**FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) Report**

### Puerto Rico Department of Labor

### Puerto Rico Occupational Safety and Health Administration (PR OSHA)



**Evaluation Period: October 1, 2021 – September 30, 2022**

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# Executive Summary

The primary purpose of this Follow-up Federal Annual Monitoring Evaluation (FAME) Report is to assess the Puerto Rico State Plan’s (PR OSHA) progress in Fiscal Year (FY) 2022 in resolving outstanding findings from the previous FY 2021 Comprehensive FAME Report.

PR OSHA has been experiencing a significant problem with recruiting and retaining enforcement staff which has worsened in recent years. The State Plan contributes the difficulty in recruiting and maintaining enforcement staff to the low salary scales. In FY 2022, PR OSHA conducted 640 total inspections in both private and public sector establishments (approximately 51% of their inspection goals for the year.) There were 457 safety and 183 health inspections conducted. PR OSHA failed to meet its inspection goals for the year because of the loss of compliance staff. From FY 2021 to FY 2022, PR OSHA lost 18 Compliance Safety and Health Officers (CSHOs) which significantly impacted the program’s ability to meet its annual assessment goals. The State Plan recruited 12 new CSHOs from 16 open announcements starting in the third quarter of FY 2022. The State Plan had only 16 experienced CSHOs that were performing safety and health inspections throughout much of FY 2022. The FY 2022 grant allocated 49 CSHO positions for the State Plan. The State Plan has hired a total of 15 CSHOs from June 2022 to March 2023.

PR OSHA continued to provide compliance assistance and outreach to employers and workers on safety and health issues through participation in its Voluntary Protection Program (VPP) and its alliances, and by conducting training and state and local government consultation visits. Compliance assistance specialists conducted 47 training and assistance activities that impacted 3,263 employers, employees, and the general public. Private sector employers receive consultation services under a 21(d) grant.

During FY 2022, the Bureau of Inspections received 10 whistleblower cases, nine were closed at the administrative level. One case was assigned for investigation and then ended up being dismissed. There were no open whistleblower cases at the end of FY 2022.

PR OSHA actively engages and collaborates effectively with OSHA. The State Plan received one Complaint About State Plan Administration (CASPA) in January 2022. They provided the requested response in a timely manner and implemented corrective actions to address the CASPA as well as previously identified FAME findings.

Except for the OSHA rule on increasing maximum penalties published on July 1, 2016, PR OSHA has been responsive to adopting new federal standards and directives. Even though it has been almost seven years since OSHA published this rule to increase penalties, PR OSHA has still not adopted the rule. Adopting OSHA’s new penalty structure requires amendments to the PR OSHA Act and these amendments must be voted on and approved by the Puerto Rico Legislature. A bill has been recently introduced to the legislature, but the bill is still under review.

PR OSHA made progress to address the previous four findings and nine observations from the FY 2021 Comprehensive FAME Report. Two observations from FY 2021 were closed as evaluated with the SAMM report, and seven remain open. In summary, this report contains a total of four continued findings, one new finding, and seven observations.

# State Plan Background

Luis E. Pardo, Assistant Secretary of Labor, was responsible for administering the Puerto Rico State Plan until February 16, 2023, when Judith Cruz was appointed as the Assistant Secretary of Labor. PR OSHA is part of the Puerto Rico Department of Labor and Human Resources, currently headed by Gabriel Maldonado, designated Secretary of Labor as of January 2022. PR OSHA serves a population of over 678,381 private sector workers and over 131,809 state and local government workers. There is a central administrative office and six area offices for enforcement activities.

PR OSHA has reported that hiring compliance personnel to staff these area offices has been a challenge since January 2017, due to the economic crisis in Puerto Rico, and the presence of an Oversight Management Board, that is operating under Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA). The requirement that the Oversight Management Board approves the filling of vacancies, and the salaries of personnel, has impacted the State Plan’s ability to recruit personnel, and to raise the salaries of enforcement personnel. PR OSHA filled 15 CSHO positions from June 2022 through March 2023. PR OSHA has requested permission to hire for seven (7) additional positions in FY 2023.

Even though PR OSHA announced 16 open positions in FY 2022, they were not able to find 16 qualified candidates that were willing to accept the positions at the low starting salaries. Due to the persistence of the former Assistant Secretary of Labor, Luis Pardo, in February 2023, the department announced that the starting salaries of new CSHOs would be raised from $28,000 to

$40,000. This salary increase should help to attract more applicants for these vacant positions.

PR OSHA’s state and local government worker consultation program is funded under the 23(g) grant agreement and its services are provided primarily out of the central office. In the private sector, PR OSHA covers all employers except for those from the maritime industry (e.g., marine cargo handling, long shoring, shipbuilding, and ship repairing). Employers of the Commonwealth and local government are under PR OSHA’s jurisdiction. The United States Postal Service (USPS), all federal agencies, and military facilities are under OSHA’s jurisdiction.

OSHA safety and health standards are adopted identically by PR OSHA. The regulations and operational systems of the plan are essentially the same as the federal program. A hearing examiner handles review procedures with employer rights of appeal to the district court. The federal award for FY 2022 was $2,397,500. The total operating budget for FY 2022 with both state and federal funds was $6,595,313. The State Plan deobligated $991,201 in federal funds in FY 2022.

### New Issues

Maximum Penalty Increase

In accordance with the Bipartisan Budget Bill passed on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum penalties. As required by law, OSHA then increase maximum penalties annually, most recently on January 15, 2023, according to the Consumer Price Index (CPI). State Plans are required to adopt both the initial increase and subsequent annual increases within the corresponding six-month timeframe set by regulation. December 2022 marked six years since the first deadline passed for adoption and the Puerto Rico State Plan has not yet completed the legislative changes to increase maximum penalties**.**

PR OSHA made the necessary amendments to the Act to increase the penalty amounts. The Secretary of Labor forwarded the amendments to the governor’s office. The governor’s office has presented the amendments to the legislature as of February 2023. The bill is still pending in the legislature.

# Assessment of State Plan Progress and Performance

## 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
* State Information Report (SIR)
* Mandated Activities Report for Consultation (MARC)
* State OSHA Annual Report (SOAR)
* OSHA Information System (OIS)
* State Plan Annual Performance Plan (APP)
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan

## Findings and Observations

### Findings (Status of Previous and New Items)

The State Plan made progress to address the previous four findings and nine observations from the FY 2021 Comprehensive FAME Report. This follow-up FAME report contains four continued findings, one new finding, and seven continued observations; two continued observations from FY 2021 were closed. There was one new finding and no new observations during FY 2022. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2021 finding and recommendation in detail.

### Completed Findings

None

### Continued Findings

### Finding FY 2022-01 (FY 2021-01): *Staffing*

There are vacant CSHO positions.

**Status:**

From FY 2021 to FY 2022, PR OSHA lost 18 compliance safety and health officers (CSHOs) which significantly impacted the program’s ability to meet its annual assessment goals. The State Plan recruited 12 new CSHOs from 16 open announcements starting in the third quarter of FY 2022. The State Plan had only 16 experienced CSHOs that were performing safety and health inspections throughout much of FY 2022. The FY 2022 grant allocated 49 CSHO positions for the State Plan. The State Plan has hired a total of 15 CSHOs from June 2022 to March 2023. Currently, there are a total of 32 CSHOs and eight managers/supervisors on staff. Two new CSHOs are expected to begin working in June 2023. PR OSHA has requested permission to hire for seven additional positions in FY 2023.

Even though PR OSHA announced 16 open positions in FY 2022, they were not able to find 16 qualified candidates that were willing to accept the positions at the low starting salaries. Due to the persistence of the former Assistant Secretary of Labor, Luis Pardo, in February 2023, the department announced that the starting salaries of new CSHOs would be raised from $28,000 to

$40,000. This salary increase should help to attract more applicants for these vacant positions.

### Finding 2021-02 (FY 2020-OB-01, FY 2019-OB-01, FY 2018-OB-05): *Safety Percent In-*

*Compliance*

In FY 2021, the percent of in-compliance for safety was 57.96% which was above the three-year national average of 31.65%.

**Status:** In FY 2022, the percent in-compliance for safety inspections for SAMM measure 9a was reported at 53.31% which is above the three-year national average of 32.25%. This finding is continued as Finding FY 2022-02, but it will be amended to reflect the new SAMM data from FY 2022. This finding remains open.

### Finding 2021-03 (FY 2020-OB-02, FY 2019-OB-02, FY 2018-OB-06): *Health Percent In-*

*Compliance*

The percent in-compliance for health was 67.52% which was above the three-national average of 40.64%

**Status:** In FY 2022, SAMM measure 9b reported that the percent in-compliance for health inspections was 63.78% which is above the three-year national average of 44.42%. This finding is continued as Finding FY 2022-03, but it will be amended to reflect the new SAMM data from FY 2022. This finding remains open.

**Finding 2022-04 (FY 2021-04):** *Penalty Increase Adoption*

PR OSHA has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

**Status:** The Secretary of Labor forwarded the necessary legislative amendments to the governor’s office. The governor’s office has presented the amendments to the legislature as of February 2023. The bill is still pending in the legislature. This finding will remain open.

### New FY 2022 Finding

**Finding 2022-05: *OIS Open Inspection Report and SIR***

The OIS Open Inspection Report for PR OSHA identified 269 inspection files with abatement that was past due. The End-of-the-Year SIR for FY 2022, under measure 3b noted 249 non-contested inspections with abatement that was more than 60 calendar days past due.

The OIS Open Inspection Report showed 237 inspection files under the tab “Citations Not Received” that had citations issued but the issuance date was not entered into OIS. Without entering the receipt date of citations in OIS, the system does not track open abatement.

**Recommendation FY 2022-05:** The State Plan needs to run and review the Open Inspection Report at least weekly in the future. The inspections listed under the tab entitled, “Citations Not Received” need to be updated in OIS to reflect the date of receipt of the citations by the employer, and a procedure needs to be developed to ensure that in the future, the date of citations received is updated in OIS. The State Plan needs to reach out to the employers identified with overdue abatement to obtain abatement and schedule follow-ups as appropriate. Case file management procedures should be reviewed and updated to ensure that abatement is secured timely going forward.

### Observations

### Closed FY 2021 Observations

**Observation FY 2021-OB-02 (FY 2020-OB-06):** *Health Lapse Time*

The health lapse time was calculated at 89.62 days for health which was above the FRL of 48.31 days to 72.47 days.

**Status:** In FY 2022, as per SAMM measure 11b, the lapse time was calculated at 74.21 days for health which was within the FRL of 55.22 to 82.84 days. This observation is closed.

**Observation FY 2021-OB-04:** *Responding to Fatalities Within One Day*

One of five (20%) of the fatality inspection files were not inspected within one day of notification.

**Status:** In FY 2022, as per SAMM measure #10, 100% of fatality inspections were initiated within one day. This observation is closed.

### Continued FY 2021 Observations

**Observation FY 2021-OB-01:** *Safety Lapse Time*

The safety lapse time was calculated at 62.43 days for safety which was above the FRL range of

40.46 to 60.70 days.

**Status:** In FY 2022, the safety lapse time for SAMM measure #11a was calculated at 68.78 days for safety which was above the FRL of 43.66 to 65.50 days. This observation is continued as Observation FY 2022-OB-01, but it will be amended to reflect the new SAMM data from FY 2022. This observation remains open.

**Observation FY 2022-OB-02 (FY 2021-03):** *Complaint Investigations*

Two of eight (25%) complaint investigation cases were missing documentation including the letter to the employer, response from the employer, and the letter to the complainant**.**

**Status:** A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. This observation will remain open.

**Observation FY 2022-OB-03 (FY 2021-05):** *Next-of-Kin Letters*

There was documentation lacking in one of five case files that the final inspection results notification letter was sent to the families of the victim.

**Status:** A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. This observation will remain open.

**Observation FY 2022-OB-04 (FY 2021-06):** *Appropriateness of Penalties*

In eight of 50 cases (14%) with violations issued, penalties were not calculated correctly in accordance with PR OSHA’s FOM. Penalties were not adjusted correctly for size and history –

especially for citations issued under Special Rule 17.

**Status:** A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. This observation will remain open.

**Observation FY 2022-OB-05 (FY 2021-07):** *Worker and Union Involvement*

One of seven (14%) inspections with unions failed to document that the union was invited to participate in the opening and/or the walkaround. In five of seven (71%) inspections with a union and the employer requested an informal conference, documentation was lacking that the union was invited to participate.

**Status:** A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. This observation will remain open.

**Observation FY 2022-OB-06 (FY 2021-OB-07):** *Case file Documentation and Management*

In one of four (25%) docketed investigations, the complaint was not analyzed correctly during the initial intake and screening process. The complaint was incorrectly docketed when it was time-barred from investigation.

**Status:** A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. This observation will remain open.

**Observation FY 2022-OB-07 (FY 2021-09):** *Case File Documentation-VPP*

Two of the three (67%) VPP case files lacked documentation as to whether there were any 90-day items and dates of correction of these hazards, if appropriate.

**Status:** A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. This observation will remain open.

### New FY 2022 Observations

None

## 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 2022 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure.

It should be noted that OSHA is in the final stages of transitioning from the Whistleblower Application in the OSHA IT Support System (OITSS), a legacy data system, to the Whistleblower module in OIS, a modern data system. For FY 2022, a portion of the State Plan whistleblower data was recorded OITSS, and a portion was captured in OIS. OSHA encountered challenges in combining the report that generates SAMM 14, 15, and 16 from both systems. As such, OSHA will not be relying on SAMMs 14, 15, or 16 in their evaluation of the State Plans whistleblower programs for FY 2022.

The State Plan was outside the FRL on the following SAMMs:

### SAMM 5b – Average Number of Violations per Inspection with Violations by Violation Type (OTS)

Discussion of State Plan data and FRL: The FRL for the average number of violations per inspection with violations by violation type is +/- 20% of the three-year national average of 0.90 for other-than-serious (OTS) violations, which equals a range from 0.72 to 1.08. PR OSHA’s OTS average is 1.63 which is above the FRL range.

Explanation: PR OSHA’s violations per inspection (OTS) is above the FRL range. Without a case file review, it is not possible to conclude that PR OSHA is not correctly classifying these violations as OTS rather than serious violations. During the next comprehensive FAME review, this SAMM measure will be further evaluated.

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

Discussion of State Plan data and FRL: The FRL for the average number for state and local government workplace inspections is +/- 5% of the three-year national average of 21.90% which equals a range from 20.81% to 23%. PR OSHA’s average is 33.59%, which exceeds the FRL range.

Explanation: PR OSHA’s percent of total state and local government workplace inspections is above the FRL range and may seem like a positive outcome. However, this percentage has been impacted due to the decrease in overall number of inspections conducted in FY 2022. This decrease in overall safety and health inspections conducted in both the private and state and local government workplaces is related to the lack of experienced CSHOs available to perform inspections.

### SAMM 7 – Planned v. Actual Inspections – Safety/Health:

Discussion of the State Plan data and FRL: The FRL for planned vs actual inspections is +/- 5% of the negotiated number of 976 safety inspections which equals a range of 927.20 to 1,024.80 for safety, and 284 health inspections which equals a range of 269.80 to 298.20 for health. PR OSHA’s Safety staff conducted 458 inspections and the health staff conducted 182 inspections – both substantially lower than the FRL.

Explanation: PR OSHA’s low number of inspections can be attributed to high staff turnover and limited experienced enforcement staff available to conduct inspections. OSHA will monitor inspection goals during quarterly meetings in FY 2023.

### SAMM 8 – Average Current Penalty per Serious Violation (Private Sector):

Discussion of the State Plan data and FRL: The FRL for average current penalty per serious violation for private sector (1-250+ workers) is +/- 25% of the $3,259.35 three-year national average which equals a range of $2,444.51 to $4,074.19. PR OSHA’s average current penalty per serious violation in the private sector (SAMM 8: 1-250+ workers) was $1,865.67 in FY 2022 and below the FRL.

Explanation: Penalties are one component of effective enforcement. State Plans are required to adopt penalty policies and procedures that are “at least as effective” (ALAE) as those contained in OSHA’s FOM (revised on August 2, 2016) to include changes to the penalty structure in Chapter 6 – Penalty and Debt Collection. The failure of PR OSHA to adopt OSHA’s increased penalty structure may be one reason that this SAMM measure is below the FRL. OSHA will continue to push PR OSHA to adopt the new penalty structure.

## Appendix A – New and Continued Findings and Recommendations

FY 2022 PR OSHA Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 2022-#** | **Finding** | **Recommendation** | **FY 2021-# or**  **FY 2021-OB-#** |
| FY 2022-01 | *Staffing*  There are vacant CSHO positions. | PR OSHA needs to continue to work with their Human Resources Assistant Secretary to announce and fill the vacant positions. | FY 2021-01 |
| FY 2022-02 | *Safety Percent In-Compliance*  In FY 2022, the percent in-compliance for safety inspections was 53.31% which was above the three-year national average of 32.25%. | PR OSHA should encourage staff to take photos on all inspections so that co-workers can be consulted and review working conditions to detect any hazard not identified. In addition, PR OSHA should increase training opportunities for new CSHOs and analyze data regarding in-compliance inspections to detect trends. | FY 2021-02  FY 2020-OB-01  FY 2019-OB-01  FY 2018-OB-05 |
| FY 2022-03 | *Health Percent In-Compliance*  In FY 2022, the percentage in-compliance for health inspections was 63.78% which was above the three-year national average of 44.42%. | PR OSHA should encourage staff to take photos on all inspections so that co-workers can be consulted and review working conditions to detect any hazard not identified. In addition, PR OSHA should increase training opportunities for new CSHOs and analyze data regarding in-compliance inspections to detect trends. | FY 2021-03  FY 2020-OB-02  FY 2019-OB-02  FY 2018-OB-06 |
| FY 2022-04 | *Adoption of Increased Penalties*  PR OSHA has failed to adopt OSHA’s initial FY 2016 maximum penalty increase and subsequent annual penalty increases. | PR OSHA must work with their state authorities to complete the legislative changes necessary to enable it to adopt minimum and maximum penalty amounts that are at least as effective as OSHA’s minimum and maximum penalties. | FY 2021-04 |
| FY 2022-05 | *OIS Open Inspection Report and SIR*  The OIS Open Inspection Report for RID 0257200-0257260 identified 269 inspection files with abatement that was past due. The End-of-the-Year SIR noted 249 non-contested inspections with overdue abatement. | PR OSHA needs to run and review the Open Inspection Report at least weekly in the future. The inspections listed under the tab entitled, “Citations Not Received” need to be updated in OIS to reflect the date of receipt of the citations by the employer and a procedure needs to be developed to ensure that abatement is secured timely going forward. | New |

## Appendix B – Observations Subject to Continued Monitoring

FY 2022 PR OSHA Follow-up FAME Report

| **Observation #**  **FY 2022-OB-#** | **Observation#**  **FY 2021-OB-# *or* FY 2021-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2022-OB-01 | FY 2021-OB-01  FY 2020-OB-05 | *Safety Lapse Time*  The safety lapse time was calculated at 68.78 days for safety which was above the FRL range of 43.66 to 65.50. | In FY 2023, OSHA will  monitor performance utilizing the SAMM Report quarterly. ` | Continued |
| FY 2022-OB-02 | FY 2021-OB-03 | *Complaint Investigations* Two of eight (25%) complaint investigation cases were missing documentation including the letter to the employer, the response from the employer, and the letter to the complainant. | A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. | Continued |
| FY 2022-OB-03 | FY 2021-OB-05 | *Next-of-Kin Letters*  There was documentation lacking in one of five case files that the final inspection results notification letter was sent to the families of the victim. | A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. | Continued |
| FY 2022-OB-04 | FY 2021-OB-06 | *Appropriateness of Penalties*  In 8 of 50 cases (14%) with violations issued, penalties were not calculated correctly in accordance with PR OSHA’s FOM. Penalties were not adjusted correctly for size and history, especially for citations issued under  Special Rule 17. | A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. | Continued |
| FY 2022-OB-05 | FY 2021-OB-07 | *Worker and Union Involvement*  One of seven (14%) of inspections with unions failed to document that the union was invited to participate in the opening and/or the walkaround. In five of seven (71%) inspections with a union and the employer requested an informal conference, documentation was lacking that the union was invited to participate. | A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. | Continued |
| FY 2022-OB-06 | FY 2021-OB-08 | *Case file Documentation and Management*  In one of four (25%) docketed investigations, the complaint was not analyzed correctly during the initial intake and screening process. The complaint was incorrectly docketed when it was time-barred from  investigation. | A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. | Continued |
| FY 2022-OB-07 | FY 2021-OB-09 | *Case File Documentation-VPP*  Two of the three (67%) VPP case files lacked documentation as to whether there were any 90-day items and dates of correction of these hazards, if appropriate. | A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. | Continued |
|  | FY 2021-OB-02 FY 2020-OB-06 | *Health Lapse Time*  The health lapse time was calculated at 89.62 days for health, which was above the FRL of 48.31 days to 72.47 days. | OSHA will monitor performance utilizing the SAMM Report quarterly. | Closed |
|  | FY 2021-OB-04 | *Responding to Fatalities Within One Day*  One of five (20%) of the fatality inspection files were not inspected within one day of notification. | OSHA will monitor performance utilizing the SAMM Report quarterly. | Closed |

## Appendix C - Status of FY 20XX Findings and Recommendations

FY 2022 PR OSHA Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status**  **and Date** |
| FY 2021-01 | *Staffing*  There are vacant CSHO positions. | PR OSHA needs to continue to work with their Human Resources Assistant Secretary to announce and fill the vacant positions. | PR OSHA hired 15 CSHOs from June 2022 to March 2023. The State Plan is continuing to recruit and fill the remaining vacancies to reach the staffing level for CSHOs required by the grant. | Not Completed | Open  (As of March 15, 2023) |
| FY 2021-02 | *Safety In-Compliance*  In FY 2021, the percent of in-compliance for safety was 57.96% which was above the three-year national average of 31.65%. | PR OSHA should encourage staff to take photos on all inspectionsso that coworkers can be consulted and review working conditions to detect any hazard not identified. In addition, PROSHA should increase training opportunities for new CSHOs. | 1. A supervisor training program was provided to area directors on October 17, 2022.  2. A hazard recognition and an inspection strategies training was provided to all CSHOs on either November 29, 30, or December 1, 2022.  3. A monthly scan summary identifying the in-compliance cases is being reviewed by the Bureau of Inspections. If patterns are observed, the area directors of those offices are notified and asked to explain.  4. CSHOs are being required to properly document in the case file when no citations were issued. Photos of the facilities must be included in the case file.  5. The area directors are required to review a scan summary of in-compliance cases and discuss these cases with the CSHOs. | Not Completed | Open  (As of March 15, 2023) |
| FY 2021-03 | *Health Percent In-* *Compliance*  The percent incompliance for health was 67.52% which was above the three-national average of 40.64% | PR OSHA should encourage staff to take photos on all inspectionsso that coworkers can be consulted and review working conditions to detect any hazard not identified. In addition, PROSHA should increase training opportunities for new CSHOs. | 1. A supervisor training program was provided to area directors on October 17, 2022.  2. A hazard recognition and an inspection strategies training was provided to all CSHOs on either November 29, 30, or December 1, 2022.  3. A monthly scan summary identifying the in-compliance cases is being reviewed by the Bureau of Inspections. If patterns are observed, the area directors of those offices are notified and asked to explain.  4. CSHOs are being required to properly document in the case file when no citations were issued. Photos of the facilities must be included in the case file.  5. The area directors are required to review a scan summary of in-compliance cases and discuss these cases with the CSHOs. | Not Completed | Open (As of March 15, 2023) |
| FY 2022-04 | *Adoption of Increased Penalties*  PR OSHA has failed to adopt OSHA’s initial FY 2016 maximum penalty increase and subsequent penalty increases. | PR OSHA must work with their state authorities to complete the legislative changes necessary to enable it to adopt minimum and maximum penalty amounts that are at least as effective as OSHA’s minimum and maximum penalty amounts. | PR OSHA made the necessary amendments to the Act to increase the penalty amounts. The Secretary of Labor forwarded the amendments to the governor’s office. The governor’s office, as of February 23, 2023, presented the amendments to the legislature. The bill is pending review. | Not Completed | Open  (As of March 15, 2023) |

## Appendix D – FY 2022 State Activity Mandated Measures (SAMM) Report

FY 2022 PR OSHA Follow-up FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of workdays to initiate complaint inspections (state formula) | 3.84 | 5 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of workdays to initiate complaint inspections (federal formula) | 1.97 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of workdays to initiate complaint investigations (state formula) | 1.33 | 1 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of workdays to initiate complaint investigations (federal formula) | .41 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 3 | Percent of complaints and referrals responded to within one workday (imminent danger) | 100% | 100% | The further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 0 | 0 | The further review level is fixed for all State Plans. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 1.97 | +/- 20% of  1.78 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 1.63 | +/- 20% of  0.91 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 35.59% | +/- 5% of  21.90% | 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 20.81% to 23%. |
| 7a | Planned v. actual inspections (safety) | 458 | +/- 5% of  976 | 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 927.0 to 1,024.80 for safety. |
| 7b | Planned v. actual inspections (health) | 182 | +/- 5% of  284 | 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 269.80 to 298.20 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $1,865.67 | +/- 25% of  $3,100.37 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,325.28 to $3,875.46. |
|  | **a**. Average current serious penalty in private sector  (1-25 workers) | $1,375 | +/- 25% of  $2,030.66 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,523.00 to $2,538.33. |
|  | **b**. Average current serious penalty in private sector  (26-100 workers**)** | $2,245.84 | +/- 25% of  $3,632.26 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,724.20 to $4,540.33. |
|  | **c**. Average current serious penalty in private sector  (101-250 workers) | $2,064.54 | +/- 25% of  $5,320.16 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,990.12 to $6,650.20. |
|  | **d**. Average current serious penalty in private sector  (greater than 250 workers) | $2,476.77 | +/- 25% of  $6,575.70 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,931.78 to $8,219.63. |
| 9a | Percent in compliance (safety) | 53.31% | +/- 20% of  31.65% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety. |
| 9b | Percent in compliance (health) | 63.78% | +/- 20% of  40.64% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 100% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 68.78 | +/- 20% of  52.42 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety. |
| 11b | Average lapse time (health) | 74.21 | +/- 20% of  66.10 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health. |
| 12 | Percent penalty retained | 62.38% | +/- 15% of  69.08% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 99.22% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A | 100% | This measure is not being reported for FY 22. Please see note below. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A | +/- 20% of  20% | This measure is not being reported for FY 22. Please see note below. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A | 90 | This measure is not being reported for FY 22. Please see note below. |
| 17 | Percent of enforcement presence | 2.25% | +/- 25% of  0.99% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS run on November 14, 2022, as part of OSHA’s official end-of-year data run.

\*Due to the transition of 11(c) data from IMIS to OIS, SAMMs 14, 15, and 16 are not being reported for FY 2022.