**FY 2023 Comprehensive**

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

Puerto Rico Department of Labor

Puerto Rico Occupational Safety and Health Administration (PR OSHA)



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

Initial Approval Date: August 30, 1977

State Plan Certification Date: September 7, 1982

Final Approval Date: None

**Prepared by:**

**U. S. Department of Labor**

**Occupational Safety and Health Administration**

**Region 2**

**New York, NY**



**Contents**

1. Executive Summary………………………………………...…………..……………….3
2. State Plan Background………………………………………………………..................4
3. Background……………………………………………………………………….....4
4. New Issues………………………………………………………………………......4
5. Assessment of State Plan Performance…………………………..…………………...5
6. Data and Methodology……………………………………………………………....5
7. Review of State Plan Performance ………………………………………………….6
8. Program Administration……………………………………................................6
9. Enforcement………………………………………………………………….......9
10. Review Procedures……………………………………………………………...13
11. Standards and Federal Program Changes (FPCs) Adoption…………………….15
12. Variances………………………………………………………………………..18
13. State and Local Government Worker Program…………………………………18
14. Whistleblower Program………………………………………………………....19
15. Complaint About State Program Administration (CASPA)………………........ 20
16. Voluntary Compliance Program………………………………………………...20
17. State and Local Government 23(g) On-Site Consultation Program…………….21
18. Private Sector 23(g) On-Site Consultation Program……………………………22

**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 20XX Findings and Recommendations…………...........C-1

Appendix D – FY 20XX State Activity Mandated Measures (SAMM) Report……..D-1

1. **Executive Summary**

The primary purpose of this report is to assess the Puerto Rico State Plan’s progress in Fiscal Year (FY) 2023 in resolving outstanding findings from the previous FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report.

In FY 2023, PR OSHA conducted 922 total inspections (in both private and state and local government establishments) and met approximately 73% of its inspection goals for the year. Although PR OSHA did not meet their inspection goals for the year they improved from FY 2022 when only 640 total inspections were conducted. PR OSHA has been experiencing a significant problem with recruiting and retaining both enforcement and administrative support staff in the last few years. PR OSHA attributes the difficulty in recruiting and maintaining staff to be directly related to the low salary scales. Between June 2022 and March 2023, the State Plan hired a total of 15 compliance safety and health officers (CSHOs). However, at the end of FY 2023, there were still 11 vacant safety and health specialist positions (all levels) and six administrative support personnel vacancies. Due to the number of recent enforcement hires, PR OSHA has about 60% of safety and health specialists in trainee status versus 40% of senior and principal level safety and health specialists. This situation impacts the State Plan’s ability to meet its annual performance goals (PR SOAR, FY 2023).

PR OSHA continued to provide compliance assistance and outreach to employers and workers on safety and health matters through the Voluntary Programs Division which oversees state and local government on-site consultation services, compliance assistance, the Voluntary Protection Program (VPP), alliances, and strategic partnerships. Compliance assistance specialists conducted 24 training and assistance activities that impacted 5,598 employers/employees and the general public.

During FY 2023, the Bureau of Inspections received nine whistleblower cases with four assigned for investigation. Five cases were closed at the administrative level and three cases were dismissed. One whistleblower investigation remains open (PR SOAR, FY 2023).

PR OSHA actively engages and collaborates effectively with OSHA. The State Plan received two Complaints About State Plan Administration (CASPA) in FY 2023. They responded in a timely manner to both CASPAs and implemented a corrective action plan to address one CASPA.

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 eight 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. The bill has recently been passed by the House of Representatives but is awaiting to be placed on the calendar, for a vote by the Senate. The Senate is in session until June of each year. It is unknown if the bill will be voted on in this legislation session. The business community in Puerto Rico opposes the legislation and has been lobbying to stop the bill from being passed by the Senate.

The State Plan made some progress to address the previous five findings and seven observations from the FY 2022 Follow-up FAME Report. Three observations were closed based on OSHA’s case file review. One observation was closed based on the data shown in the End-of-Year (EOY) State Activity Mandated Measures (SAMM) Report for SAMM #11a. There were no completed findings, and two observations were converted to findings.

Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and the related federal monitoring plans. Appendix C describes the status of previous findings with associated completed corrective actions.

**II. State Plan Background**

1. **Background**

Judith Cruz Concepcion was appointed as the Assistant Secretary of Labor on February 16, 2023. 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’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. PR OSHA received a base grant award of $2,397,500 and de-obligated $403,639 this year to result in an award of $1,993,861.

1. **New Issues**

Lapsing of Federal Funds

In FY 2022, PR OSHA received a federal base award of $2,397,500. The State Plan de-obligated $991,201 in federal funds in FY 2022, to result in an award of $1,406,299. In FY 2023, PR OSHA received a base grant award of $2,397,500. They de-obligated $403,639 to result in an award of $1,993,861. Additionally, the State Plan lapsed $28,520.46 in FY 2023.

The State Plan is de-obligating funds due to reduced salary costs with resignations and the resulting vacancies. Other contributing factors to the lapsing and de-obligation of federal funds are due to the state’s fiscal restrictions imposed under the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA) and the stringent oversight of government spending by the Financial Oversight and Management Board which approves all transactions. Additionally, the offices of Finance and Budget have experienced significant staff shortages which delays the processing of payments to vendors and the drawdown of federal funds.

Under the Occupational Safety and Health Administration (OSHA) policy for repeated lapses and de-obligations of 23(g) Grant Funds, State Plans that lapse or de-obligate funds in three consecutive years will have a portion of the base awards permanently reduced, and the funding will be permanently redistributed to other State Plans with the ability to match the additional funding in year five. PR OSHA has de-obligated large amounts of federal funds in both FY 2022 and FY 2023. The State Plan must ensure that federal funds in FY 2024 are not de-obligated or lapsed, to avoid receiving a warning letter in FY 2025, the fourth year, and permanent reduction in funding in the fifth year.

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

1. **Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2023 is a comprehensive year and as such, OSHA was required to conduct an onsite evaluation and case file review. A four-person OSHA team, which included two whistleblower investigators, an industrial hygienist and a safety engineer was assembled to conduct a full case file review. The enforcement and consultation case review were conducted at the Puerto Rico OSHA State Plan office during the timeframe of January 22-25, 2024. The whistleblower case file review was conducted remotely due to budget constraints. A total of 133 safety, health, Voluntary Protection Program, and whistleblower inspection case files were reviewed. The safety and health inspection files were randomly selected closed inspections conducted during the evaluation period (Oct 1, 2022 through September 30, 2023). The review also included 10 open inspections that appeared open as of December 14, 2023. The selected population included:

* Seven (7) fatality closed case files
* Fifty-one (51) safety closed case files
* Twenty (20) closed health case files
* Ten (10) open inspections
* Fifteen (15) closed complaints investigated
* Four (4) closed consultation case files
* Six (6) VPP files
* Twelve (12) annual VPP evaluations
* Eight (8) closed whistleblower case files

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

* State Activity Mandated Measures Report (Appendix D) (SAMM)
* OSHA Information System (OIS)
* State Information Report (SIR)
* Mandated Activities Report for Consultation (MARC)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Limited *(or full)* case file review

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

1. **Review of State Plan Performance**

**1. PROGRAM Administration**

1. Training

PR OSHA staff in FY 2023 attended training at the OSHA Training Institute (OTI), Atlantic OSHA Training Center, and internal courses presented by their Division of Technical Support (PR SOAR, FY 2023).

Training offered for Safety and Health Specialists in FY 2023 included the following:

• Manual on Uniform Traffic Control Devices Training

• OTI #1000, Initial Compliance Course

• OTI #1050 and #105, Introduction to Safety Standards

• OTI #1241, Introduction to Health Standards

• Course #OSHA 510, Safety and Health Standards in Construction

• Course #OSHA 511, Safety and Health Standards in General Industry

• Hazard Recognition and Citation Writing (Internal Training)

• Introduction Safety and Health Standards (Internal Training)

• Drone Pilot Certification (Internal Training)

1. OSHA Information System (OIS)

The State Plan utilizes OIS to enter all data for enforcement, consultation, and

whistleblower case files. Compliance assistance activities are also captured in OIS.

During this FAME review, there were 10 open inspections that were selected from the OIS Inspection Report to review. These inspections remaining opened as of December 14, 2023, ranging in days from 679-769. The purpose of the review was to determine why PR OSHA has cases with pending citations opened for extended periods of time beyond the statute of limitation for issuing citations. The review determined that citations were being written and proposed by CSHOs but not being issued by area directors timely.

PR OSHA has determined legally that the citations that were proposed in these cases must be deleted, and the files closed, without issuing the citations. The State Plan is trying to write internal referrals where appropriate, open new inspections to reinspect sites that still exist, and determine if the hazards are still present.

**Finding FY 2023-01**: *OIS Open Inspection Report-Pending Citations*

The OIS Open Inspection report run on December 14, 2023, showed 135 inspection files that had citations that were pending issuance over 180 days or six months. The PR OSHA Act has a statute of limitation that requires citations to be issued within 180 days of the opening conference or last exposure. The State Plan will not be able to issue citations for these inspections, if citations were documented, supported and approved for issuance.

The report also that there were 378 cases with citations that were entered into OIS but were not issued.

**Recommendation FY 2023-01:**

PR OSHA should ensure that OIS reports are run weekly, and managers are held accountable for issuing citations timely. Establish a system of tracking that ensures in the future that citations will be issued within 180 days. Review the list of inspections that have pending citations over 180 days and determine best options legally to close these files.

**Finding FY 2023-02 (FY 2022-05):** *OIS Open Inspection Report-Pending Abatement*

The OIS Open Inspection Report run on December 14, 2023, showed 33 inspections with overdue abatement. The number of days overdue for these inspections ranged from 4 to170 days overdue.

**Recommendation FY 2023-02:**

PR OSHA should ensure that OIS reports are run weekly, and managers are held accountable for issuing securing abatement timely. Establish a system of tracking that ensures in the future, that abatement of citations will be secured within the abatement period, petitions for modifications of abatement are obtained from the employer or follow-up inspections are conducted.

**Observation FY 2023-OB-01**: *OIS Open Inspection Report-Citations Not Received*

The OIS Open Inspection Report run on December 14, 2023, showed 19 inspection files listed that had not been updated in OIS to reflect the receipt of citations. OIS needs to be updated when the State Plan has confirmation that citations have been received so that the system can properly track abatement and the files closed.

**Federal Monitoring Plan FY 2023-OB-01:**

OSHA will continue to review the OIS Open Inspection Report quarterly to monitor the State Plan’s progress in updating OIS for receipt of citations.

1. State Internal Evaluation Program Report

The Program Evaluations Division performed the following audits, monitoring, and evaluations activities during FY 2023:

* Quarterly basis – Generated SAMM Report
* Quarterly basis – Generated SIR for enforcement
* Quarterly basis – Generated an information report on State Emphasis Programs
* December 2022 – Audit report on Compliance Assistance Activities FY 2022
* January 2023 – Report on the Achievement for the State Emphasis Programs on the

Strategic Plan 2022-2026

* March 2023 – Audit report to the Area Office Directors about open cases and open unprogrammed activities forwarded for appropriate actions
* May 2023 – Audit report to the Consultation Program about Compliance Assistance

Activities

* May 2023- Audit report to the Secretary of Labor about inspections performed FY

2023 (open and closed)

The Program Evaluations Division reviewed 106 case files from six area offices during FY 2023. The case files were reviewed to verify the alleged hazard transcription errors (from original complain to investigation report) and verify citation elements. At the end of FY 2023, the Program Evaluations Division started accompanied visit evaluations. Two visits were performed before the end of the fiscal year with CSHOs (PR SOAR, FY 2023).

1. Staffing

This State Plan is comprised of the following divisions:

* Office of the Assistant Secretary
* Administration and Management
* Bureau of Technical Assistance
* Voluntary Programs
* Technical Support
* Management and Information Systems
* Program Evaluation
* Hearing Examiner
* Legal Affairs
* Bureau of Inspections

There are six area offices throughout the island. The State Plan ended FY 2023 with 72 total

employees. They hired 10 new employees in 2023 including eight CSHOs, a translator, and an Information Technology specialist.

As of March 7, 2024, the State Plan reported the following employment:

* + 31 CSHOs
  + Eight CSHO supervisors (Area Directors and Division Directors)
  + Two safety and health specialists for the Technical Support Division
  + Two whistleblower investigators
  + One whistleblower supervisor
  + Two (compliance assistance specialists (Voluntary Programs Division)
  + Nineteen administrative staff (technical, legal, others)

The State Plan hopes to post and fill 17 positions in FY 2024. These positions include 11 safety and health specialists and six administrative support positions.

**Finding FY 2023-03 (FY 2021-01, FY 2022-01):**  *Staffing*

The State Plan had 11 vacant safety and health specialist positions (all levels) and six administrative support personnel vacancies at the end of FY 2023 (PR SOAR, FY 2023). There were 31 safety and health specialists employed at the end of FY 2023.

**Recommendation FY 2023-03:**

PR OSHA needs to continue to work with their Human Resources Department to announce and fill the vacant positions.

**2. ENFORCEMENT**

a) Complaints

During this evaluation period, PR OSHA responded to 324 complaints requiring an inspection

with an average response time of 4.01 days from notification. This was within the FRL

(SAMM #1a). The State Plan received 135 complaints that were assigned to be investigated

SAMM #2a)

PR OSHA received four imminent danger complaints or referrals which they responded to

100% of the time within one workday (SAMM #3). The State Plan had no denials of entry.

During the case file review, 15 complaints that were assigned for investigation and 25

complaints that were inspected were reviewed. The review found that if the complainant had

provided their contact information, complaint letters were being sent to the complainants.

These complaint letters adequately addressed all the alleged hazards.

**Observation FY 2023-OB-02:** *Timely Response to Complaints Requiring Investigation*

SAMM #2a, average number of workdays to initiate complaint investigations (state formula) was reported at 1.90 days in FY 2023. The negotiated number of days to respond to complaints with an investigation is one day**.**

**Federal Monitoring Plan FY 2023-OB-02:**

In FY 2024, OSHA will monitor using the SAMM Report quarterly.

1. Fatalities

The EOY SAMM #10 identified three fatalities that met the criteria for reporting under this measure. The State Plan responded 100% within one workday of the fatality for the three cases measured.

An OIS Scan Summary Report identified seven fatalities that were inspected in FY 2023.

The case review included a review of all seven of the fatality inspections. The case file review of these files found that the employer was found to be incompliance with PR OSHA’s standards, but the files lacked documentation to reach that conclusion.

For example, in one of the fatalities reviewed, a security guard working for a large security company was stabbed to death while working.. The case file did not include a copy of the employer’s workplace violence program, even though it was requested. Additionally, there was no indication that the program was reviewed. The inspection was closed without issuing any citations to the employer. There was no documentation in the file to explain why the General Duty Clause was not considered or a Hazard Alert Letter was issued to the employer.

In another instance, an excavator operator was killed when he jumped from the excavator to avoid a loose rook hitting him and became trapped under collapsed soil. The case file was closed as an in-compliance inspection. The file lacked documentation that applicable industry and national consensus standards as well as the operator’s manual were researched to determine the appropriateness of writing a General Duty Clause citation. Additionally, if a General Duty Clause citation was not warranted, a Hazard Alert Letter should have been considered or the file documented to address why either was not issued.

A third instance, an employee was struck and killed by truck that rolled down an inclined road. The truck’s parking brake was not engaged, and the tires of the truck were not choked. The inspection was closed as an in-compliance. There was no documentation in the file to support why a General Duty Clause violation or a Hazard Alert Letter was not issued to the employer.

**Finding FY 2023-04:**  *Case File Documentation for Fatality Inspections*

In three of seven (43%) of the fatality inspections reviewed, the files lacked documentation to support why a violation under the General Duty Clause or a Hazard Alert Letter was not issued to the employer.

**Recommendation FY 2023-04:**

PR OSHA should research applicable industry and national consensus standards when OSHA standards are not applicable to determine the applicability of a General Duty Clause citation. This review should be documented in the case file. If a General Duty Clause citation is not warranted, then a Hazard Alert Letter should be considered.

An employer is required to report a fatality within eight hours of being notified to PR OSHA as required by 1904.39(a)(1). The case file review of these seven reported fatality inspections found that the employer in two of cases did not report timely. PR OSHA did not issue a citation or document the reason why a citation was not appropriate.

**Observation FY 2023-OB-03:** *Issuing Citations for Not Reporting Fatalities Timely*

In two of seven (29%) fatality case files, the employer did not report the fatality within eight hours of learning of the fatality. PR OSHA did not issue a citation or document in the case file the reasons why a citation was not issued

**Federal Monitoring Plan FY 2023-OB-03:**

During the next comprehensive FAME review, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

**Finding FY 2023-05 (FY 2022-OB-03, FY 2021-OB-05):**  *Next-of-Kin Letters*

In four of seven (57%) of the fatality case files reviewed, there was no evidence in the file that the initial inspection notification and final inspection results letters were sent to the families of the victims.

**Recommendation FY 2023-05:**

The State Plan needs to follow OSHA directive CPL 02-00-166, Communicating OSHA Fatality Procedures to a Victim’s Family. This directive requires an initial inspection and a final results letter to be sent to the victim’s family. PR OSHA adopted this directive on August 9, 2021.

c) Targeting and Programmed Inspection

PR OSHA conducted 922 inspections in FY 2023, which was 27% below the projected goal

of 1,260 inspections, but 282 more inspections than conducted in FY 2022. Of the 922

inspections conducted, 623 were in the private sector and 299 took place in SLG workplaces

(SIR #1a and #1b). Safety staff conducted 646 inspections (34% below the goal) compared

to the industrial hygiene staff who conducted 276 inspections (3% below the goal), (SAMM

#7).

PR OSHA focused its inspection resources on the following hazards and/or industries listed

below (PR OSHA SOAR, FY 2023):

* Amputations (144 inspections)
* Health Care (42 inspections)
* Hazardous Public Activities for Mobile Crews (88 inspections)
* State and Local Government Law Enforcement (61 inspections)
* Construction (145 inspections)

The FRL for percent in-compliance for safety inspections is +/- 20% of the three-year

national average of 31.73% which equals a range of 25.38 to 38.08%. PR OSHA’s percent

in-compliance for safety is 47.00% which is higher than the FRL. The FRL for percent in-

compliance for health inspections is +/- 20% of the three-year national average of

43.82% which equals a range of 35.06% to 52.58%. PR OSHA’s percent in-compliance for

health is 59.73% which is higher than the FRL (SAMM #9).

**Finding FY 2023-06 (FY 2022-02, FY 2021-02 FY 2020-OB-01, FY 2019-OB-01, FY 2018-**

**OB-05):**

*Safety Percent In-Compliance*

In FY 2023, the percent in-compliance (SAMM #9a) for safety inspections was 47.0% which

was above the three-year national average of 31.73%.

**Recommendation FY 2023-06:**

PR OSHA should encourage staff to take photos on all inspections so that co-workers and

supervisors 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.

**Finding FY 2023-07 (FY 2022-03, FY 2021-03, FY 2020-OB-02, FY 2019-OB-02, FY 2018-**

**OB-06):**

*Health Percent In-Compliance*

In FY 2023, the percent in-compliance (SAMM #9b) for health inspections was 59.73%

which was above the three-year national average of 43.82%.

**Recommendation FY 2023-07:**

PR OSHA should encourage staff to take photos on all inspections so that co-workers and

supervisors 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.

d) Citations and Penalties

The FRL for the average number of violations per inspection with violations by violation type is +/- 20% of the three-year national average of 1.75 for serious/willful/repeat (S/W/R) violations which equals a range of 1.40 to 2.10. PR OSHA’s S/W/R average is 1.95 violations which is above the FRL range. The FRL for other-than-serious (OTS) violations is +/- 20% of the three-year national average of 0.89 which equals a range of 0.71 to 1.07.

PR OSHA’s OTS average was 1.17 which is slightly above the FRL but not an area of concern (EOY SAMM #5a and 5b).

During the case file review, there were 28 case files with violations. Twenty-seven of the 28 (96%) had adequate evidence to support the violations and the violations were classified correctly.

The End-of-Year SAMM #8a-8d showed that the average current serious penalty in private sector for all employment totals issued by PR OSHA is significantly below the FRL. PR OSHA has not adopted OSHA’s revised penalty adjustment legislation and their initial proposed penalties are lower than Federal OSHA’s penalty amounts.

1. Abatement

The review of case files during this audit revealed that adequate verification/evidence of

abatement was being obtained in 27 of the 28 (96%) case files reviewed with citations

issued. This does not represent a trend that requires further action. Follow-up inspections

were performed when indicated.

1. Worker and Union Involvement

Of the 78 case files reviewed, 18 (23%) involved unions. Unions were present and involved in the inspection process in 11 of the 18 case files reviewed regarding unions. EOY SAMM #13, Percent of Initial Inspections with Worker Walkaround Representation or Worker Interview was 99.02%, below the FRL of 100% but not statistically significant.

**Observation FY 2023-OB-04 (FY 2022-OB-05, 2021-OB-07):** *Union Involvement*

In seven of 18 (39%) of cases with unions, the case files lacked documentation that a union representative was asked to participate, either in the opening conference, walkaround, closing conference or an informal conference, if one was held.

**Federal Monitoring Plan FY 2023-OB-04:**

During the next comprehensive FAME review, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

**Observation FY 2023-OB-05:**  *Documenting Employee Interviews*

In eight of 78 (10%) cases, there was no evidence in the file that employees were interviewed during the inspection process.

**Federal Monitoring Plan FY 2023-OB-05:**

During the next comprehensive FAME review, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

**3. REVIEW PROCEDURES**

1. Informal Conferences

The PR OSHA FOM dated April 14, 2021, contains a chapter on settlements. This chapter

permits area directors to amend abatement dates, reclassify violations (e.g., willful to serious,

serious to other-than-serious), and modify or withdraw a penalty, a citation, or a citation item

where evidence is established during the informal conference to show that the changes are

justified. After the changes requested by the employer or his representative in a citation item,

items or all the citation are amended, the area director calculates the new total proposed penalty. If the resulting new total proposed penalty reduction is more than 50% of the initial

proposed penalty the area director consults with the Bureau Inspection Director. The

Bureau of Inspection Director must approve that percentage of reduction. This consultation must be documented in the informal conference notes with justifications.

Additionally, the PR FOM states that when the employer or representative wants to bargain only a reduction of the total proposed penalty accepting all the citations, the area director may reduce up to 30% of the total initially proposed penalty.

The case file review contained 21 cases that had an informal conference. The informal conferences were all held within 15 federal working days of the issuance of the citations.

**Finding FY 2023-08**: *Following FOM Procedures for Penalty Reductions at Informal Conferences*

In 15 of 21 (71%) of the files with penalty reductions, the area director either approved a penalty reduction of more than 30% (when all citations were accepted or authorized a reduction of more than 50% of the initial penalty) without documenting that the Bureau Inspection Director had approved the reduction.

**Recommendation FY 2023-08:**

The State Plan should follow the guidelines outlined in the PR FOM for adjusting penalties during informal conferences.

The End-of-Year SIR for measure 5a, Percent of Violations Vacated (Pre-Contest) for Private Sector Inspections, was only 1.25% below the National reference. End-of-Year SIR measure 6a, Percent of Violations Reclassified (Pre-Contest) for Private Sector Inspections was only 2.12% below the National reference. SIR measure #7a, Percent of Penalty Retention (Pre-Contest) for Private Sector Inspections was 55.92%, a significant penalty reduction, below the National reference of 75.19%.

These three End-of-Year SIR measures show that the State Plan is amending a small percentage of citations but is providing significant penalty reductions during informal conferences to settle the cases.

1. Formal Review of Citations

Contested cases are handled by the PR Department of Labor Hearing Examiner Division. According to PR OSHA’s Field Operations Manual, the Occupational Safety and Health Examiner (OSHE), created under Section 21 of the Act, is an independent adjudicatory entity. The Hearing Examiner’s Office (HEO) is separate from PR OSHA and provides workers and employers hearing opportunities in matters associated with citations, proposed penalties, and abatement periods as provided by the Act. Formal settlement agreements and abatement documentation are kept at HEO in separate files and copies of such documentation are included in the original case files at PR OSHA.

The Legal Division received one hundred thirty-six contested cases in FY 2023 (PR

OSHA SOAR, FY 2023).

Seventy cases were closed with Hearing Examiner Resolutions as follows:

* Twelve hearings with stipulated agreements,
* Sixteen cases closed with hearing examiner resolution,
* Nine were dismissed,
* None were discharged, and
* Thirty-three are pending per notification from the Secretary.

The remaining 66 cases are under legal analysis from Hearing Examiner and

pending resolution.

|  |  |
| --- | --- |
| **Penalty Collection** | |
| Cases received for collection until September 30, 2023 | 21 |
| Outstanding cases on September 30, 2022 | 19 |
| Cases collected from October 1, 2022 through September 30, 2023 | 2 |
| Penalties Collected | $3,380.00 |
| Uncollectible Cases | 12 |
| Uncollectible Penalties | $60,710.00 |
| Outstanding Cases, includes public debt | 19 |
| Outstanding Penalty Amount, includes public debt | $92,710.00 |
| Total Closed Cases (Received during the fiscal year and previous years): | 117 |

Note: 1. The figures in the table include uncontested cases referred for direct collection of payment and contested cases with adjudicated penalties.

The End-of-Year SIR for Measure 5b, Percent of Violations Vacated After a Contest Had Been Filed) for Private Sector Inspections, was 24.57% above the national reference of 15.30%. End-of-Year SIR Measure 6b, Percent of Violations Reclassified After a Contest Had Been Filed for Private Sector Inspections, was 43.94% above the National reference of 12.40%. SIR Measure #7b, Percent of Penalty Retention After a Contest Had Been Filed for Private Sector Inspections, was 41.57%, a significant penalty reduction below the national reference of 66.14%.

These three End-of-Year SIR measures show that the State Plan is primarily settling cases in contests by reclassifying the citations issued and significantly reducing the initial penalties to settle the cases.

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

In accordance with 29 CFR 1902, State Plans are required to adopt standards and Federal Program Changes (FPCs) within a six-month time frame. State Plans that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. During FY 2023, PR OSHA responded in a timely manner with the required notice of intent to adopt; however, they have not yet adopted the maximum penalty increase from 2016 or the COVID-19 Reporting Log requirement.

a) Standards Adoption

**Adoption of Maximum and Minimum Penalty Increases**

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum and minimum penalties. See 81 FR 43429. As required by law, OSHA then increased penalties annually, most recently on January 14, 2022, according to the Consumer Price Index (CPI). See 2022 Annual Adjustments to OSHA Civil Penalties, available at [https://www.osha.gov/memos/2022-01-13/2022-annual-adjustments-osha-civil-](https://www.osha.gov/memos/2022-01-13/2022-annual-adjustments-osha-civil-penalties) penalties; 87 FR 2328 (Jan. 14, 2022).

OSHA-approved State Plans must have penalty levels that are at least as effective as federal OSHAs per Section 18(c)(2) of the Occupational Safety and Health Act; 29 CFR 1902.37(b)(12). State Plans were required to adopt the initial maximum penalty level increase and the subsequent annual increases. State Plans were required to submit their initial intent to adopt by September 1, 2016. The first deadline for adoption of an annual increase was January 1, 2017.

PR OSHA is required to adopt maximum and minimum penalty increases that are at least as effective as the Agency’s most recent increase issued in January 2022 without further delay. OSHA recognizes that the State Plan needs to implement legislative changes before this adoption can occur; however, it is six years past the initial adoption deadline. On September 3, 2021, OSHA sent a letter to the Puerto Rico State Plan warning that failure to adopt these increases would likely result in a new FAME finding. OSHA also requested that PR OSHA submit an action plan for how it would implement the necessary legislative changes for the adoption to occur. Unfortunately, PR OSHA failed to respond to the letter or submit the requested action plan.

Over the past two and half years since receiving this letter, the Puerto Rico State Plan has made some progress toward completing the required legislative changes and adopting the minimum penalty increases.

The legislation has been passed by the House of Representatives and has been reviewed by the Senate subcommittee. The legislation has not been placed on the calendar for the Senate for voting. The Senate is in session until June of each year. It is unknown if the Senate will vote before the session ends this year. There is opposition to the penalty increase provisions expressed by business groups on the island.

Until at least as effective maximum and minimum penalty levels are adopted, this finding will remain open.

**Finding FY 2023-09 (FY 2021-04, FY 2022-04):** *Federal Program Changes (FPCs)*

PR OSHA has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. Additionally, PR OSHA PESH has not adopted the Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions, 29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv).

**Recommendation FY 2023-09:**

PR OSHA must work with their state authorities to complete the legislative changes necessary to enable it to adopt maximum and minimum penalty amounts that are at least as effective as OSHA’s maximum and minimum penalty levels. Additionally, PR OSHA must work with its state authorities to adopt the COVID-19 Reporting Log requirement.

The tables below provide a complete list of the federal directive and standards which required action during the evaluation period:

**Table A**

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

***(May include any delinquent standards from earlier fiscal years)***

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | 5/2/2022 | N/A |  | 12/5/2021 |  |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910  (11/5/2021) | 1/7/2022 | 5/2/2022 | N/A |  | 1/24/2022 |  |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022 | 3/15/2022 | 1/26/2022 | N |  | 7/15/2022 |  |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions  29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)  (2/14/2022) | 4/14/2022 | 5/2/2022 | N |  | 8/14/2022 | Not yet adopted |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023  29 CFR 1903  (1/15/2023) | 3/15/2023 |  |  |  | 7/15/2023 |  |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | 10/3/2023 | Y | N | 1/21/2024 | 4/1/2024 |

**Table B**

**Status of FY 2022 and 2023 Federal Program Changes (FPC) Adoption**

***(May include any delinquent FPCs from earlier fiscal years)***

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| ***Adoption Required*** |  |  |  |  |  |  |
| Revised Combustible Dust National Emphasis Program  CPL 03-00-008  (1/30/2023) | 3/31/2023 | 2/15/2023 | Y | Y | 7/30/2023 | 2/10/2023 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026  (7/13/2023) | 9/11/2023 | 9/11/2023 | Y | N | 1/9/2024 | 11/8/2023 |
| ***Equivalency Required*** |  |  |  |  |  |  |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 6/24/2022 | Y | Y | 11/3/2022 | 8/4/2022 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 10/14/2022 | Y | N | 2/11/2023 | 1/31/2024 |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 11/15/2022 | Y | N | 3/15/2023 | 10/10/2023 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 4/8/2023 | Y | N | 8/6/2023 |  |
| National Emphasis Program – Falls | 6/30/2023 | 6/30/2023 | Y | Y | 10/28/2023 | 9/19/2023 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2022 | 11/28/2023 | Y | N | 3/27/2024 | 3/27/2024 |
| ***Adoption Encouraged*** |  |  |  |  |  |  |
| OSHA’s Use of Small Unmanned Aircraft Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 5/2/2022 | Y | Y | N/A | 6/24/2022 |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024  (4/8/2022) | 6/8/2022 | 5/2/2022 | Y | Y | N/A | 6/24/2022 |

**5. Variances**

There were no variances issued in FY 2023.

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

This is not a state and local government worker program.

**7. WHISTLEBLOWER Program**

During FY 2023, the Bureau of Inspections received nine (9) whistleblower related complaints,

four were assigned for investigation. The whistleblower results for FY 2023 were as follows:

* No cases were found with merit
* No cases were withdrawn
* Five cases were closed at the administrative level
* Three cases were dismissed
* No cases were settled though agreements
* One case currently under investigation

Four cases completed within the established timeframe of 90 days, for an

achievement of 100% of completion within the 90 days (PR OSHA SOAR, FY 2023).

SAMM #14, #15, and #16 were not reported for FY 2023 due to the transition of 11(c) data from

the Integrated Management Information System (IMIS) to OIS.

The PR OSHA FOM was revised on April 14, 2021, replacing the previous FOM dated

September 23, 2011. PR OSHA also uses PR OSHA Instruction CPL 02-003-02D, dated

November 25, 2016, as a guide and instruction for conducting whistleblower investigations.

The State Plan did not adopt the Federal Whistleblower Investigative Manual (WIM), CPL 02-

03-11, dated April 29, 2022, identically. Instead, the State Plan committed to updating the

whistleblower section in their FOM and PR OSHA Instruction CPL 02-003-02D to reflect the

updates in the Federal Whistleblower Investigative Manual. These changes have not been made.

**Finding FY 2023-10:** *Whistleblower Investigative Manual*

PR OSHA’s whistleblower section in their FOM and PR OSHA Instruction CPL 02-003-

02D needs to be updated to be equivalent to the federal whistleblower manual.

**Recommendation FY 2023-10:**

PR OSHA needs to either revise the whistleblower section in their FOM, PR OSHA Instruction

CPL 02-003-02D or adopt the federal WIM as it pertains to 11(c) investigations and adjust it for

its statute. OSHA will work with PR OSHA to compare the changes to these documents,

monitor progress and review the final version of these documents, to include but not limited to the

following; general processing following the receipt of whistleblower complaints, screening and

docketing of complaints, initial notification to complainants and respondents, the scheduling of investigations, requesting and analyzing of investigative data and findings, supervisory review

and authorization and recording the case data in OIS.

During this FAME review, Region II’s Whistleblower Investigators, reviewed eight scanned case files all completed during FY 2023; two files were begun in 2022. PR OSHA maintains hard

copies of all their files and has not migrated to an electronic case file system. The State Plan did

not adopt CPL 02-03-009, Electronic Case File (ECF) System Procedures for the Whistleblower

Protection Program that was effective on June 18, 2020.

The docketed case files reviewed included four cases that were dismissed, one that was

withdrawn, and three administratively closed files. Data was taken from both the OSHA IT

Support System (OITSS) and OIS.

**Finding FY 2023-11 (FY 2022-OB-06, FY 2021-OB-08):** *Whistleblower Case File*

*Documentation*

In five of the eight (63%), the files lacked evidence of supervisory review and approval. In two

of the three (67%) administratively closed files, OIS documented that the case was assigned to

an investigator after it was administratively closed. In three of eight (37.5%) case files,

incorrect date entries were made in OIS.

**Recommendation FY 2023-11:**

PR OSHA should ensure that files are reviewed by supervisors to ensure correct data entry and documentation is in the case before closing. PR OSHA should consider adopting CPL 02-03-009, Electronic Case File (ECF) System Procedures for the Whistleblower Protection Program. PR OSHA should reach out to the Regional Office to inquire about scheduling training for the use of OIS for the whistleblower staff.

**8. Complaint About State Program Administration (CASPA)**

In FY 2023, PR OSHA received two Complaints About State Plan Administration. Both CASPAs were answered promptly and were closed in FY 2023. One CASPA required a corrective action plan while the other did not.

Below is a summary of these CASPAs:

• CASPA 2023-01-PR alleged the mishandling of a formal complaint, which led to improper and ineffective inspection procedures. This issue prompted a corrective action plan, which included a re-investigation, additional issued citations, training, and a more stringent casefile evaluation process. The CASPA was closed after these actions were taken in August 2023.

• CASPA 2023-02-PR alleged limitations on allowing staff to attend OTI training courses and mishandling of in-compliance inspections in OIS. The training allegations were answered by providing evidence of training plans and attendance by staff at the OSHA Training Institute. The allegations regarding mishandling of in-compliance inspections were addressed by supplying OIS reports and copies of the written policies and procedures outlined in the FOM. This CASPA was closed without further investigation in May 2023.

**9. Voluntary Compliance Program**

## During FY 2023, the Voluntary Programs Division re-evaluated two VPP sites for

**c**ontinuingparticipation at the Guanin level, one VPP participation application was

received and is underevaluation as per the VPP manual procedures (PR OSHA SOAR, FY

2023). For FY 2023 PR OSHA has 12 sites approved for VPP all participating at the

Guanin Level (Star equivalent). These sites include the following:

* Stryker (Oct 2022)
* Honeywell Aerospace PR (Feb 2023)
* Steris Corp. Applied Sterilization Technologies (NEW APPLICATION REQUEST – Sep. 2023).
  + Honeywell Aerospace – Aguadilla
  + Industrial C&S of PR LLC – Vega Alta
  + Industrial C&S of PR LLC -Arecibo
  + Hindustan Platinum – Humacao
  + Industrial C&S of PR LLC – Vieques
  + GE International of Puerto Rico – Añasco
  + Veolia ES Technical Solutions, LLC – Gurabo
  + Stryker Puerto Rico, Ltd – Arroyo
  + Pfizer Global Manufacturing – Vega Baja
  + Hamilton Sundstrand – Santa Isabel
  + Glaxo Smith Kline – Guayama
  + Weiland – Caguas

There were six VPP files reviewed. The review found that in all six files the files did not identify if there were any 90-day items that were noted and the required correction. PR OSHA has an unwritten procedure that before awarding continued VPP status for any site with outstanding hazards, a follow-up inspection will be conducted. There was no evidence of follow-up inspections being conducted for these six files.

Additionally, the case file review included a review of the FY 2022 annual self-evaluations from the 12 active sites. The review showed that PR OSHA is receiving, reviewing, and processing annual self-evaluations from active VPP participants. The State Plan adopted the federal VPP Policies and Procedures Manual in June 2020 but not identically.

**Finding FY 2023-12 (FY 2022-OB-07, FY 2021-OB-09):**  *Case File Documentation-VPP*

All six (100%) VPP case files lacked documentation as to whether there were any 90-day items and dates of correction of these hazards, if appropriate.

**Recommendation FY 2023-12:**

PR OSHA needs to document and track correction of any outstanding 90-day items open after completing the VPP evaluation.

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

In FY 2023, one consultation visit was request and one visit was conducted in response to the request. There are no pending requests. PR OSHA is struggling to get requests from the state and local government entities. There were 15 hazards referred to enforcement in FY 2023 because correction could not be obtained from the employers. There are no hazards pending correction currently and no pending reports to be issued. The State Plan shares consultants between the 21(d) and 23(g) grants. There are no consultants employed 100% of the time under the 23(g) federal grant.

In order to review more than one case file, consultation visit files were requested and reviewed from both FY 2022 and FY 2023.

**Finding FY 2023-13:**  *Forwarding List of Hazards to Unions*

In four of four (100%) consultation files with unions, the List of Hazards was not forwarded.

**Recommendation FY 2023-13:**

PR OSHA needs to follow its Consultation Policies and Procedures Manual and issue the List of Hazards to sites that are unionized.

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

Private sector consultation for Puerto Rico is administered under a 21(d) grant.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or**  **FY 2022-OB-#** |
| --- | --- | --- | --- |
| FY 2023-01 | *OIS Open Inspection Report-Pending Citations*  The OIS Open Inspection Report, run on December 14, 2023, showed 135 inspection files that had citations that were pending issuance over 180 days or six months. The PR OSHA Act has a statute of limitation that requires citations to be issued within 180 days of the opening conference or last exposure. The State Plan will not be able to issue citations for these inspections, if citations were documented, supported and approved for issuance.  The report also showed that there were 378 cases with citations that were entered into OIS but were not issued. | Ensure that OIS reports are run weekly, and managers are held accountable for issuing citations timely. Establish a system of tracking that ensures in the future, that citations will be issued within 180 days.  Review the list of inspections that have pending citations over 180 days and determine best options legally to close these files. | New |
| FY 2023-02 | *OIS Open Inspection Report-Pending Abatement*  The OIS Open Inspection Report, run on December 14, 2023, showed 33 inspections with overdue abatement. The number of days overdue for these inspections ranged from 4-170 days overdue. | Ensure that OIS reports are run weekly, and managers are held accountable for issuing securing abatement timely. Establish a system of tracking that ensures in the future, that abatement of citations will be secured within the abatement period, petitions for modifications of abatement are obtained from the employer or follow-up inspections are conducted. | FY 2022-05 |
| FY 2023-03 | *Staffing*  The State Plan had 11 vacant safety and health specialist positions (all levels) and six administrative support personnel vacancies at the end of FY 2023 (PR SOAR, FY 2023). There were 31 safety and health Specialists employed at the end of FY 2023. | PR OSHA needs to continue to work with their Human Resources department to announce and fill the vacant positions. | FY 2022-01  FY 2021-01 |
| FY 2023-04 | *Case File Documentation for Fatality Inspections*  In three of seven (43%) of the fatality inspections reviewed, the files lacked documentation to support why a violation under the General Duty Clause or a Hazard Alert Letter was not issued to the employer. | PR OSHA should research applicable industry and national consensus standards when OSHA standards are not applicable to determine the applicability of a General Duty Clause citation. This review should be documented in the case file. If a General Duty Clause citation is not warranted, then a Hazard Alert Letter should be considered. | New |
| FY 2023-05 | *Next-of-Kin Letters*  In four of seven (57%) of the fatality case files reviewed, there was no evidence in the file that the initial inspection notification and final inspection results letters were sent to the families of the victims. | The State Plan needs to follow OSHA directive CPL 02-00-166, *Communicating OSHA Fatality Procedures to a Victim’s Family*. This directive requires an initial inspection and a final results letter to be sent to the victim’s family. PR OSHA adopted this directive on August 9, 2021. | FY 2022-OB-03  FY 2021-OB-05 |
| FY 2023-06 | *Safety Percent In-Compliance*  In FY 2023, the percent in-compliance (SAMM #9a) for safety inspections was 47.0% which  was above the three-year national average of 31.73%. | PR OSHA should encourage staff to take photos on all inspections so that co-workers and supervisors 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 2022-02  FY 2021-02  FY 2020-OB-01  FY 2019-OB-01  FY 2018-OB-05 |
| FY 2023-07 | *Health Percent In-Compliance*  In FY 2023, the percent in-compliance (SAMM #9b) for health inspections was 59.73%  which was above the three-year national average of 43.82%. | PR OSHA should encourage staff to take photos on all inspections so that co-workers and supervisors 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 2022-03  FY 2021-03  FY 2020-OB-02  FY 2019-OB-02  FY 2018-OB-06 |
| FY 2023-08 | *Following FOM Procedures for Penalty Reductions at Informal Conferences*  In 15 of 21 (71%) of the files with penalty reductions, the area director either approved a penalty reduction of more than 30% (when all citations were accepted or authorized a reduction of more than 50% of the initial penalty) without documenting that the Bureau Inspection director had approved the reduction. | The State Plan should follow the guidelines outlined in the PR FOM for adjusting penalties during informal conferences. | New |
| FY 2023-09 | *Federal Program Changes (FPCs)*  PR OSHA has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. Additionally, PR OSHA PESH has not adopted the Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions, 29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv). | PR OSHA must work with their state authorities to complete the legislative changes necessary to enable it to adopt maximum and minimum penalty amounts that are at least as effective as OSHA’s maximum and minimum penalty levels. Additionally, PR OSHA must work with their state authorities to adopt the COVID-19 Reporting Log requirement. | FY 2022-04  FY 2021-04 |
| FY 2023-10 | *Whistleblower Investigative Manual*  PR OSHA’s whistleblower section in the FOM and PR OSHA Instruction CPL 02-003-02D needs  to be updated to be equivalent to the federal whistleblower manual. | PR OSHA needs to either revise the whistleblower section in their FOM, PR OSHA Instruction  CPL 02-003-02D or adopt the federal WIM as it pertains to 11(c) investigations and adjust it for  its statute. OSHA will work with PR OSHA to compare the changes to these documents,  monitor progress, and review the final version of these documents. | New |
| FY 2023-11 | *Whistleblower Case File Documentation*  In five of the eight (63%), the files lacked evidence of supervisory review and approval. In two of the three (67%) administratively closed files, OIS documented that the case was assigned to an investigator after it was administratively closed. In three of eight (37.5%) incorrect date entries were made in OIS. | PR OSHA needs to ensure that files are reviewed by supervisors to ensure correct data entry and documentation is in the case before closing. The State Plan should consider adopting CPL 02-03-009, Electronic Case File (ECF) System Procedures for the Whistleblower Protection Program.  PR OSHA should reach out to the Regional Office to inquire about scheduling training for the use of OIS for the whistleblower staff. | FY 2022-OB-06  FY 2021-OB-08 |
| FY 2023-12 | *Case File Documentation-VPP*  In all six (100%) VPP case files lacked documentation as to whether there were any 90-day items and dates of correction of these hazards, if appropriate. | PR OSHA needs to document and track correction of any outstanding 90-day items open after completing the VPP evaluation. | FY 2022-OB-07  FY 2021-OB-09 |
| FY 2023-13 | *Forwarding List of Hazards to Unions*  In four of four (100%) consultation files with unions, the List of Hazards was not forwarded. | PR OSHA needs to follow its Consultation Policies and Procedures Manual and issue the List of Hazards to sites that are unionized. | New |

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 2022-OB-# *or* FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 |  | *OIS Open Inspection Report-Citations Not Received*  The OIS Open Inspection Report run on December 14, 2023, showed 19 inspection files listed that had not been updated in OIS to reflect the receipt of citations. OIS needs to be updated when the State Plan has confirmation that citations have been received so that the system can properly track abatement and the files closed. | OSHA will continue to review the OIS Open Inspection Report quarterly to monitor the State Plan’s progress in updating OIS for receipt of citations. | New |
| FY 2023-OB-02 |  | *Timely Response to Complaints Requiring Investigation*  SAMM #2a, average number of workdays to initiate complaint investigations (state formula), was reported at 1.90 days in FY 2023. The negotiated number of days to respond to complaints with an investigation is one day. | In FY 2024, OSHA will monitor using the SAMM Report quarterly. ` | New |
| FY 2023-OB-03 |  | *Issuing Citations for Not Reporting Fatalities Timely*  In two of seven (29%) fatality case files, the employer did not report the fatality within eight hours of learning of the fatality. PR OSHA did not issue a citation or document in the case file and the reasons why a citation was not issued. | During the next comprehensive FAME review, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action. | New |
| FY 2023-OB-04 | FY 2022-OB-05  FY 2021-OB-07 | *Worker and Union Involvement*  In seven of 18 (39%) of cases with unions, the case files lacked documentation that a union representative was asked to participate, either in the opening conference, walkaround, closing conference or an informal conference, if one was held. | During the next comprehensive FAME review, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action. | Continued |
| FY 2023-OB-05 |  | *Documenting Employee Interviews*  In eight of 78 (10%) cases, there was no evidence in the case file that employees were interviewed during the inspection process. | During the next comprehensive FAME review, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action. | New |
|  | 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 using the SAMM Report quarterly. ` | Closed |
|  | 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. | Closed |
|  | FY 2022-OB-03  FY 2021-0B-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. | Converted to Finding |
|  | 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. | Closed |
|  | 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. | Closed |
|  | 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. | Converted to a Finding |

| **FY 2022-#** | **Finding** | **Recommendation** | State Plan Corrective Action | **Completion Date (if Applicable)** | **Current Status**  **(And Date if Item is**  **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
| 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. | 86% of allocated CSHO positions have been filled. A salary increase for entry level positions has alleviated the recruitment process. Vacant positions have been identified and requested with goal of filling them in FY 2024. | Not Applicable | Open  (As of September 30, 2023) |
| 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. | CSHOs are in the process of being trained and retrained in hazard recognition. Training is internal and external (OTI). CSHOs were instructed to document all alleged hazards not found during inspections. Current SAMM shows slight decrease in measure (49.84%).  This measure requires continued monitoring. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-03 | *Health Percent In-Compliance*  In FY 2022, the percentage in-compliance for health inspections was 63.78% whichwas 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 todetect 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. | CSHOs are in the process of being trained and retrained in hazard recognition. Training is internal and external (OTI). CSHOs were instructed to document all alleged hazards not found during inspections. Current SAMM shows slight decrease in measure (49.84%).  This measure requires continued monitoring. | Not Applicable | Open  (As of September 30, 2023) |
| 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. | House Bill 1772 recommending amendment to PR OSH Act to include penalty increase requirements, passed in the House on 6/23/2023. The House presented the Bill to the Senate and is currently pending evaluation for the August 2023 session. Bill pending review. Estimated date of completion is in early FY 2024. |  | Open  (As of September 30, 2023) |
| 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. | Case files were retrieved and reviewed. Absent data was entered, abatement verifications obtained, entered, cases finalized, closed, or sent to the Legal Division. The “Citations not Received” issue is being tracked and data is being entered. | Not Applicable | Open  (As of September 30, 2023) |

| State Plan: SAMM Number | State Plan: SAMM Name | State Plan: Data | FY 2023 Further Review Level | FY 2023 Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of workdays to initiate complaint inspections (state formula) | 4.01 | 5 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of workdays to initiate complaint inspections (federal formula) | 1.91 | 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) | 1.90 | 1 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of workdays to initiate complaint investigations (federal formula) | 0.88 | 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) | 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) | 1.95 | **+/-**20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 1.17 | **+/-**20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 32.43% | **+/-**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 23.00%. |
| 7a | Planned v. actual inspections (safety) | 646 | +/- 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 927.20 to 1,024.80 for safety. |
| 7b | Planned v. actual inspections (health) | 276 | +/- 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) | $1,686.67 | +/- 25% of  $3,625.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. |
|  | **a**. Average current serious penalty in private sector  (1-25 workers) | $1,090.00 | +/- 25% of  $2,348.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. |
|  | **b**. Average current serious penalty in private sector  (26-100 workers**)** | $1,832.93 | +/- 25% of  $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. |
|  | **c**. Average current serious penalty in private sector  (101-250 workers) | $2,371.42 | +/- 25% of  $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. |
|  | **d**. Average current serious penalty in private sector  (greater than 250 workers) | $2,676.84 | +/- 25% of  $7,331.41 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| 9a | Percent in-compliance (safety) | 47.00% | +/- 20% of  31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in-compliance (health) | 59.73% | +/- 20% of  43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 100% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 64.64 | +/- 20% of 55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 79.18 | +/- 20% of 69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | 52.67% | +/- 15% of  71.84% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| 13 | Percent of initial inspections with worker walk around representation or worker interview | 99.02% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | 1.63% | +/- 25% of  0.93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%. |

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

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