, three administrative personnel, and an accountant. In total, Wyoming OSHA has 17 employees providing 14.3 full-time equivalents to the program.

The following table shows the federal award levels, State Plan matching funds, and one-time money from FY 2018 through FY 2020.

Fiscal Year	Federal Award	State Plan Match	100% State Funds	Total Funding	% State Plan Contribution	One-time Money
2020	\$541,700	\$541,700	\$870,600	\$1,954,000	72%	\$19,550
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

Even though COVID-19 altered the inspection landscape significantly in FY 2020, Wyoming OSHA still excelled in several areas. First, Wyoming OSHA accomplished 100% of its overall inspection goal by conducting 168 inspections. Second, not only did the State Plan’s average serious penalty in the private sector for employers with up to 250 employees exceed the three-year national average by 34%, but Wyoming OSHA also had a high penalty retention rate of 92.5%. Next, the whistleblower program showed consistency by meeting or exceeding performance measures for whistleblower investigations. Finally, the State Plan established a plan to improve the VPP.

New Issues

None.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year, and as such, OSHA did not perform an on-site case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

- State Activity Mandated Measures (SAMM) Report (Appendix D)
- State Information Report
- Mandated Activities Report for Consultation
- State OSHA Annual Report (Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan

B. Findings and Observations

Appendix A describes the new and continued findings and recommendations and lists the one finding which was continued from the previous FAME Report. Appendix B describes the seven continued observations subject to continued monitoring and the related federal monitoring plans. One observation from FY 2019 was closed. Appendix C describes the status of the FY 2019 finding and recommendation in detail.

FINDINGS (STATUS OF PREVIOUS AND NEW ITEMS)

Continued Finding

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

Status: In August 2020, Wyoming OSHA began following the guidance in Chapter 9 of the OSHA Field Operations Manual (FOM) to give complainants the opportunity to evaluate whether the employer corrected the hazards in the complaints unless the complainant indicated that a response was not required. Although the State Plan has taken corrective action, a case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year's on-site case file review during the FY 2021 Comprehensive FAME and is awaiting verification.

OBSERVATIONS

Closed 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.

Status: The State Plan has a publication called "Wyoming OSHA Citation Booklet for Employers: A Step by Step Guide." This guide provides some flexibility in scheduling informal conferences by stating that the request for informal conferences shall be made within 30 days of receiving the citation package. Furthermore, Wyoming OSHA's administrative rules provide that informal conferences can be held at any time prior to a formal hearing. The State Plan has operated in compliance with its administrative rules; therefore, this observation is closed.

Continued Observations

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

Status: Wyoming OSHA's response to the FY 2019 FAME was that they would use workers compensation data and emphasis programs to select state and local government establishments for inspection. Even though the State Plan increased their inspections in state and local government workplaces in early FY 2020, they were not able to continue in the latter part of FY 2020 because the pandemic shuttered most state and local government sites. Still, Wyoming OSHA was able to conduct a greater percentage of state and local government inspections in a few months of FY 2020 than in all of FY 2019, when they conducted 3.66% of inspections in state and local government workplaces. This is an indication that the State Plan had, in fact, taken steps to increase the percentage of inspections in state and local government establishments. It should be noted that an observation has a life span of three years, after which time it must be closed by OSHA or elevated to a finding. However, due to the extenuating circumstances of the pandemic and the fact that the State Plan has shown improvement in a short amount of time, OSHA is making an exception and allowing this observation to continue for one additional year. This observation is continued.

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

Status: The State Plan changed their coding process to properly code referral and fatality inspections. Wyoming OSHA has also begun including coding in their internal auditing process. Although the State Plan has taken corrective action, a case file review is necessary to gather the facts needed to evaluate progress on this observation. This observation will be a focus of next year's on-site case file review during the FY 2021 Comprehensive FAME and is continued.

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

Status: In FY 2020, Wyoming OSHA averaged 77 days from the day inspections were opened to the day the citations were issued (lapse time), compared to an FRL range of 40.46 days to 60.70 days. A longer lapse time is not a favorable outcome because it indicates a delay in hazard abatement. This observation is continued.

Observation FY 2020-OB-04 (previously FY 2019-OB-04): Wyoming OSHA did not conduct enough follow-up inspections to confirm abatement for safety and health inspections and fatality inspections in FY 2020.

Status: Although a scan of OIS data shows zero follow-up inspections in FY 2020, OSHA is aware that the pandemic has placed certain restrictions on Wyoming OSHA's ability to conduct follow-up inspections. This observation is continued.

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

Status: The Wyoming State Plan has begun following Chapter 5 of the OSHA FOM for case file preparation and documentation and also reviews the guidance with the staff. Although the State Plan has taken corrective action, a case file review is necessary to gather the facts needed to evaluate progress on this observation. This observation will be a focus of next year's on-site case file review during the FY 2021 Comprehensive FAME and is continued.

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

Status: Wyoming OSHA is considering the changes needed to implement its own SST policy in order to comply with OSHA's recently updated Site-Specific Targeting Directive (CPL 02-01-062). This observation is continued.

Observation FY 2020-OB-07 (previously FY 2019-OB-08): 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%).

Status: The Wyoming State Plan has changed the processes for receipt, handling, and disposition of whistleblower cases to ensure clear documentation within the files. Although the State Plan has taken corrective action, a case file review is necessary to gather the facts needed to evaluate progress on this observation. This observation will be a focus of next year's on-site case file review during the FY 2021 Comprehensive FAME and is continued.

C. State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon FRL which can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2021 SAMM Report and includes the FRL for each measure. The State Plan was outside the FRL on the following SAMMs:

SAMM 2a – Average number of workdays to initiate complaint investigations (state formula)

Discussion of State Plan Data and FRL: The SAMM data shows that Wyoming OSHA took an average of four workdays to initiate complaint investigations (phone/fax/email investigations) while the FRL was negotiated to be one workday.

Explanation: While the higher number of days to initiate complaint investigations is not a favorable outcome, it does not serve as an adequate basis for an observation in this report. Wyoming OSHA's average of 4.00 is close to the overall national average of 3.90. OSHA will continue to review this SAMM in quarterly conference calls.

SAMM 3 – Percent of imminent danger complaints and referrals responded to within one workday

Discussion of State Plan Data and FRL: The SAMM data shows that Wyoming OSHA responded to 94.44% of imminent danger complaints and referrals within one day. The FRL is fixed at 100% for all State Plans.

Explanation: The 94.44% result in Appendix D is due to an input coding error. Wyoming OSHA corrected an input coding error on one of twenty imminent danger complaints and referrals. A review of an updated SAMM Report for FY 2020 shows that Wyoming OSHA responded to 100% of imminent danger complaints and referrals within one day.

SAMM 5 – Average number of violations per inspection with violations by violation type

Discussion of State Plan Data and FRL: The SAMM data shows that in FY 2020, Wyoming OSHA averaged 0.38 other-than-serious (OTS) violations per inspection. The FRL range was from 0.76 to 1.14.

Explanation: With an average of 1.69, Wyoming OSHA was within the FRL range of 1.43 to 2.15 for serious, willful, repeat, and unclassified (SWRU) violations per inspection. These metrics show that the State Plan is identifying and settling serious hazards. While the average number of violations per inspection for OTS violations is not a favorable outcome, it is not a cause for concern and is not an adequate basis for an observation in this report.

SAMM 6 – Percent of total inspections in state and local government workplaces

This has been previously discussed in Observation FY 2020-OB-01.

SAMM 8 – Average current serious penalty in private sector - total (1 to greater than 250 workers)

Discussion of State Plan Data and FRL: The SAMM data shows that Wyoming OSHA's average current serious penalty was \$3,986.53 compared to the FRL range of \$2,223.65 to \$3,706.08. The FRL is based on a three-year national average. This was a positive outcome.

Explanation: 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. As a result, Wyoming OSHA consistently performs well with regard to SAMM 8.

SAMM 9 – Percent in compliance

Discussion of State Plan Data and FRL: Wyoming OSHA exceeded the in-compliance rates for both safety and health in FY 2020. For safety, the State Plan averaged 44.00% in compliance, compared to the FRL range of 24.82% to 37.24%. For health, the State Plan averaged 91.67%, compared to the FRL range of 29.72 to 44.58%. These are not favorable outcomes.

Explanation: The FY 2020 in-compliance rates appear to be an aberration caused in part by the pandemic. With a staff of eight compliance officers, Wyoming OSHA's in-compliance rates tend to be more variable compared to a larger office. In addition, more response work tends to result in higher in-compliance rates compared to offices who can plan their inspections at sites where hazards are likely to occur.

The State Plan has recently adopted the Respirable Crystalline Silica National Emphasis Program, and these inspections should result in a higher percentage of sites containing health hazards. With consideration to the pandemic, and considering the variability in the State Plan's metrics, no observation is warranted at this time.

SAMM 11 – Average lapse time

Discussion of State Plan Data and FRL: Lapse time is the number of work days from the opening conference date to the earliest issuance date, and the FRL is based on a three-year national average. The lapse time for safety has been discussed in Observation FY 2020-OB-02. For health, the lapse time was 104.67 days, compared to the FRL range of 48.31 to 72.47 days.

Explanation: The Wyoming State Plan processed only a few health citations in FY 2020, resulting in a lapse time anomaly. In FY 2019, the State Plan's lapse time for health inspections was squarely within the FRL range, which leads OSHA to believe that the pandemic may have been a factor in the longer FY 2020 lapse time. As a result, while there is a continued observation related to the safety lapse time, there is no observation related to the health lapse time.

SAMM 12 – Percent penalty retained

Discussion of State Plan Data and FRL: In FY 2020, the Wyoming State Plan retained 92.5% of penalties, compared to the FRL range of 57.38% to 77.64%.

Explanation: The higher percentage of penalties retained is a favorable outcome for several reasons. First, the case file documentation supports the citations. Next, the State Plan management is communicating with the compliance officers on appropriate standards to cite. Finally, the State Plan is managing the informal conferences in a manner that is conducive to settlement.

SAMM 14 – Percent of 11(c) investigations completed within 90 days

Discussion of State Plan Data and FRL: The Wyoming State Plan completed 100% of its whistleblower cases that it investigated within 90 days. The FRL is fixed at 100% for all State Plans.

Explanation: This SAMM is included in this report as a positive outcome. The Wyoming State Plan was one of only two State Plans to complete 100% of its whistleblower cases within 90 days. In fact, nationwide, State Plans completed only 39% of whistleblower cases within 90 days.

SAMM 15 – Percent of 11(c) complaints that are meritorious

Discussion of State Plan Data and FRL: Wyoming OSHA found 69% of its cases (nine of thirteen) to be meritorious in FY 2020. The FRL range of 14.40% to 21.60% is based on a three-year national average.

Explanation: For the second consecutive year, the Wyoming State Plan exceeded the national average of meritorious case percentage by a significant margin. This is a positive outcome and reflects consistency in the whistleblower program.

SAMM 16 – Average number of calendar days to complete an 11(c) investigation

Discussion of State Plan Data and FRL: Wyoming OSHA completed its whistleblower investigations within an average of 71 days. The FRL is fixed at 90 days for all State Plans.

Explanation: The Wyoming State Plan exceeded the FRL in FY 2020. This positive outcome reflects a significant improvement compared to the FY 2019 average of 219 days. When compared to the national average of 316 days for all State Plans, the Wyoming State Plan continues to excel in expeditiously concluding whistleblower cases.

Appendix A – New and Continued Findings and Recommendations

FY 2020 Wyoming OSHA Follow-up FAME Report

FY 2020-#	Finding	Recommendation	FY 2019-# or FY 2019-OB-#
FY 2020-01	The State Plan did not give complainants the opportunity to evaluate whether the employer corrected the hazards in 20 of 23 (87%) complaint investigation files reviewed in FY 2019.	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. <i>Corrective action is complete and awaiting verification.</i>	FY 2019-01

Appendix B – Observations and Federal Monitoring Plans

FY 2020 Wyoming OSHA Follow-up FAME Report

Observation # FY 2020-OB-#	Observation# FY 2019-OB-# or FY 2019-#	Observation	Federal Monitoring Plan	Current Status
FY 2020-OB-01	FY 2019-OB-01 FY 2018-OB-02 FY 2017-OB-02	Wyoming OSHA was significantly below the further review level (FRL) for SAMM 6, which measures the percent of inspections conducted in state and local government workplaces. At 4.76%, Wyoming OSHA was outside the FRL range of 19.23% to 21.25%.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings in FY 2021.	Continued
FY 2020-OB-02	FY 2019-OB-02	The State Plan coded some referrals and fatality inspections in OIS incorrectly in FY 2019. Six of 22 (27%) self-referral inspections under emphasis programs were coded as unprogrammed-other when they should have been coded as programmed-planned. Three non-work-related fatalities were coded as referrals instead of fatalities – non-work-related.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings in FY 2021.	Continued
FY 2020-OB-03	FY 2019-OB-03	The lapse time for safety inspections exceeded the FRL by 27% in FY 2020.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings in FY 2021.	Continued
FY 2020-OB-04	FY 2019-OB-04	Wyoming OSHA did not conduct enough follow-up inspections to confirm abatement for safety and health inspections and fatality inspections in FY 2020.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings in FY 2021.	Continued
FY 2020-OB-05	FY 2019-OB-05	Wyoming OSHA did not mail a copy of the citation to the union in three of three (100%) inspections that involved unions in FY 2019.	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings in FY 2021	Continued
FY 2020-OB-06	FY 2019-OB-07	Although Wyoming OSHA adopted the SST directive by incorporating it into the Workers Compensation LEP, the LEP does not provide for comprehensive inspections. As a result, Wyoming	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings in FY 2021.	Continued

Appendix B – Observations Subject to Continued Monitoring

FY 2020 Wyoming OSHA Follow-up FAME Report

		OSHA was not conducting comprehensive programmed general industry inspections.		
FY 2020-OB-07	FY 2019-OB-08 FY 2018-OB-04	Throughout FY 2019, the whistleblower program had deficiencies involving the receipt, processing, and disposition of whistleblower cases. Of the 25 whistleblower case files reviewed, there were 16 cases where OSHA was unable to determine whether a manager was involved in the review and approval of the complaints during the complaint intake process for both docketed or administratively closed cases (64%); there were three cases where OSHA was unable to locate a complaint intake form or one similar to the OSHA-87 Form (12%); and in nine cases, OSHA was unable to locate a copy of the notification letters to the complainant and/or respondent (36%). Of the eight settled cases, there were three cases where OSHA could not determine whether the settlement was reviewed and approved (38%); in three cases, OSHA 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%).	The OSHA Regional Office will monitor the State Plan’s performance in this area during quarterly meetings in FY 2021.	Continued
	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.		Closed

Appendix C - Status of FY 2019 Findings and Recommendations

FY 2020 Wyoming OSHA Follow-up FAME Report

FY 2019-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
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 FOM Chapter 9 to notify both formal and non-formal complainants of pending investigations and inspections, and then of the results of the investigations and inspections.	Wyoming OSHA said they will follow the guidance in the FOM Chapter 9 to give the complainants the opportunity to evaluate whether the employer corrected the hazards, unless the complainant indicates that a response is not required.	August 3, 2020	Awaiting Verification February, 2021

Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report

FY 2020 Wyoming OSHA Follow-up FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Wyoming - WYOMING OSHA			FY 2020	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	5.79	16	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	4.55	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	4	1	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	2.88	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	94.44%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 1.69	+/- 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 review is from 1.43 to 2.15 for SWRU and from 0.76 to 1.14 for OTS.
		Other: 0.38	+/- 20% of Other: 0.95	
6	Percent of total inspections in state and local government workplaces	4.76%	+/- 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

Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report

FY 2020 Wyoming OSHA Follow-up FAME Report

U.S. Department of Labor				
				requiring further review is from 19.23% to 21.25%.
7	Planned v. actual inspections – safety/health	S: 155	+/- 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: 13	+/- 5% of H: 15	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$3,986.53	+/- 25% of \$2,964.86	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,223.65 to \$3,706.08.
	a. Average current serious penalty in private sector (1-25 workers)	\$2,947.00	+/- 25% of \$1,967.64	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,475.73 to \$2,459.55.
	b. Average current serious penalty in private sector (26-100 workers)	\$5,376.91	+/- 25% of \$3,513.45	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,635.09 to \$4,391.81.
	c. Average current serious penalty in private sector (101-250 workers)	\$7,022.69	+/- 25% of \$5,027.02	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,770.27 to \$6,283.78.

Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report

FY 2020 Wyoming OSHA Follow-up FAME Report

U.S. Department of Labor				
	d. Average current serious penalty in private sector (greater than 250 workers)	\$7,284.50	+/- 25% of \$6,190.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,643.18 to \$7,738.64.
9	Percent in compliance	S: 44%	+/- 20% of S: 31.03%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 24.82% to 37.24% for safety and from 29.72% to 44.58% for health.
		H: 91.67%	+/- 20% of H: 37.15%	
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: 77	+/- 20% of S: 50.58	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 40.46 to 60.70 for safety and from 48.31 to 72.47 for health.
		H: 104.67	+/- 20% of H: 60.39	
12	Percent penalty retained	92.50%	+/- 15% of 67.51%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 57.38% to 77.64%.
13	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	100%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	69%	+/- 20% of 18%	The further review level is based on a three-year national average. The

Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report

FY 2020 Wyoming OSHA Follow-up FAME Report

U.S. Department of Labor				
				range of acceptable data not requiring further review is from 14.40% to 21.60%.
16	Average number of calendar days to complete an 11(c) investigation	71	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	0.99%	+/- 25% of 1.09%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.82% to 1.36%.

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 9, 2020, as part of OSHA’s official end-of-year data run.

Appendix E – FY 2020 State OSHA Annual Report (SOAR)
FY 2020 Wyoming OSHA Follow-up FAME Report

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

**FY 2020 Annual Report
State Operations Annual Report
(SOAR)**



Evaluation Period: October 1, 2019 – September 30, 2020

Prepared by: Karen Godman and Christian Graham

Submitted: December 16, 2020

**Karen Godman
Deputy Administrator**

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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 2020 State OSHA Annual Report (SOAR)

FY 2020 Wyoming OSHA Follow-up FAME Report

I. 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) 2020 the program had three (3) field offices, which are located in Casper, Gillette and Rock Springs. Over FY 2020, 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 2020 through FY 2024. 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 2020 23(g) Cooperative Agreement and which include the Strategic Plan (FY 2020 - 2024).

Appendix E – FY 2020 State OSHA Annual Report (SOAR)

FY 2020 Wyoming OSHA Follow-up FAME Report

II. Summary of Annual Performance Plan Results

Strategic Goal #1 - Reduce Fatalities			
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 and other CA outreach.		
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 ratio, and average cost of injury. Our primary measure for reduction will be the number of fatalities we investigated each year compared to the 20-year average of the previous strategic plan.		
Performance Indicator(s)	Activity Measures: * Number of fatalities investigated * Number of enforcement inspections * Number of training sessions * Number of CA and outreach activities with Alliances - Associations - Coalitions	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 FY2000 through FY2020 = 7.35. <i>Total number of fatalities investigated for FY1999 through FY2019 = 147</i>			

Appendix E – FY 2020 State OSHA Annual Report (SOAR)

FY 2020 Wyoming OSHA Follow-up FAME Report

Activity Measures	2020 Target	2020 Results	Difference
Number of fatalities investigated	7.35	4	-45%
Number of enforcement inspections	168	173	+3%
Safety	153	160	+5%
Health	15	13	-13%
Number of training sessions	48	150	+312%
Number of Compliance Assistance outreach activities with Alliances/Coalitions:	25	29	+16%
Intermediate Outcome			
	FY2020	FY2019	% Change
Number of inspection hazards identified	355	292	+22%
	FY2020	FY2019	% Change
Serious	288	204	+41%
Willful	2	1	+50%
Repeat	9	7	0%
Unclassified	0	7	-100%
Other than Serious	56	73	-23%
Primary Outcome Measure: Using a 20-year baseline, the average amount of fatalities this year has been reduced by 45%.			

Strategic Goal #2 – Improve workplace safety and health for all Wyoming workers as evidenced by fewer injuries and illnesses.

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, amputations and losses of an eye.		
Strategy	Conduct inspections of targeted industries to 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 reported in-patient hospitalizations, amputations and losses of an eye will be screened and depending on the nature of the issue, the status of an inspection will be determined. A pre-post analysis will be made for each FY showing number of post visit claims compared to the number of pre-visit claims.		
Performance Indicator(s)	<i>Activity Measures:</i> * Number of enforcement inspections * Number of training sessions * Number of CA activities	Intermediate Outcome Measures: % Programmed inspections resulting in the identification of hazard	Primary Outcome Measure: Reduction in reported in-patient hospitalizations, amputations and losses

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.

Appendix E – FY 2020 State OSHA Annual Report (SOAR)
FY 2020 Wyoming OSHA Follow-up FAME Report

Activity Measures	2020 Target	2020 Results	% Diff- erence
Number of enforcement inspections	168	173	+3%
Number of training sessions	48	150	+312%
Number of Compliance Assistance outreach activities with Alliances/Coalitions:	25	29	+16%

Intermediate Outcome	FY2020	% Result
% Comprehensive programmed inspections resulting in the identification of hazard	9	100%

Primary Outcome Measure: By NAICS	2020	2019	% Change
Total dollar of employer premium for WC claims	\$86,898,688.93	\$89,365,388.27	-3%

Conclusion Inspections, training sessions, and compliance assistance activities, contributed to a 3% reduction in WC premiums. Metrics of Activity measures & Intermediate Outcomes help to highlight not only identification of hazards, but training provided to eliminate future hazards, thereby abating hazards in the present time and into the future. The increases in training the past year can be attributed to a fully filled & trained CAS and the positive working relationships developed with the public sector to assist in guiding them through proper steps for assessment and protection to employees through the COVID-19 pandemic.

Strategic Goal #3 – Promote a safety and health culture in Wyoming through strong and effective Compliance Assistance through Cooperative programs.			
Performance Goal #3.1	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 Alliance, Association, Coalition and to encourage participation in VPP.		
Performance Indicator(s)	Activity Measures: * 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 Coalitions	Intermediate Outcome Measures: * 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 agreement. * Number of Employers that request CAS and work with CAS through alliances and coalitions.	Primary Outcome Measure: * Number of participants requesting enrollment information in VPP

Appendix E – FY 2020 State OSHA Annual Report (SOAR) FY 2020 Wyoming OSHA Follow-up FAME Report

Baseline - Number of members in alliances, associations, coalitions and VPP participants for previous FY			
Activity Measures	2020 Target	2020 Results	% Change
Number of enforcement inspections	168	173	+3%
Number of CA outreach	25	29	+16%
*Increased membership numbers	625	304	-51%
Creation of new Alliances, Assoc., and Coalitions	2	0	-100%
Intermediate Outcome	2020 Target	2020 Results	% Change
Percent increase of membership in Alliances, Assoc., and Coalitions	6	16	0%
<i>*Number of Employers increase in H&S training per consent agreement</i>	0	0	0%
<i>*Number of employers with increase in Risk Management per consent agreement</i>	0	0	0%
Number of employers that request CAS through Alliances and Coalitions	0	0	0%
Primary Outcome Measure	2020 Target	2020 Results	% Change
Number of participants requesting enrollment information in VPP. General Industry/Construction	2	0	-100%
Conclusion: * 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 not effective in bolstering clientele and there are other means in which the employer can get this assistance through other State programs and request through the Consultation program. However, membership in two alliance groups has decreased due to industry hardships. One VPP application was received for FY2019.			

III. 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 conducted 4 fatality inspections in FY 2020. This compares to a 20 year average, from 1999 – 2019, of 7.35, which is a 45% decrease. The top five (5) NAICS contributing industries are listed in the table below.

Industry	Number of fatalities
Mining	46
Construction	33
Transportation and Warehousing	20
Manufacturing	11
Agriculture, Forestry, Fishing and Hunting	4

In efforts to reduce injuries and illnesses of employers receiving comprehensive compliance inspections, we focus on workplaces identified through Workers' Compensation data, by direct

Appendix E – FY 2020 State OSHA Annual Report (SOAR)

FY 2020 Wyoming OSHA Follow-up FAME Report

observation, fielding complaints & referrals and through reporting requirements associated with in-patient hospitalizations, amputations and losses of an eye. To reduce WC premiums, our enhanced focus will be to apply our WC data to the industries listed above who historically have had the highest number of fatalities. Inspections, training, and compliance assistance have contributed to a 3% decrease in employer WC premiums in FY 20.

IV. Mandated Activities

WY OSHA has assured that the below activities have been verified during the course of FY 2020 operations.

1. Prohibition against advance notice;
2. Employee access to hazard and exposure information;
3. Safeguards to protect an employer's trade secrets;
4. Employer recordkeeping;
5. Legal procedures for compulsory process and right of entry;
6. Posting of employee protections and rights;
7. Right of an employee representative to participate in walkarounds;
8. Right of an employee to review a decision not to inspect (following receipt of a complaint from that employee); and
9. Voluntary compliance programs.

V. Special Measures of Effectiveness/Special Accomplishments:

Compliance Outreach

Wyoming employs one Compliance Assistance Specialist (CAS) to provide outreach to public sector, participate in alliance and coalitions, run the VPP Program and create tools & resources to assist these groups. This CAS has accomplished much the past year, to include 23 public sector visits, 6 program reviews, 12 Return To Work (RTW) visits, 5 Technical Assistance events, 4 formal presentations at conferences, 23 visits & development of resources to assist public sector in assessment and control strategies for COVID-19.

In addition, 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

Appendix E – FY 2020 State OSHA Annual Report (SOAR)

FY 2020 Wyoming OSHA Follow-up FAME Report

Transportation Safety Coalition (TSC), Cheyenne Roofing Alliance (CRA), Wyoming Construction Coalition (WCC) and Wyoming Contractor's Association (WCA).

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 rates in the Oil & Gas Industry. WOGISA general membership has decreased in response to economic decline to approximately 241 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.

Appendix E – FY 2020 State OSHA Annual Report (SOAR)

FY 2020 Wyoming OSHA Follow-up FAME Report

Safety Stand Down Events and Worker’s Memorial

There was also a cooperative effort to promote and participate in many safety events, to include the 7th National Safety Stand-Down to Prevent Falls in Construction September 14-18, 2020) and two certificates were issued. WY OSHA also participated in Safe & Sound Week (August 10-16, 2020), through sharing of information and empowering alliances to participate, for which seven employers participated. In addition, OSHA participated in the Worker’s Memorial through press release through the Agency website on April 28, 2020 to honor those that have lost their lives in a workplace fatality.

Voluntary Protection Program (VPP) & 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 Compliance Assistance Specialist & VPP Coordinator over the past two years. With the position now filled, the program is collaborating with the OSHA Regional Office and is making significant progress on a new VPP application. The program is increasing VPP awareness 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 through 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

OSHA Penalty Collection

The Department of Workforce Services recognized WY OSHA’s challenge in collecting penalties, and has been working with a contract collections agency since FY 17 to address this challenge. The Agency continues to pursue the collection of penalties owed. In FY 20, the collections agency has collected a total of \$23,902.00.

Appendix E – FY 2020 State OSHA Annual Report (SOAR)

FY 2020 Wyoming OSHA Follow-up FAME Report

Discount Program

This FY 2020, 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 (3rd) party private consultant applications for approval. Once approved, the third party consultants 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 3rd 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 FY2020, 254 employers qualified for this discount program

Appendix E – FY 2020 State OSHA Annual Report (SOAR)

FY 2020 Wyoming OSHA Follow-up FAME Report

VI. Adjustments or Other Issues

Due to the COVID-19 crisis, the Department of Workforces Services, OSHA Division developed visit and inspection requirements for CSHO's based on potential exposures when they were in the offices and out in the field. Staff were required to wear face-coverings in all major settings, minimize visits and inspections to four people maximum attendance, follow CDC guidelines for proper PPE mandates, and follow the requirements for keeping 6' distance from others when meeting. On the Consultation team, CSHO's were required to contact potential employers a week prior to the visit to validate that no employees had been impacted by COVID-19, and call the day prior to the visit to ensure that status was still accurate. If CSHO's were to travel out of state, they were required to self-quarantine and work from home for a minimum of 14 days.

Wyoming OSHA created industry specific guidelines by developing checklists and reporting requirements to help guide employers through assessing workplaces and implementing the appropriate hierarchy of controls, which were posted on the Wyoming OSHA website.

Public Sector

A continuing major issue for FY 2020 is the projected number of public sector inspections to be completed. Issues that continued to create challenges during FY 2020 for the Compliance Program were changes in personnel, loss of seasoned staff and specific complaint activities for public sector.

Discrimination Issues

FY2020 was a positive year for the 11c, Whistleblower Program. The one State funded Investigator has continued with the program, which has provided consistency and an ability to address and process discrimination cases. 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:

- Handled & Processed: 34 cases
- Opened: 32 new cases
- Investigated & Dismissed: 2 cases
- Screened Out (Referrals, Subject Matter Jurisdiction): 48 cases
- Administratively Closed: 18 cases
- Screened Complaint Timeline: 15 day average
- Settlement: Seven cases with a total settlement value of \$20,068
- Average Days Open: 35