

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

**Puerto Rico Department of Labor  
Puerto Rico Occupational Safety and Health Administration (PR OSHA)**



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## **I. Executive Summary**

### **A. State Plan Activities, Themes, and Progress**

The purpose of this report is to assess the Puerto Rico Occupational Safety and Health Administration (PR OSHA) State Plan's activities for Fiscal Year (FY) 2016, and its progress in resolving outstanding findings and recommendations from previous FAME reports, with a focus being on the FY 2015 Comprehensive FAME Report.

PR OSHA continues to have a significant enforcement presence in the workplace through its inspection activity. In FY 2016, PR OSHA continued to exceed its inspection goal by conducting 1,633 inspections – 188 more than its projected goal of 1,445. PR OSHA's Voluntary Programs Division continues to provide assistance to employers and workers on safety and health matters. During FY 2016, 217 private sector establishments and 18 state and local government establishments received on-site visits. PR OSHA has a comprehensive and very active outreach and training program.

Last year's FAME report included three findings. During the FY 2016 performance period, PR OSHA made significant progress in addressing the corrective actions needed to improve its program. OSHA determined that additional corrective action was needed regarding one of these three findings (non-formal complaint investigations). PR OSHA took the corrective actions necessary to address the other two findings (union involvement and delays initiating worker retaliation investigations); therefore, these two findings were successfully completed.

Last year's FAME report also included 11 observations. OSHA determined that seven of the 11 observations were sufficiently addressed and could be closed. Regarding the four remaining FY 2015 observations, a portion of one (policies and procedures involving informal settlements) was converted to a finding, while the other portion (policies and procedures involving the timeframe of informal conferences) remains an observation. The other three observations were continued for further monitoring during the FY 2017 performance period.

### **B. State Plan Introduction**

PR OSHA is responsible for administering the Puerto Rico State Plan which is part of the Puerto Rico Department of Labor and Human Resources headed by the Secretary of Labor. PR OSHA serves a population of 744,189 private sector workers and 135,730 state and local government workers. There is a central administrative office and six area offices for enforcement activities. PR OSHA's 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 with the exception of 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 table below presents PR OSHA’s funding levels from FY 2012 through FY 2016:

<b>PR OSHA’s FY 2012-2016 Funding History</b>					
<b>Fiscal Year</b>	<b>Federal Award (\$)</b>	<b>State Plan Match (\$)</b>	<b>100% State Plan Funds (\$)</b>	<b>Total Funding (\$)</b>	<b>Percent of State Plan Contribution</b>
<b>2016</b>	\$2,506,300	\$2,506,300	\$2,637,272	\$7,649,872	67.2%
<b>2015</b>	\$2,495,100	\$2,495,100	\$2,665,555	\$7,655,755	67.4%
<b>2014</b>	\$2,480,900	\$2,480,900	\$3,003,444	\$7,965,244	68.8%
<b>2013</b>	\$2,480,900	\$2,480,900	\$2,404,990	\$7,366,790	65.9%
<b>2012</b>	\$2,588,900	\$2,588,900	\$2,140,864	\$7,318,664	64.6%

In their FY 2016 grant application, PR OSHA allocated for 60 enforcement staff and has 41 on board; they allocated for 2.5 safety and health consultants and have two on board. They have one whistleblower investigator on board. The compliance assistant specialist position, which had been vacant since 2009, was filled in FY 2016.

### **C. Data and Methodology**

OSHA established a two-year cycle for the FAME process. This is the follow-up year and as such, OSHA was not required to perform an on-site evaluation and case file review. However, since PR OSHA’s FY 2015 FAME report included a total of three findings and eleven observations, OSHA reviewed a sample of select case files to determine if these were isolated instances or if this represented a trend that required further action.

This FAME was performed by a team of OSHA personnel from both the safety and the health disciplines and the whistleblower (WB) 11(c) program. The OSHA team reviewed enforcement and consultation case files at PR OSHA’s central office in Hato Rey, Puerto Rico on February 6, 2017 through February 8, 2017. The WB 11(c) program case files were sent to the New York OSHA Regional Office for evaluation. A total of 39 case files were reviewed for this FAME and are broken down into the following categories:

- Enforcement case files (16)
- Enforcement case files with informal conferences and penalty reduction >50% (7)
- Non-formal complaints (2)
- Consultation case files (8): state and local government (2) and private (6)
- Whistleblower investigation case files (6)

## D. Findings and Observations

This follow-up FAME report contains two findings and four observations. One finding was continued from the FY 2015 FAME report, and one finding was converted from an observation. Four previous observations were continued. There were no new findings and observations identified during this year's FAME.

Appendix A describes new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring. Appendix C describes the status of each FY 2015 recommendation in detail.

### Completed FY 2015 Findings

During the FY 2016 performance period, PR OSHA addressed two findings identified in last year's FAME report. These completed findings were:

- **Union Involvement:** Inspection results and a copy of the citation was sent to the union in all nine (100%) case files reviewed that had both an authorized union and citations issued.
- **Worker Retaliation – Delays in Initiating an Investigation:** PR OSHA's Bureau of Inspections Director is ensuring that proper procedures are being adhered to in accordance with the Whistleblower Investigation Manual by screening and entering all workplace retaliation allegations the same day received from the complainant. Investigations were initiated in a timely manner in all six (100%) of the case files reviewed.

### Continued FY 2015 Findings

OSHA determined that one finding identified in last year's report was not successfully addressed. The continued finding was:

- **Non-Formal Complaint Investigations:** In the two non-formal (phone/fax) complaint investigations reviewed (100%), complaint items were not adequately addressed prior to closing the case files. The complaint allegations not addressed were in relation to fire extinguishers inspection and sanitation.

### New FY 2016 Finding

During the review of 13 informal conference case files, OSHA determined that in six (46%) of the case files, the area directors did not request approval from the Director of the Bureau of Inspections for a penalty reduction above 50% as described and required in PR OSHA's Field Operations Manual (FOM). This finding was an observation in last year's FAME report. Additional details of the FY 2016 findings can be found in Appendix A of this report.

## FY 2016 Observations

Four of the 11 observations noted in the FY 2015 FAME report are being continued. Six of the previous FY 2015 FAME report observations were closed and one was converted to a finding. The four continued findings were regarding lapse time, properly issuing citations, appropriate timeframes for holding informal conferences, and sufficient documentation in consultation case files related to the safety and health survey. Details can be found in Appendix B of this report.

## **II. Assessment of State Plan Performance**

### **A. Major New Issues**

#### **Maximum Penalty Increase**

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

#### **New Leadership and Economic Crisis**

As result of the November 2016 elections in Puerto Rico, effective January 2017, Carlos J. Saavedra-Gutiérrez, Esq. was appointed the new Puerto Rico Department of Labor Secretary. Luis E. Pardo-Rosado was appointed the PR OSHA's new Assistant Secretary of Labor. Unfortunately, Puerto Rico's economy is entering its 11<sup>th</sup> year of negative or flat growth. This crisis has resulted in the island having more than \$72 billion of debt which could have an impact on the payment of state and local government workers' salaries. The 114<sup>th</sup> United States Congress enacted the "Puerto Rico Oversight, Management, and Economic Stability Act" ("PROMESA") effective on June 30, 2016. The Financial Oversight and Management Board for Puerto Rico (Junta de Control Fiscal) was established to assist the Government of Puerto Rico, including instrumentalities, managing its public finances, and for other purposes. It is important to note that the Puerto Rico State Plan budget is protected from economic crisis.

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

(Source: FY 2016 APP and FY 2016 SOAR)

This section focuses on PR OSHA's progress toward meeting its targeted performance goals as outlined in the program's FY 2016 Annual Performance Plan (APP). The APP consisted of two fundamental goals: to improve workplace safety and health for all workers, and to change workplace culture to increase employer and worker safety and health awareness. This is the third year of PR OSHA's Five-Year Strategic Plan.

PR OSHA Strategic Goal 1: To improve workplace safety and health for all workers, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities.

**Performance Goal 1.1.1A** – Reduce the most prevalent workplace injuries/illnesses by 5% in handling and working with blood in the emergency room industry. Achieve a 1% reduction from the baseline measure to assess progress towards achievement of the five-year performance goal.

**NAICS 621493 (Freestanding Ambulatory Surgical & Emergency Centers)**

Year	Total Recordable Case Rate (OSHA 300)	Percent Change
2012	2.89	Baseline
2013	6.26	Corrected Baseline
2014	6.19	1% Decrease
2015	5.01	20% Decrease
2016	4.24	32% Decrease

**NAICS 622110 (General Medical & Surgical Hospitals)**

Year	Total Recordable Case Rate (OSHA 300)	Percent Change
2012	9.53	Baseline
2013	8.0	Corrected Baseline
2014	7.92	1% Decrease
2015	7.80	3% Decrease
2016	4.24	47% Decrease

OSHA’s Bureau of Inspections (BI) identified 192 establishments and conducted 17 inspections where the LEP directive would apply. As a result of the inspections, establishments were cited with a total of 83 violations classified – 37 serious and 46 other-than-serious. Eighty-three (83) injuries were reported on the 2015 OSHA 300 logs related to General Medical Services. The corrected baseline was established as 6.26 for NAICS 621493 and 8.0 for NAICS 622110. This LEP concluded during FY 2016. PR OSHA exceeded this goal.

**Performance Goal 1.1.1B** – Reduce the most prevalent workplace injuries/illnesses by 5% in the fast food industries (limited and full service restaurants). Achieve a 1% reduction from the baseline measure to assess progress toward achievement of the five-year performance goal.

Year	Total Recordable Case Rate (OSHA 300)	Percent Change
2012	2.51	Baseline
2013	5.62	Corrected Baseline
2014	5.56	1% Decrease
2015	5.20	7% Decrease
2016	4.32	23% Decrease

During FY 2016, BI identified 1,294 establishments and conducted 101 inspections where the LEP directive would apply. As a result of these inspections, establishments were cited with a total of 288 violations classified – 123 serious, 160 other-than-serious, and five failure-to-abates (FTA). One-hundred eighty-six (186) injuries were reported on the 2015 OSHA 300 logs related to the fast food industry. This LEP concluded during FY 2016. PR OSHA exceeded this goal.

**Performance Goal 1.1.1C** – Reduce the most prevalent workplace injuries/illnesses by 5% in the emergency, disaster preparedness and, management offices. Achieve a 1% reduction from the baseline measure to assess progress toward achievement of the five-year performance goal.

Year	Total Recordable Case Rate (OSHA 300)	% Change
2012	8.85	Baseline
2013	10.92	Corrected Baseline
2014	10.81	1% Decrease
2015	9.25	15% Decrease
2016	4.24	61% Decrease

During FY 2016, BI identified 237 establishments and conducted seven inspections where the LEP directive would apply. As a result of these inspections, establishments were cited with a total of 38 violations classified – 20 serious and 18 other-than-serious.

Twenty-three (23) injuries were reported on the 2015 OSHA 300 logs by the employers of the Emergency, Disaster Preparedness, and Management Office. This LEP concluded during FY 2016. PR OSHA exceeded the goal.

**Performance Goal 1.1.2** – Decrease the fatality rate in the construction industry by an additional 5% from the baseline by focusing on the four leading causes of fatalities in construction (falls, struck-by, electrocutions, and caught-in/between). Revise baseline and performance measure to assess progress towards achievement of the five-year performance goal.

Year	Number of Fatalities	Workforce	Fatality Rate	Percent Change From Baseline
2012	5	48,000	1.04	Baseline – 1.28 = 1% Decrease
2013	3	35,614	0.84	Baseline – 1.04 = 1% Decrease
2014	5	36,050	1.38	Baseline – 1.26 = 0.9% Increase
2015	3	37,000	0.80	Baseline – 0.80 = 37% Decrease
2016	4	30,095	1.33	Baseline – 1.33 = 37% Decrease

*Note: During FY 2016, the fatality rate was calculated at 1.33 per 10,000 workers [4 fatalities ÷ 30,095 workers] ÷ 10,000 workers).*

During FY 2016, PR OSHA investigated four fatalities in the construction industry – all related to the four leading causes of fatalities in construction. This included one struck-by and three electrocutions. The BI conducted 157 programmed planned construction inspections. As a result of the fatalities investigated, six citations were issued relating to the four leading causes of fatalities in construction. PR OSHA exceeded the goal.

During FY 2016, PR OSHA participated in the National Fall Prevention Stand-Down and delivered one 10-hour safety and health construction training session to help raise awareness about the four leading causes of fatalities in construction.

PR OSHA continued to maintain its successful “Door-to-Door” program in the construction industry. The program is used to promote safety and health on-site consultation visits in the construction projects all over Puerto Rico. Due to the reduction of the number of construction

projects, the “Door-to-Door” directive was updated to include projects with 25 or more workers lasting for a period of six months or more. Program participants must agree to abate all hazards identified, improve their safety and health program, and receive an on-site consultation visit from PR OSHA at least every three months. The participants post the program’s banner in a conspicuous place at the worksite. There were six new sites were approved during FY 2016.

During FY 2016, the Voluntary Programs Division conducted 92 on-site consultation visits in the construction industry – resulting in 226 identified hazards and notifications made to employers. Ninety-eight (98) of the 226 (43%) hazards identified were related to the four leading causes of fatalities in construction.

PR OSHA Strategic Goal 2: To change workplace culture to increase employer and worker awareness of, commitment to, and involvement in safety and health.

**Performance Goal 2.1.1A** – Achieve 80% of the targeted employers in general industry that received an inspection and have either implemented an effective safety and health program or improved their existing program.

The annual performance goal of 80% established for FY 2016 was exceeded by 4%. During FY 2016, the number of targeted establishments inspected was 1,427. Of the 1,427 targeted establishments, 91% (1,295) implemented or improved their existing program. In addition, as part of PR OSHA’s effort, its Division of Voluntary Programs delivered five open training sessions regarding safety and health programs and worker involvement. Participation included 383 employer representatives and workers. PR OSHA exceeded this goal.

**Performance Goal 2.1.1B** – Achieve 80% percent of the targeted employers in general industry that requested an on-site visit and have either implemented an effective safety and health program or improved their existing program.

During FY 2016, the Division of Voluntary Programs conducted 143 on-site consultation visits to employers in the general industry. Of the 143 employers who requested on-site consultation visits, 114 (80%) implemented or improved their existing program. PR OSHA met this goal.

**Performance Goal 2.2.2A** – Deliver training to employers and workers on the skills necessary for effective worker involvement in safety and health matters in working with blood in the emergency room.

BI conducted 17 related inspections and delivered training to all (100%) employers and workers following the inspection. The annual performance goal of 90% established for FY 2016 was exceeded by 10%. PR OSHA exceeded this goal.

**Performance Goal 2.2.2B** – Deliver training to employers and workers on the skills necessary for effective worker involvement in safety and health matters in the fast food (limited and full service restaurants) industry.

BI conducted 101 fast food industry inspections and delivered training to all (100%) employers and workers following the inspection. The annual performance goal of 90% established for FY 2016 was exceeded by 10%. PR OSHA exceeded this goal.

**Performance Goal 2.2.2C** – Deliver training to employers and workers on the skills necessary for effective worker involvement in safety and health matters in the emergency, disaster, preparedness, and management offices industry.

BI conducted seven related inspections and delivered training to all (100%) employers and workers following the inspection. The annual performance goal of 90% established for FY 2016 was exceeded by 10%. PR OSHA exceeded this goal.

**Performance Goal 2.3.1** – Develop and disseminate occupational safety and health training and reference materials to 100% of small employers and workers identified in the Drugstore Industry.

PR OSHA’s Voluntary Programs Division conducted nine on-site consultation visits in the Drugstore Industry. Forty (40) hazards were identified with notifications made to employers. Two training sessions were in cooperation with the University of Puerto Rico Medical Science Campus (School of Pharmacy) and the local college. There were 71 employers and workers who received training. One open training session was delivered in Hato Rey with 83 participants. PR OSHA met this goal.

## **C. Highlights from the State Activity Mandated Measures (SAMMs)**

(Source: Appendix D SAMM Report 11-14-2016)

### **Average Current Penalty Per Serious Violation**

PR OSHA’s average current penalty per serious violation in private sector (SAMM 8: 1-250+ workers) was \$1,085.30 in FY 2016. The Further Review Level (FRL) is -25% of the National Average (\$2,279.03) which equals \$1,709.27. Penalties are one component of effective enforcement, and State Plans are required to adopt penalty policies and procedures that are “at least as effective” (ALAE) as those contained in OSHA’s FOM, which was revised on August 2, 2016, to include changes to the penalty structure in Chapter 6 – Penalty and Debt Collection. OSHA will continue to explore ALAE analysis of State Plan penalty structures to include evaluation of average current penalty per serious violation data.

### **Inspections and Response Time to Complaints**

During the FY 2016 performance period, PR OSHA conducted 1,633 inspections. This exceeded PR OSHA’s 1,445 inspection goal of 1,445 by 113%. Safety staff conducted 1,180 inspections (116% of the goal) and industrial hygiene staff conducted 453 inspections (104% of the goal). (SAMM #7) PR OSHA’s response time to complaints averaged 2.64 days which was significantly below the national reference standard of five days. (SAMM #1a)

### **In-Compliance Inspections**

PR OSHA's percentage of in-compliance inspections for safety was 42.96% which was higher than the further review level of 34.62% which incorporates a 20% adjusted difference. PR OSHA's percentage of in-compliance inspections for health was 42.34% which was just slightly below the further review level of 42.88%. OSHA will continue to monitor this issue during the quarterly meetings in FY 2017. (SAMM #9)

### **Fatalities and Citation Lapse Time**

During FY 2016, eight fatalities were reported. This was one less fatality (seven) than was reported in FY 2015. PR OSHA's one-day response time was 100%. (SAMM #10) PR OSHA's citation lapse time (the average number of calendar days from opening conference to citation issuance) was calculated at 65.08 days for safety which is above the further review level of 54.19 days. PR OSHA's lapse time for health was 77.93 days which is also above the further review level of 68.74 days. (SAMM #11) These numbers incorporate a 20% adjusted difference. The issue of high lapse time is being monitored through Observation 2016-01.

## **III. Assessment of State Plan Corrective Actions**

There were three findings and 11 observations identified in the FY 2015 FAME report. In FY 2016, PR OSHA completed two of the three findings and closed seven of the 11 observations. One observation from the FY 2015 report was converted to a finding and four observations will continue to be monitored by OSHA.

### **FY 2015 Findings**

#### **Finding 15-01**

In four of the eight (50%) non-formal (phone/fax) complaint investigations reviewed, the complaint items were not adequately addressed prior to the case files being closed. The complaint allegations not addressed were: construction machinery and operator training, ventilation, means of egress, personal protective equipment, and vermin control.

#### **Status Finding 15-01**

In both (100%) of the non-formal (phone/fax) complaint investigations reviewed, complaint items were not adequately addressed prior to the case files being closed. The complaint allegations not addressed were in regards to fire extinguishers inspection and sanitation. OSHA determined that this finding should remain open.

#### **Finding 15-02**

Inspection results and a copy of the citation was not sent to the union in three of the seven (43%) case files reviewed that had both an authorized union and citations issued.

#### **Status Finding 15-02**

Inspection results and a copy of the citation was sent to the union in all nine (100%) case files reviewed that had both an authorized union and citations issued. OSHA determined this item to be completed.

### **Finding 15-03**

Five of thirteen (39%) complaints were noted in IMIS as having a delay from the initial intake to the actual screening, causing a significant delay in initiating an investigation.

### **Status Finding 15-03**

The PR OSHA Bureau of Inspections Director is ensuring that proper procedures are being adhered to in accordance with the Whistleblower Investigation Manual by screening and entering all workplace retaliation allegations the same day received from the complainant. Investigations were initiated in a timely manner in all six (100%) of the case files reviewed. OSHA determined this item to be completed.

### FY 2015 Observations

#### **Observation 15-01**

PR OSHA's average lapse time for citations was calculated at 51.62 days for safety – a decrease of 1.86 days from 53.48 days in FY 2014 – but above the national average of 42.78 days. The lapse time for health was 66.33 days – a decrease of 18.28 days from 84.61 days in FY 2014 – but above the national average of 53.51 days.

#### **Status Observation 15-01**

PR OSHA's lapse time was calculated at 65.06 days for safety – an increase of 13.44 days from 51.62 days in FY 2015 and above the national average of 45.15 days. The lapse time for health was 77.93 days – an increase of 11.6 days from 66.33 days in FY 2015 and above the national average of 57.32 days. OSHA will continue to monitor this observation in FY 2017.

#### **Observation 15-02**

Three of sixteen (19%) complaint case files lacked documentation that the complainant had been notified of the results of the inspection.

#### **Status Observation 15-02**

All 14 (100%) complaint case files reviewed had documentation that the complainant was notified of the inspection results. OSHA closed this observation.

#### **Observation 15-03**

In five of the 60 (8%) case files reviewed with violations, adequate evidence to support the violation was not documented in the case file. One recordkeeping citation was issued when there were no injuries/illnesses reported and worker exposure was missing on the violation worksheet in four case files.

#### **Status Observation 15-03**

Adequate evidence to support violations was noted in all nine (100%) of the case files with violations that were reviewed. OSHA closed this observation.

**Observation 15-04**

Missed violations were noted in seven of the 60 (12%) case files reviewed. The missed violations were for slips, electrical hazards, hazard communication, and fall hazards.

**Status Observation 15-04**

Missed violations were not noted in all nine (100%) of the case files with violations reviewed. OSHA closed this observation.

**Observation 15-05**

In 14 of 60 (23%) case files reviewed with citations issued, violations related to machine guarding, electrical hazards, unprotected rebar, hazard communication, blood-borne pathogens, respiratory protection, and powered industrial trucks were issued as other-than-serious with no justification documented in the case file. The related conditions should have been issued as serious. Another case file reviewed had a citation issued as a serious for a fall hazard. Based on the information in the case file this violation should have been issued as a willful.

**Status Observation 15-05**

In one of nine (11%) case files reviewed with citations issued, a violation related to general duty clause 6(a)(1): a microbiological contamination citation was issued as an other-than-serious when the related conditions should have been issued as serious. OSHA will continue to monitor this observation.

**Observation 15-06**

In 15 of the 60 (25%) case files reviewed, the severity/probability noted on the violation worksheet did not compare to the injury/illness assessed for violations related to fire extinguishers, electrical, personal protective equipment, machine guarding, power industrial truck, ladders, first aid, and hazard communication.

**Status Observation 15-06**

Appropriate violation classification (severity and probability) was noted in all nine (100%) case files reviewed with violations. OSHA closed this observation.

**Observation 15-07**

PR OSHA accepted abatement responses from employers and closed the cases without adequate evidence in 10 of the 60 (17%) case files reviewed. PR OSHA is not obtaining the final verification for power industrial truck operator training (struck-by), respiratory protection, hazard communication, ladders (fall) and rebar (impalement).

**Status Observation 15-07**

Adequate abatement was noted in all nine (100%) case files reviewed with violations. OSHA closed this observation.

**Observation 15-08**

In eight of 39 (20%) cases where informal conferences were held, area directors did not request approval from the director of the Bureau of Inspections for a penalty reduction above 50% as described and required in PR OSHA's FOM. In addition, the informal conference was not held within 15 days in three of the case files.

#### **Status Observation 15-08**

*Informal Settlement:* In six of 13 (46%) cases where informal conferences were held, the area directors did not request approval for an informal settlement from the director of the Bureau of Inspections for a penalty reduction above 50% as described and required in PR OSHA's FOM. OSHA converted this observation to a finding. *Informal Conferences:* In one of the 13 (7.7%) case files reviewed the informal conference was not held within 15 days. OSHA will continue to monitor this observation.

#### **Observation 15-09**

Three of 13 (23%) whistleblower cases were closed without a closing conference being held with the complainant as required by Whistleblower Investigation Manual.

#### **Status Observation 15-09**

Closing conferences were held in all six (100%) whistleblower case files reviewed. OSHA closed this observation.

#### **Observation 15-10**

In 29 of 30 (97%) of the consultation case files reviewed, the safety and health hazard survey (Form 33) comments section did not provide details necessary to ensure that the number assigned and description corresponded.

#### **Status Observation 15-10**

The safety and health hazard survey (Form 33) comments section did not provide comments necessary to ensure that the number assigned and description corresponded in two of the eight (25%) consultation case files reviewed. PR OSHA consultants attended OTI 1330 Consultation Systems Assessment Training which covered OSHA-33 completion in December 2016 (FY 2017). OSHA will continue to monitor this observation.

#### **Observation 15-11**

In 6 of 30 case files (20%) reviewed, abatement verification (certification and documentation) for serious hazards was not properly identified (requirements of Cooperative and State Program [CSP] 02-00-002, Section II.F and IV.F.2.II, respectively).

#### **Status Observation 15-11**

Abatement verification (certification and documentation) for serious hazards as required by CSP 02-00-002 procedures was noted in all eight (100%) of the consultation case files reviewed. OSHA closed this observation.

## Appendix A – New and Continued Findings and Recommendations

### FY 2016 PR OSHA State Plan Follow-up FAME Report

FY 2016-#	Finding	Recommendation	FY 2015 #
FY 2016-01	<p><i>Non-Formal Complaint Investigations</i>                      In the two (100%) non-formal (phone/fax) complaint investigations reviewed, complaint items were not adequately addressed prior to the closing the case files.</p>	<p>PR OSHA should ensure all complaint items are addressed using phone/fax procedures and/or assigned for inspection in accordance with PR OSHA's FOM.</p>	FY 2015-#01
FY 2016-02	<p><i>Informal Settlements</i>                      In six of 13 (46%) cases where informal conferences were held, the area directors did not request approval from the director of the Bureau of Inspections for a penalty reduction above 50% as described and required in PR OSHA's FOM.</p>	<p>PR OSHA should ensure that area directors request approval from the director of the Bureau of Inspections for a penalty reduction above 50% in accordance with PR OSHA's FOM.</p>	FY 2015-OB-08



**Appendix B – Observations Subject to New and Continued Monitoring**  
**FY 2016 PR OSHA State Plan Follow-up FAME Report**

<b>Observation # FY 2016-OB-#</b>	<b>Observation# FY 2015-OB-#</b>	<b>Observation</b>	<b>Federal Monitoring Plan</b>	<b>Current Status</b>
FY 2016-OB-01	FY 2015-OB-01 FY 2014-OB-02	<i>Citation Lapse Time</i> Citation lapse time was calculated at 65.06 days for safety – an increase of 13.44 days from 51.62 days in FY 2015 and above the further review level of 45.15 days. The lapse time for health was 77.93 days – an increase of 11.6 days from 66.33 days in FY 2015 and above the national average of 57.32 days.	The Region will continue to monitor this issue by utilizing the quarterly SAMM reports.	Continued
	FY 2015-OB-02	<i>Notification to the Complainant</i> Three of sixteen (19%) complaint case files lacked documentation that the complainant had been notified of the results of the inspection.		Closed
	FY 2015-OB-03 FY 2014-OB-01	<i>Adequate Evidence to Support Violations</i> Adequate evidence to support violations was noted in all nine (100%) of the case files with violations that were reviewed.		Closed
	FY 2015-OB-04	<i>Citations for all Apparent Violations</i> Missed violations were not noted in all nine (100%) of the case files with violations reviewed.		Closed
FY 2016-OB-02	FY 2015-OB-05 FY 2014-OB-03	<i>Violation Classification</i> In one of nine (11%) case files reviewed with citations issued, a violation related to general duty clause 6(a)(1): a microbiological contamination citation was issued as an other-than-serious when the related conditions should have been issued as serious.	During next year’s FAME, a sample of case files will be reviewed to determine possible trends.	Continued
	FY 2015-OB-06 FY 2014-OB-04	<i>Violation Classification</i> Appropriate violation classification (severity and probability) was noted in all nine (100%) case files reviewed with violations.		Closed
	FY 2015-OB-07	<i>Adequate Verification or Evidence of Abatement</i> Adequate abatement was noted in all nine (100%) case files reviewed with violations.		Closed

**Appendix B – Observations Subject to New and Continued Monitoring**  
**FY 2016 PR OSHA State Plan Follow-up FAME Report**

<b>Observation # FY 2016-OB-#</b>	<b>Observation# FY 2015-OB-#</b>	<b>Observation</b>	<b>Federal Monitoring Plan</b>	<b>Current Status</b>
	FY2015-OB-08	<i>Informal Settlements</i> In six of 13 (46%) cases where informal conferences were held, area directors did not request approval from the director of the Bureau of Inspections for a penalty reduction above 50% as described and required in PR OSHA’s FOM.		Converted to a finding
FY 2016-OB-03	FY 2015-OB-08	<i>Informal Conferences</i> In one of the 13 (7.7%) case files reviewed the informal conference was not held within 15 days.	During next year’s FAME, a sample of case files will be reviewed to determine possible trends.	Continued
	FY 2015-OB-09	<i>Worker Retaliation – Policies and Procedures</i> Closing conferences were held in all six (100%) whistleblower case files reviewed.		Closed
FY 2016-OB-04	FY 2015-OB-10 FY 2014-OB-06	<i>Consultation Case File Documentation</i> The safety and health hazard survey (Form 33) comments section did not provide comments necessary to ensure that the number assigned and description corresponded in two of the eight (25%) consultation case files reviewed.	During next year’s FAME, a sample of case files will be reviewed to determine possible trends.	Continued
	FY 2015-OB-11	<i>Consultation Case File Documentation</i> Abatement verification (certification and documentation) for serious hazards as required by CSP 02-00-002 procedures was noted in all eight (100%) of the consultation case files reviewed.		Closed

**Appendix C - Status of FY 2015 Findings and Recommendations**  
**FY 2016 PR OSHA State Plan Follow-up FAME Report**

FY 2015-#	Finding	Recommendation	State Plan Response Corrective Action	Completion Date	Current Status and Date
FY 2015-01	<p><i>Non-Formal Complaint Investigations</i>                      In four of the eight (50%) non-formal (phone/fax) complaint investigations reviewed, complaint items were not adequately addressed prior to the case files being closed.</p>	<p>PR OSHA should ensure all complaint items are addressed using phone/fax procedures and/or assigned for inspection in accordance with PR OSHA's FOM.</p>	<p>PR OSHA's Bureau of Inspections prepared a PowerPoint (PPT) presentation that covered proper policies and procedures when handling non-formal complaints in accordance with PR OSHA's FOM. The presentation was utilized during training for PR OSHA staff on this issue.</p>	May 20, 2016	Continued
FY 2015-02	<p><i>Union Involvement</i>                      Inspection results and a copy of the citation was not sent to the union in three of the seven (43%) case files reviewed that had both an authorized union and citations issued.</p>	<p>PR OSHA should ensure that representative of workers are notified of the inspection results and provided with a copy of the citation.</p>	<p>PR OSHA's Bureau of Inspections prepared a PowerPoint (PPT) presentation that covered proper policies and procedures of notifying representatives of workers of the inspection results and providing copies of the citation.</p>	May 20, 2016	Closed
FY 2015-03	<p><i>Worker Retaliation - Delays in Initiating an Investigation</i>                      Five of 13 (39%) complaints were noted as having a delay from the initial intake to the actual screening, causing a significant delay in initiating an investigation.</p>	<p>PR OSHA should ensure that the Whistleblower Investigation Manual, adopted in March 2012, is followed regarding all workplace retaliation allegations.</p>	<p>PR OSHA's Bureau of Inspections Director is ensuring that proper procedures are being adhered to in accordance with the Whistleblower Investigation Manual by screening and entering all workplace retaliation allegations the same day received from the complainant.</p>	February 26, 2016	Closed



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

### FY 2016 PR OSHA State Plan Follow-up FAME Report

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

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Puerto Rico – PR OSHA			FY 2016	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	2.64	5	Further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	1.62	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	0.00	1	Further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	0.00	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	Further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	Further review level is fixed for all State Plans.

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

### FY 2016 PR OSHA State Plan Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 1.51	+/- 20% of SWRU: 1.87	Further review level is based on a one-year national rate.
		Other: 1.38	+/- 20% of Other: .99	
<b>6</b>	Percent of total inspections in state and local government workplaces	24.31%	+/- 5% of 38.41%	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
<b>7</b>	Planned v. actual inspections – safety/health	S: 1,180	+/- 5% of S: 1,010	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 453	+/- 5% of H: 435	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,085.30	+/- 25% of \$2,279.03	Further review level is based on a one-year national rate.
	<b>a.</b> Average current serious penalty in private sector (1-25 workers)	\$458.24	+/- 25% of \$1,558.96	Further review level is based on a one-year national rate.
	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	\$1,773.52	+/- 25% of \$2,549.14	Further review level is based on a one-year national rate.
	<b>c.</b> Average current serious penalty in private sector (101-250 workers)	\$1,111.25	+/- 25% of \$3,494.20	Further review level is based on a one-year national rate.
	<b>d.</b> Average current serious penalty in private sector (greater than 250 workers)	\$1,636.24	+/- 25% of \$4,436.04	Further review level is based on a one-year national rate.

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

### FY 2016 PR OSHA State Plan Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
9	Percent in-compliance	S: 42.96%	+/- 20% of S: 28.85%	Further review level is based on a one-year national rate.
		H: 42.34%	+/- 20% of H: 35.68%	
10	Percent of work-related fatalities responded to in one workday	100%	100%	Further review level is fixed for all State Plans.
11	Average lapse time	S: 65.08	+/- 20% of S: 45.16	Further review level is based on a one-year national rate.
		H: 77.93	+/- 20% of H: 57.28	
12	Percent penalty retained	56.67%	+/- 15% of 69.86%	Further review level is based on a one-year national rate.
13	Percent of initial inspections with worker walk around representation or worker interview	99.57%	100%	Further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	88%	100%	Further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	0%	+/- 20% of 24%	Further review level is based on a three-year national average.
16	Average number of calendar days to complete an 11(c) investigation	145	90	Further review level is fixed for all State Plans.
17	Percent of enforcement presence	4.50%	+/- 25% of 1.26%	Further review level is based on a one-year national rate.