

Appendix B
Puerto Rico State Plan
FY 2010 Enhanced FAME Follow-up Report Prepared by Region 2
Status of Findings, Recommendations, and Corrective Actions

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-1	<ul style="list-style-type: none"> a) PROSHA had a significant number of open cases with unsatisfied overdue abatement. b) There was a lack of case file documentation in situations where CSHOs observed the abatement of cited hazard(s) during the inspection. c) Employers, who requested additional time to correct hazards after the citations were issued, did not provide the required information that will allow PROSHA to correctly grant a Petition for Modification of Abatement Date (PMA). 	<p>Ensure abatement is assured in a timely manner by implementing improvements in management oversight including periodic review of management reports; provide training to compliance officers to better recognize serious hazards; improve case lapse time through expedited case file reviews and periodic review of management reports; provide training for compliance officers and 29(a) investigators to better recognize and document serious hazards.</p>	<ul style="list-style-type: none"> a) Each Area Director (AD) was instructed to run weekly the standard reports and take the appropriate action. b) Area Directors will be retrained in case file review, including the abatement of cited hazards during inspections and to request the necessary information that will allow them to grant a Petition for Modification of Abatement Date (PMA). This training will be conducted from November 29 to December 3, 2010. c) PROSHA will audit adherence with this process by the end of the third quarterly of 2011. 	<ul style="list-style-type: none"> a) As of 10/06/2010 the ADs are running standard reports on a weekly basis, and are making the corrections. b) On December 2, 3, 9, 10 and 13, 2010, the FOM training was given to all the Area Directors. On January 12, 13 and 14, 2011, the ADs gave the training to all CSHO's. c) PROSHA plans to audit the status of abatement management by performed by June 30, 2011. 	Completed.
09-2	<p>The 2009 EFAME noted that in private sector consultations inspections; 41 of the 760 serious hazards issued, or 5.39%, were not verified corrected in a timely manner.</p>	<p>Private Sector Consultation: ensure timely hazard abatement by improvements in management oversight including periodic review of appropriate management reports. (Rec-2 move to place in order)</p>	<p>The Director and consultants of the Voluntary Programs Division were instructed to review the appropriate management reports to ensure the timely hazard abatement for each consultation visit, in both private and public sectors.</p>	<p>The Director of the Bureau of Technical Assistance and the Director of Voluntary Programs Division discussed with the consultants the hazard abatement procedures on October 4, 2010.</p> <p>Refresher training on the Consultation Policies and</p>	Completed.

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				<p>Procedures Manual was given on October 15 and 21, 2010.</p> <p>PROSHA plans to audit the process by the end of the third quarterly of 2011.</p>	
09-3	PROSHA conducted a total of 23 public-sector consultation visits in FY 2009. Three “initial” visits, or 13.04%, were coded as high hazards establishments. Goal was not met. Reference point is 100%.	Public Sector Consultation: Improve inspection targeting mechanisms to ensure that high hazard worksites are inspected. Ensure timely hazard abatement by improvements in management oversight including periodic review of appropriate management reports.	<p>During the Month of December, 2010 Voluntary Programs Division will commence sending letters to Puerto Rico Government Agencies. The letters will be sent to one agency at a time. If no request is received within a one month period then letters will be sent to the next government agency.</p> <p>If, after all letters are sent and no/or minimal, consultation requests are received, the Director of Voluntary Programs Division will consider a second round of letters or a new approach.</p>	The Director of Voluntary Programs will be verifying each public sector request to ensure that the proper action is taken. Also, the Public Works were identified as a high hazard industry for the public sector. A letter informing the hazards in that industry and inviting them to request a consultation visit was prepared. The letter was sent on March 1, 2011.	Completed.
09-4 09-5 09-6	The 2009 EFAME noted that 4 of the 6 Area Office reports reflected several open non formal complaint investigations. These reports should have been reviewed and those investigations that are still open where satisfactory responses were received should be marked closed. Additionally, in several instances there were a number of cases which are closed, but the days to satisfy were still running as the date the response letter was received had not been entered into the IMIS.	<p>09-4. Implement internal controls such as supervisory review and final approval before complaint investigation (non-formal complaints) and complaint inspections are closed.</p> <p>09-5. In cases in which complaint inspections are not opened in a timely manner - make a notation in the file</p>	<p>09-4: Area Directors were instructed to use the ACE and Standard reports to track all complaint investigations.</p> <p>09-5 Each AD was retrained in the compliance policies and procedures as established in the new FOM from November 29 to December 3, 2010.</p> <p>09-6: ADs were instructed to make the pertinent notations in the daily case diary. On October 6, 2010 the Assistant</p>	<p>On 10/06/2010 during the FOM training, ADs were instructed to close all the non-formal complaints, as appropriate. The training stressed use of the complaint tracking system (formal and non-formal) to verify all the open complaints.</p> <p>ADs were instructed to make notations in the daily case diary to verify all the documents of the case before the CSHO enters the information in the system.</p>	Completed.

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		<p>09-6. explaining the delay. All non-formal complaints alleging potential imminent danger conditions such as trench hazards should be reviewed by a supervisor for evaluation, to determine if an inspection is warranted.</p>	<p>Secretary in a meeting with the Area Director and the sub director of the Bureau of Inspections (BI) gave clear instructions to comply with this recommendation.</p>	<p>PROSHA plans to audit these issues by the end of the third quarter 2011.</p>	
<p>09-7</p>	<p>As part of the 2009 EFAME; 16 fatality case files were reviewed by the OSHA BSE Team. There was no evidence of “next of kin” notification letters in 7 of the case files reviewed and, in 2 case files, notification of enforcement action could not be found either.</p>	<p>Provide training to CSHOs and managers to reiterate the policies relating to fatality investigations including the proper procedures pertaining to making the appropriate communication to the family of victims (i.e. next of kin letters).</p>	<p>CSHOs and Area Directors were trained on the policies and procedures relating to fatality investigations, including making the appropriate communications to the family of victims.</p> <p>Area Directors verify that in accident investigation cases all next of kin notifications are sent, If not the Area Director will return the case to the CSHO to correct this.</p> <p>If during the internal audit accident investigation cases are found to not have sent the next of kin notifications the Area Director will be instructed to correct this and immediately send the appropriate letters.</p>	<p>As of 10/6/2010 The Bureau of Inspections Director (BI) opened a fatality file to provide follow up on the actions taken by Area Directors pertaining to the next of kin notifications with the appropriate communications to the family of victims.</p> <p>As of 11/24/2010; 8 Directors, 1 Hearing Examiner and 30 Specialists were trained in the Course 1230-Accident Investigation conducted in Puerto Rico from November 16th to the 24th, 2010 by OSHA Training Institute.</p> <p>PROSHA plans to audit this issue by the end of the third quarter 2011.</p>	<p>Completed.</p>

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09-8	The 2009 EFAME noted that in one case reviewed the CSHO did not appear to pursue a willful violation where there were indications that the employer knowingly allowed the Fall Protection standard to be violated	Provide training to all field staff, including supervisory staff, to ensure the application of PROSHA’s Field Operations Manual guidance and procedures whenever there is evidence that a willful violation may exist, and to counteract any potential employer affirmative defense.	Each Area Director was retrained in late 2010 in the compliance policies and procedures relating to documenting willful violations as established in the FOM. In addition review of the potentially willful nature of a violation has been highlighted in the regular case file review process.	<p>The Area Directors retrained CSHOs on this matter in January of 2011.</p> <p>As of 11/24/2010; 8 Directors, 1 Hearing Examiner and 30 Specialists were trained in the Course 1230-Accident Investigation by OSHA Training Institute.</p> <p>FOM training was given to all the Area Directors. Each Area Director was trained on the compliance policies and procedures relating to documenting willful violations as established in the new FOM.</p> <p>As of 1/21/2011; CSHOs were trained on the compliance policies and procedures relating to documenting willful violations as established in the FOM.</p>	Completed.
09-9	The 2009 EFAME noted that penalty reductions amounting to more than 50% of the total for all penalties initially proposed (after any deletions or any reclassification) must be approved by the PROSHA’s Bureau of Inspections Director. In approximately 70% of the penalty reduction cases reviewed, the amount of the penalty reduction was in excess of 50% but the Bureau of Inspections Director’s	Ensure that the PROSHA policy of notifying the Bureau of Inspections before granting penalty reductions in excess of 50% is followed.	Each Area Director was retrained in the compliance policies and procedures, relating to penalty reductions as established in the new FOM from November 29 to December 3, 2010.	<p>December 13, 2010 During the FOM training, the ADs received an instruction from the BI, stating that penalties should not be reduced more than 30%. If the ADs think that the employer deserves a higher reduction, they must contact the BI sub director to explain the situation, and then make a decision.</p> <p>As to fatality cases,</p>	Completed.

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	approval was only requested in one case.			PROSHA has set a policy which stipulates that all citations related to the fatality can not entail a penalty reduction.	
09-10	<p>In a single case file reviewed for the 2009 EFAME, there was indication in the case file that a CSHO attempted to establish that the employer knowingly violated the Trenching Standard when there were indications of willful intent.</p> <p>There was no documentation in the file that indicates the employer was ever interviewed.</p> <p>The severity of the violation issued may have been misclassified as low (vs. High).</p>	Re: Willful Citations - see Finding, Recommendation, Response and Status for 09-8. Training should be provided to all field staff, including supervisory staff, to ensure proper violation classification.	Re: Willful Citations - see Finding, Recommendation, Response and Status for 09-8.	<p>Each Area Director was retrained in the compliance policies and procedures as established in the new FOM from November 29 to December 3, 2010. The Area Directors retrained CSHOs on this matter by January 31, 2011.</p> <p>This training also addressed proper classification and gravity of the violations.</p> <p>Course 1230-Accident Investigation was conducted in Puerto Rico from November 16th to the 24th, 2010 by OSHA Training Institute</p>	Completed.
09-11	The 2009 EFAME noted that there was evidence in the majority of the files that employees were contacted/interviewed during inspections. However, the review revealed that union representatives were not involved in the inspection process at unionized worksites in 5 of 29 cases reviewed. In only one of the 29 union case files reviewed was there evidence the union was sent a copy of the citations.	Provide training to all field staff regarding the agency’s policy of Union/Employee Representative involvement during and after inspections and the requirement to properly document compliance with this policy in case files.	All field staff and Area Directors will be trained and required to comply with the policy of union/employee representative involvement during and after inspections and to document properly each case file.	<p>On October 6, 2010 all the Area Directors were instructed and they, in turn, instructed their field personnel about Union/Employee Representative involvement in inspection cases. Also, in the FOM training, this matter was explained.</p> <p>As of December 13, 2010, the ADs were trained on the FOM policy relating to Union/Employee</p>	Completed.

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				<p>Representative involvement during and after inspections.</p> <p>As of January 21, 2011, the ADs trained the CSHOs on the FOM policy relating to Union/Employee Representative involvement during and after inspections.</p>	
<p>09-12 09-13 09-14</p>	<p>The 2009 EFAME noted that in 10 of the 40 safety inspections case files evaluated, there was not enough evidence to support the violation. In addition, in 17 case files where various General Duty Clause citations were issued, the citation did not conform to the documentation requirements, as per the PROSHA Field Operations Manual. In 10 of the case files, the violations do not appear to have been classified appropriately.</p>	<p>09-12 Provide training to all Supervisory and field staff regarding documentation on OSHA 1B forms, to ensure correct citing of standards and regulations, proper violation classification, correct use of the “in the alternative” citations, and General Duty Clause provisions, as well as proper documentation of General Duty Clause (GDC) violations as described in PROSHA’s FOM (OSHA Instruction CPL 2.45C, April 2000; Chapter IV).</p> <p>09-13 Implement internal controls to ensure that all cases are reviewed on a supervisory level and that all violations issued meet the</p>	<p>See State Action Taken.</p>	<p>As of 12/13/2010, the ADs were trained on the FOM policy relating to documentation in the 1B forms, proper violation classification, and GDC provisions and GDC documentation violations.</p> <p>As of 1/ 21/ 2011, the ADs trained the CSHOs on the compliance policies and procedures relating to proper documentation, GDC provisions and violation classification as established in the new FOM.</p> <p>As of 12/13/2010, the ADs were trained on the FOM policy relating to the requirement that all the violations issued meet the prima facie requirements in inspection cases; if not, the ADs have instructions that when they are correcting a case, it must be returned to the CSHO for the pertinent corrections.</p>	<p>Completed.</p>

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		prima facie requirements. 09-14 See Recommendations 09-9 and 09-10.			
09-15	In reference to a specific health case file reviewed for the 2009 EFAME; there was evidence that there had been needle stick injuries at the inspection location. The needlesticks were recorded on the OSHA 300 log, yet the inspection was not expanded to evaluate the employer's compliance with the Bloodborne Pathogen standard.	On a case-by-case basis; CSHOs and supervisors should evaluate whether to expand un-programmed partial inspections to a comprehensive scope.	See State Action Taken.	As of 12/13/2010, the ADs were trained on the new FOM compliance policies and procedures including when it is appropriate to expand inspections. On 11/24/2010 the six Area Directors and the Bureau of Inspections' sub director participated in the OSHA OTI's OSHA 300 training; they, in turn, explained the training to the CSHOs. As of 12/13/2011, the ADs trained the CSHO's on the compliance policies and procedures including when it is appropriate to expand inspections as established in the new FOM.	Completed.
09-16	The 2009 EFAME noted that IMIS reports from each PROSHA office were reviewed. The review of the Violation Abatement Report (a report that lists all cases with violations and the abatement dates) revealed that there were 283 cases with open cases with unabated items that were past due.	Provide additional training to all field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established policy including: ♦ Ensuring that appropriate abatement periods are assigned for unabated violations. ♦ Ensuring that all abatement information	See State Action Taken.	As of 12/13/2010, the ADs were trained on the new FOM compliance policies relating to the appropriate handling of abatement issues. The ADs are working on a 2 week cycle to maintain and update the IMIS abatement report. As of 1/21/2011, the ADs	Completed. PROSHA plans to audit this issue in late FY 2011/early FY 2012.

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		<p>accepted satisfies the order to comply prior to the closing the case.</p> <ul style="list-style-type: none"> ♦ For cases with CDI (Corrected during Inspection), ensuring that the file documents the method of abatement and that the CSHO observed the abatement. 		<p>trained the CSHOs on the compliance policies and procedures to ensure that abatement issues are handled in accordance with the new FOM</p>	
<p>09-17 18</p>	<p>The 2009 EFAME noted that there were three Safety Cases reviewed which contained PMA's. In 2 cases, PMAs were requested and granted, however, the PMA did not contain information required by the PROSHA's FOM. There were three Health cases reviewed with PMA requests letters. All were incomplete and untimely and the PMAs were granted by PROSHA</p>	<p>09-17 Implement internal controls to ensure that all Petitions for Modification of Abatement (PMA) Dates are reviewed on a supervisory level to ensure that all required information is contained in the request prior to granting the PMA.</p> <p>09-18 PROSHA should train all appropriate personnel on the FOM requirements for PMAs and should implement internal controls, such as supervisory review and approval to ensure that PMA requirements are met before granting PMAs.</p>	<p>9-17 and 9-18 See State Action Taken.</p>	<p>09-17 Area Directors were retrained in case file review, including the abatement of cited hazards during inspections and to request the necessary information that will allow them to grant a Petition for Modification of Abatement Date (PMA). This training was conducted as of 12/13/2010.</p> <p>09-18 Area Directors were retrained in case file review, including the abatement of cited hazards during inspections and to request the necessary information that will allow them to grant a Petition for Modification of</p>	<p>Completed</p>

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				Abatement Date (PMA). This training was conducted as of 12/13/2010.	
09-19	The 2009 EFAME noted that the review of the Violation Abatement Report (a report that lists all cases with violations and the abatement dates) revealed that there were 283 cases with open cases with unabated items that are past due. These 283 cases represent a total of 1034 cited hazards of which 184 have been abated leaving 850 (or 82%) unabated. In addition, the 2010 special study identified an additional 344 cases which have unabated violations prior to October 1, 2008.	PROSHA must conduct a thorough study of their cases with abatements due and develop and implement a plan to obtain abatement – especially for past due abatements	Area Directors will be instructed to use the Violation Abatement Report , verify each case file and using 1903 Regulation as well as the FOM, determine the action to be follow: 1. employer out of business – closed the case 2. cases in Legal Division – verify the cases status and follow Legal recommendations 3. cases under 6 month period – conduct a follow up inspection 4. cases over 6 month period – conduct an inspection. The sub director of BI periodically reviews the Violation Abatement Report, to follow up on the Area Director’s actions.	As of 10/06/2010; the Area Directors verified the Open Case Report and the status of the cases at the Legal Division, and closed many of them. The Legal Division was instructed to verify the status of the cases every six months.	Completed.
09-20	The 2009 EFAME noted that there were instances where Failure to Abate (FTA) violations may have been warranted, but were not issued.	Ensure that Failure To Abate notices are issued where appropriate.	See State Action Taken.	As of 12/13/2010, the ADs were trained on the new FOM compliance policies to ensure that FTA notices are issued where appropriate. As of 1/21/2011, the ADs trained the CSHOs on the compliance policies and procedures to ensure that FTA issues are handled in accordance with the new FOM.	Completed. PROSHA plans to audit this issue in late FY2011/early FY2012

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09-21	<p>The 2009 EFAME noted that there were 11 health cases reviewed with informal conferences (IFC). In two cases there were no notes of the IFC. In 10 cases there was no evidence that either union or employee representatives were notified and afforded an opportunity to participate in the informal conference.</p>	<p>Relating to informal conferences, PROSHA representatives must thoroughly document the following in the case file: The fact that notification to the parties of the date, time and location of the informal conference was made; indicate the date the informal conference was held in the diary sheet; at the conclusion of the conference, all main issues and potential courses of action must be summarized and documented.</p>	<p>See State Action Taken.</p>	<p>On October 6, 2010 the ADs were instructed, and informed the CSHOs, that they have to notify the Union representatives to participate in the informal conference (IFC). The ADs have to enter in the narrative all the details discussed, including any penalty reduction, abatement evidence, and photos, if any.</p> <p>Area Directors were instructed to follow these instructions in April, 2010.</p> <p>As of 12/13/2010, the ADs were trained on the new FOM compliance policies relating to the PROSHA Instruction ADM 1.13B of April 16, 2010, Procedures to Prepare and Process Informal Settlement Agreements.</p>	<p>Completed.</p> <p>PROSHA plans to audit this issue in late FY2011 or late FY 2012.</p>
09-22	<p>The 2009 EFAME noted that in the event that a case is contested PROSHA area offices forward the cases directly to the “legal division” rather than trying to settle post contest. PROSHA’s FOM allows that formal settlements can occur at the area office level.</p>	<p>PROSHA Area Offices should be allowed to attempt to settle cases, including those which would result in formal settlement agreements, before sending contested cases to PROSHA’s in house Counsel for settlement.</p>	<p>See State Action Taken.</p>	<p>As established in the new FOM, Area Directors are authorized to conduct informal conference and to attempt and make all effort to settle cases before sending them to PROSHA’s Legal Division. Area Directors are not allowed to conduct post contest settlement agreements.</p> <p>Also, each Area Director was retrained in the compliance policies and procedures as</p>	<p>Completed.</p>

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				<p>established in the new FOM. That training was completed on 12/13/2010.</p>	
<p>09-23</p>	<p>The 2009 EFAME noted that the special study determined that there were a significant number of open inspections (344) that were in the debt collection process at the Legal Division. In addition, through analysis of PROSHA’s debt collection report, there were currently 107 cases at PROSHA offices that were overdue for debt collection action.</p>	<p>PROSHA must review its debt collection process procedures and institute changes necessary to ensure timely resolution of debt collection cases and to ensure timely processing of such cases at the Area Office level.</p>	<p>See State Action Taken.</p>	<p>As of 12/13/2010, the ADs were trained on the compliance policies and procedures to ensure the timely processing of debt collection at the Area Offices as established in the new FOM.</p> <p>The Government of Puerto Rico is going through one of the biggest economic crisis in its history. There have been massive layoffs in both the public and private sectors. Almost 100,000 jobs were lost during the period of 2009 through 2010. The majority of all PROSHA cases are from public agencies, notably the Puerto Rico Department of Education.</p> <p>This public agency is in a state of flux. The Secretary of Education position was filled in early February 2011. The Department of Education is under intense scrutiny from the Federal Government due to questionable management of federal funds.</p> <p>PROSHA’s Legal Division exercised the full extend of</p>	<p>Training was completed.</p> <p>Pending. Regarding the PR Department of Education’s failure to pay penalties; this is an ongoing issue and PROSHA is seeking assistance from FED OSHA to help resolve this issue.</p>

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				<p>its authority to collect unpaid penalties, from sending and mailing collection letters, soliciting informal conferences with Department of Education Counsel, and up to appearing before a judge. As of February 2011 there has been no progress on recovering unpaid penalties.</p> <p>PROSHA’s Legal Division is exploring options that would compel the Department of Education to produce abatement and payment of all the unpaid penalties.</p>	
09-24	The 2009 EFAME noted that IMIS Data management requires increased oversight.	PROSHA must ensure that the IMIS management reports identified with potential vulnerabilities are updated in order to improve the integrity of OSHA data and transparency to the public. PROSHA must improve its performance with IMIS data management. Additionally, PROSHA Management must use IMIS reports as a tool to effectively manage both the program and the work product of its staff.	See State Action Taken.	<p>Three IMIS Clerk positions were filled (Arecibo and Mayaguez Area Offices, and one for Voluntary Programs Division). The person recruited for the Ponce Area Office declined. A training orientation for IMIS Clerk was conducted on September 23, 2010.</p> <p>Area Directors and IMIS Clerk are required to use IMIS reports as a tool to manage both the program and the staff performance.</p>	Completed. PROSHA plans to audit IMIS/OIS late in FY 2011 or early in FY 2012.
09-25	The 2009 EFAME noted that a total of 31 rejected IMIS forms were found at the time of the evaluation. Some of these date back to 2009 and early 2010.	Area Offices must correct rejected forms promptly and if they experience problems and cannot correct the form they should contact OMDS for assistance.	See State Action Taken.	As of 10/6/2010 the ADs have been instructed to put a ticket in the OMDS for the correction of rejects. In some cases, the OMDS calls and informs that the problem has	Completed

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				<p>been corrected, but when the Area IMIS clerks check, the problem persists. And the IMIS clerks provides follow-up until the problem is corrected.</p> <p>The Bureau of Inspections sub director is responsible to provide follow up every two weeks; the ADs have to verify if they have rejects. As of January 24, 2011 none of the six Area Offices had rejects.</p> <p>As of October 29, 2010, the Area Directors have been running this report weekly, and it was added to the Area Directors’ regular audit process.</p>	
09-26	<p>The 2009 EFAME noted that a total of 476 draft forms were found for five offices. Although the majority were recent (relative to the 2009 Special Study), there are a few deficiencies in saving forms to final.</p>	<p>Area Offices must review and update draft forms on a periodic basis.</p>	<p>See State Action Taken.</p>	<p>As of 10/6/2010, the Bureau of Inspections sub director is responsible to run appropriate reports and provide follow up every two weeks; the ADs have to verify if they have drafts forms.</p> <p>As of 10/29/2010, the Area Directors were instructed to review and update draft forms and run this report weekly. This was added to the Area Directors’ regular audit process.</p>	<p>Completed</p>

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09-27	At the time of the 2009 Special Study, a review of the OSHA 31 (Program Activity) report in the NCR indicated that there are multiple employees who are not entering any OSHA 31 data. For those employees entering data, a few have double entries entered for the week as the hours worked reflect double the weekly hours (76). There are instances where employees did not enter hours worked for the week and then resumed entering hours (skip in weekly entries). There are also instances where the hours reported were significantly lower than the required weekly 38 hours.	Area Offices must track and ensure OSHA 31 Forms are being completed in a timely manner.	See State Action Taken.	<p>The Area Directors were instructed on October 6, 2010 to track and ensure OSHA 31 forms are being completed weekly.</p> <p>Since October 29, 2010 all CSHOs are required to submit 31 forms on a weekly basis.</p> <p>Since October 6, 2010, the Bureau of Inspections sub director is responsible to run the appropriate reports every two weeks and provide follow up on Area Directors.</p>	Completed.
09-28	At the time of the 2009 Special Study, there are a total of 1472 open inspections for all Area Offices. There are 627 open cases with abatement dates over two weeks past due, which represent 44% of the total open cases. Three hundred thirty nine (23%) of the open cases involve debt collection processes. Two hundred fifty eight (18%) of the open cases are contested.	The Area Offices must run case audit reports on inspections to ascertain whether or not the penalty was paid, and if so these cases should be closed.	See State Action Taken.	<p>On October 6, 2010 the Area Directors were instructed to run case audit reports every two weeks and take the appropriate action.</p> <p>The IMIS clerk continues working with IMIS reports to correct any problems.</p>	Completed
09-29	At the time of the 2009 Special Study, a total of 108 cases for all Area Offices are listed on the report for the time period 10/1/2008 to 4/30/2010. 107 require further collection activities. These reports are not reflective of cases dated before 10/1/2008 where penalties may not have been collected. PROSHA	The Area Offices should contact their Legal Division to ascertain whether or not the older of the contested cases have become final orders, and if they have, these cases also should be closed.	See State Action Taken.	<p>Since October 6, 2010, Area Directors were instructed to contact the Legal Division to determine whether the contested cases that have become final orders have been closed.</p> <p>The ADs follow up the contested case in the Legal</p>	Completed

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	<p>management indicated that the majority of these cases were already acted upon and transferred to the Legal Division for debt collection; however the information was not entered in the IMIS.</p>			<p>Division for appropriate action.</p> <p>Since October 6, 2010, the Bureau of Inspections sub director has been verifying that the Area Directors follow this instruction.</p> <p>Since October 28, 2010 the Area Directors have to contact the Legal Division at least three times a year to verify that all contested cases with final order, but are still open, are closed in the system of the pertinent Area Office.</p>	
09-30	<p>The 2009 EFAME noted that in ten (10) of eleven (11) consultation visit cases, the employer requested an extension to correct hazards, but does not give the reasons why nor do they describe interim protective measures, yet PROSHA granted the extensions.</p>	<p>PROSHA must meet the requirements of CSP 02-00-002 when granting extensions of correction due dates and ensure that employers provide the required information and implement appropriate interim protective measures</p>	<p>See State Action Taken.</p>	<p>On October 4, 2010, the Director of the Bureau of Technical Assistance and the Director of Voluntary Programs reviewed this finding with the consultants. Also, the Director of Voluntary Programs is reviewing cases before extensions of correction due dates are granted. Refresher training on the Consultation Policies and Procedures Manual was given on October 15 and 21, 2010. The Director of Voluntary Programs verifies that the consultation program is complying with CSP 02-00-002 in this regard.</p>	<p>Completed.</p>

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09-31	<p>The 2009 EFAME noted that regarding consultation visits. Of the cases reviewed for the special study; 5% of employees were interviewed (114 interviewed out of 2,187 employees covered in the cases reviewed for the audit). Where visits were conducted at worksites with labor representation, there is no evidence in the case files that labor officials were contacted or were offered the opportunity to participate in the consultation visit.</p>	<p>Efforts should be made to increase the number of employees interviewed during Consultation visits and to ensure that employee representatives are offered the option to participate during the on-site visit.</p>	<p>See State Action Taken.</p>	<p>On October 4, 2010, the Director of the Bureau of Technical Assistance and the Director of Voluntary Programs reviewed this finding with the consultants.</p> <p>The consultants were instructed on the importance of interviewing employees during their consultation visits.</p> <p>Refresher training on the Consultation Policies and Procedures Manual was given on October 15 and 21, 2010. The Director of Voluntary Programs verifies that the consultation program is complying with CSP 02-00-002 in this regard.</p>	<p>Completed.</p>
09-32	<p>Of the consultation files reviewed for the 2009 Special Study; one health file in audit sample had industrial hygiene sampling conducted (The Audit included: 11 Health, 8 visits coded as “Both” which means that both Safety and Health issues were addressed). In the one case in audit sample where sampling was done, pre/post calibration of audio-dosimeters and the sound level meter was not accomplished.</p>	<p>Health consultants should be reminded of the importance of evaluating health hazards found in the workplace. PROSHA must also ensure that ALL consultants conducting health visits have the required competencies, meeting the intent of Appendix K of CSP 02-00-002.</p>	<p>See State Action Taken.</p>	<p>On October 4, 2010, the Director of the Bureau of Technical Assistance and the Director of Voluntary Programs reviewed this finding with the consultants. The consultants were instructed on the importance of evaluating the health hazards in the workplace during consultation visits and the calibration of the equipment.</p> <p>Refresher training on the Consultation Policies and Procedures Manual was given on October 15 and 21, 2010.</p>	<p>Completed</p>

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				The Director of Voluntary Programs verifies that the consultation program is complying with CSP 02-00-002 in this regard.	
09-33	The 2009 EFAME noted that proper documentation was not found in consultation case files where formal training was done during a visit or as part of a separate Training/Assistance Visit. Approximately 77% of the case files reviewed did not have complete OSHA 300 log records included. Proper documentation was not found in case files where formal training was done during a visit or as part of a separate Training/Assistance Visit. Approximately 77% of the case files reviewed did not have complete OSHA 300 log records included.	It is recommended that a tracking form be utilized to ensure that all required documentation is included in each case file and to facilitate supervisory review of the files.	See State Action Taken.	As of 06/30/2010: A letter template was developed to inform the employer about the training done in the workplace. Also, a form to be signed by training participants was developed which requires notation of the training title and the topics covered. A check list was developed and it is used by the consultants and the Division's staff to keep track of the documentation required in the consultation visit files. Refresher training on the Consultation Policies and Procedures Manual was given on October 15 and 21, 2010. The Director of Voluntary Programs follows up to ensure compliance with this requirement.	Completed.
09-34	The 2009 EFAME noted that the appropriate documentation was not found for consultation follow-up visits.	PROSHA must document all visits as required by the CSP 02-00-002.	See State Action Taken.	As of 06/30/2010: A letter template was developed to inform the employers about the results of the follow up consultation visits.	Completed.

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				<p>A check list was developed and it is used by the consultants and the Division's staff to keep track of the documentation required in the consultation visit files.</p> <p>The check list has been in use since June 2010.</p> <p>The Director of Voluntary Programs follows up to ensure compliance with this requirement.</p> <p>Refresher training on the Consultation Policies and Procedures Manual was given on October 15 and 21, 2010.</p>	
<p>09-35 36</p>	<p>The 2009 EFAME noted that two of the four SHARP files reviewed indicated that these employers were not eligible to be SHARP participants because their Safety and Health Program Assessment Worksheet Forms 33 (Form 33) scores did not meet the criteria set forth in CSP-02-00-002. Additionally, a comprehensive safety and health hazard survey was not conducted in 2 cases.</p>	<p>09-35 PROSHA should review all their SHARP cases to ensure that only eligible employers are in the program. Additionally, efforts should be made to increase the number of employees interviewed during Consultation visits.</p> <p>09-36 Form 33 refresher training should be provided for existing staff and full Form 33 training provided for new staff members.</p>	<p>See State Action Taken.</p>	<p>09-35 On October 4, 2010, the Director of the Bureau of Technical Assistance and the Director of Voluntary Programs discussed this finding with the consultants. The requirements for SHARP participation and Form 33 were discussed with the consultants. The Director of Voluntary Programs follows up to ensure compliance with this requirement.</p>	<p>Completed.</p>

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				<p>Refresher training on the Consultation Policies and Procedures Manual was given on October 15 and 21, 2010.</p> <p>09-36 Form 33 was discussed with all consultants, including the new staff members on October 15, 2010. Refresher training on the Consultation Policies and Procedures Manual was given on October 15 and 21, 2010. The Director of Voluntary Programs gives follow up to compliance with this requirement.</p>	
09-37	The 2009 Special Study identified deficiencies with documentation and organization of Discrimination Investigation Case Files.	PROSHA needs to implement the case organization standards as outlined in the Federal Manual that PROSHA adopted in February 2007. All investigators need to follow this format. Tabs should be used to organize all case files with a streamlined standard for all documents. Investigators should be trained to adhere to these new standards.	See State Action Taken.	<p>Since September 2010 the discrimination investigators were instructed and used the case organization standards as outlined in the Federal Manual. The BI provided special tabs to be used in the organization of all the discrimination cases.</p> <p>Since October 15, 2010 all the Investigators have been instructed on how they will manage discrimination cases,</p>	Completed.

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				<p>including case file organization.</p> <p>Since October, 2010 the BI's sub director is required to audit all cases received in the Central Office to confirm that the case file organization is followed.</p>	
09-38	<p>Regarding the Discrimination investigators; the 2009 EFAME noted that interviews of investigators and supervisors revealed a lack of understanding and confusion with the appeals process, and the procedures for merit cases.</p>	<p>PROSHA should train all investigators and staff of the legal process for merit and non-merit cases, as well as cases that are appealed. The appeals process should be outlined in the directive so that all Investigators are familiar with the appeals process and can explain it to Complainants. The directive should mandate that the closing letters for Non-Merit cases contain an advisement of the Complainant's appeal rights. At a minimum, the Complainant should be advised of where the appeal is filed and the timeframe.</p>	<p>See State Action Taken.</p>	<p>On October 15, 2010, all discrimination investigators were trained by the Legal Division. It is PROSHA's assessment that the investigative staff fully understands the appeal process related to discrimination cases and the complainants' rights.</p> <p>The discrimination investigators were instructed to contact the Discrimination Supervisor of the Bureau of Inspections when they are filling out the screening complaint form, to ensure if the complaint is meritorious.</p> <p>The State Internal Evaluation Program (SIEP) had been working with the PROSHA Instruction CPL 02-03-002 B Whistleblower Investigations Manual, previously known as PROSHA Instruction DIS 0-0.9. This Manual was reviewed and amended on February 23, 2011. A copy was sent to Region II on</p>	<p>Completed (pending completion of Discrimination Manual described above).</p>

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				February 24, 2011 to Carol Tiedeman and Steve Kaplan, and was written in the CAP.	
09-39	The 2009 EFAME noted that the reviewers found numerous formats, styles, and organization of the Final Investigative Reports.	A tab should be added to case file organization for investigator’s notes. This will aid in the organization of the case file, and make any FOIA requests more manageable.	See State Action Taken.	<p>Since September 2010 the discrimination investigators were instructed and used the case organization standards as outlined in the Federal Manual. The BI provided special tabs to be used in the organization of all the discrimination cases.</p> <p>Since October 15, 2010 all the Investigators have been instructed on how they will manage discrimination cases, including case file organization.</p> <p>Since October, 2010 the BI’s sub director is required to audit all cases received in the Central Office to confirm that the case file organization is followed.</p> <p>In addition, staff was instructed (in writing) to use tabs in the case file organization and to follow the order in which the documents must be organized.</p>	Completed.

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-40	The 2009 EFAME noted that interviews of investigators showed that no investigators have access to the Whistleblower IMIS section. The secretary is the only person with access to Whistleblower IMIS.	Investigators should be granted access to Whistleblower IMIS so that they may better track their cases.	See State Action Taken.	Since August 31, 2010, all the nine Investigators have had access to the Whistleblower IMIS section. The investigators access the system to enter all the forms and related information. As of August 18, 2010 the investigators were trained on how to access the Whistleblower IMIS section and now they may track their cases.	Completed
09-41	The 2009 EFAME noted that interviews revealed that several investigators wanted a team leader or another contact who investigators may ask legal, procedural, or substantive questions.	It is suggested that PROSHA assign a team leader or contact who investigators may ask legal, procedural, or substantive questions	See State Action Taken.	As of August 31, 2010, the discrimination investigators have been instructed that if they have any questions or inquiries, they must contact the BI's Discrimination Supervisor, who, if necessary, will refer them to the Legal Division.	Completed
09-42	The 2009 EFAME noted that the interviews of investigators showed that many would prefer to have full-time investigators as it is difficult to adhere to the timelines with their other CSHO cases.	It is suggested that PROSHA managers look in to the plausibility of having two (2) full-time 29(a) investigators.	See State Action Taken.	PROSHA has reviewed this recommendation and concludes that, though desirable, the discrimination investigation caseload does not supports two full-time 29(a) investigators.	Completed
09-43	The 2009 EFAME noted that of the discrimination investigation cases reviewed; only two case files contained a Complainant Questionnaire	It is suggested that PROSHA investigators use a Complainant Questionnaire which would allow pertinent information to be filled in by the Complainant for easy access and reference for the investigator	See State Action Taken.	In September 2010 the Complaint Questionnaire was revised and is included in the PROSHA Instruction DIS 0-0.9 amended Discrimination Manual. On October 15, 2010, all the investigators were trained and	Completed

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				<p>required to use the Complainant Questionnaire and include it in the case file.</p> <p>The State Internal Evaluation Program (SIEP) had been working with the PROSHA Instruction CPL 02-03-002 B Whistleblower Investigations Manual, previously known as PROSHA Instruction DIS 0-0.9. This Manual was reviewed and amended on February 23, 2011. A copy was sent to Region II on February 24, 2011 to Carol Tiedeman and Steve Kaplan, and was written in the CAP.</p>	
09-44	<p>The 2009 EFAME noted that several investigators during interviews stated that they used screening checklists that help to identify all elements, timeliness, and jurisdiction. Several of these were located in case files and were a great resource for the investigators to timely and efficiently screen complaints.</p>	<p>It is suggested that all investigators adopt the screening checklist used by some investigators to help identify all elements, timeliness, and jurisdiction.</p>	<p>See State Action Taken.</p>	<p>Since February 2011, the SIEP has been working with the PROSHA Instruction DIS 0-0.9 amended Discrimination Manual. The draft of this Manual is in the process of being reviewed. The program expects it to be final by February 28, 2011.</p> <p>On October 15, 2010, all the investigators were trained and required to use the Complainant Questionnaire, the revised screening checklist and include it in the case file.</p> <p>On October 18, 2010, Investigators were trained on the complaint intake process. PROSHA adopted all the</p>	<p>Completed.</p>

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				forms, including the screening checklist. Also, when the investigators send the cases once an investigation is over, the BI checks the entire case.	
09-45	The 2009 EFAME noted that regarding Whistleblower reports; the reviewers found numerous formats, styles, and organization of the Final Investigative Reports.	PROSHA should follow the Federal Manual’s template for Final Investigative Reports.	See State Action Taken.	Since October 15, 2010, the investigators have been instructed to use the Federal Manual’s template for Final Investigative Reports	Completed
09-46	The 2009 EFAME noted that documentation of The Secretary’s findings were in the form of letters that only stated the element that was missing and gave appeal rights. Basic information was missing such as the (1) allegation, (2) defense, (3) timeliness, and (4) jurisdiction and the elements of the case.	PROSHA should adopt the Federal Manual’s template for Secretary’s Findings, which would include adding a brief explanation of the allegation, defense, timeliness, jurisdiction, and elements. This letter should also contain appeal rights.	See State Action Taken.	Since October 15, 2010, all investigators were told instructed to use the Federal Manual, which was adopted and translated into Spanish. They have been instructed that all cases must have the four elements, in addition to a brief explanation of the allegation, defense, timeliness, and jurisdiction.	Completed
09-47	The 2009 EFAME noted that of the reviewed twenty-six cases, twenty-two of the OSHA-87 forms were signed by the CSHO, one was unsigned, and three were signed by the Supervisor.	The supervisor should sign off on all OSHA-87 forms.	See State Action Taken.	As of October 1, 2010, the Discrimination Supervisor has signs all the OSHA-87 forms	Completed
09-48	The 2009 EFAME noted that PROSHA had not required current VPP participants (covered by the Process Safety Management Standard) to submit the annual self evaluation PSM Questionnaire. The PSM Application Supplement has not been required for	Ensure all applications covered by 29 CFR 1910.119 contain the PSM Application Supplement. Require all PSM covered VPP participants to submit the annual PSM questionnaire with their annual self	See State Action Taken.	Refresher training on the new Voluntary Protection Programs Policies and Procedures Manual was completed on October 7, 2010. All VPP participants that are required to comply with the	Completed.

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	<p>applicants until very recently (i.e. during FY 2010)</p>	<p>evaluation.</p>		<p>PSM Questionnaire requirement were informed of the requirement. The Director of Voluntary Programs follows up with sites to ensure compliance with this requirement.</p>	
<p>09-49</p>	<p>The 2009 EFAME noted that for VPP; although a Medical Access Order (MAO) that can be used to allow review employee medical records and to verify the accuracy of the employer’s OSHA logs and for determine eligibility for VPP participation. No Medical Access Order or other provision is utilized for PROSHA staff to allow access to confidential employee medical records to ensure that recordkeeping is accurate.</p>	<p>PROSHA must ensure that the Puerto Rico regulation equivalent to 29 CFR 1913.10, “Rules of agency practice and procedure concerning OSHA access to employee medical records” and OSHA Directive CPL 02-02-072, “Rules of agency practice and procedure concerning OSHA access to employee medical records” (which was adopted by Puerto Rico on October 24, 2007) is utilized to both obtain this information and to protect employee privacy.</p> <p>Additionally, it is strongly recommended that Puerto Rico modify TED 8.1 to require a detailed and thorough evaluation of VPP employers’ recordkeeping records to ensure that VPP eligibility requirements are met.</p>	<p>See State Action Taken.</p>	<p>As of October 2010 a Medical Access Order has been requested for VPP evaluations. A detailed and thorough recordkeeping records evaluation is now being conducted in VPP applicants and participant sites.</p> <p>Refresher training for the appropriate staff on the new Voluntary Protection Programs Policies and Procedures Manual was completed on October 7, 2010.</p> <p>The Director of Voluntary Programs follows up the VPP teams to ensure compliance with this requirement.</p>	<p>Completed.</p>

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-50	<p>The 2009 EFAME noted that there were two VPP participants that were approved in 2004 and 2005 respectively that did not have their first re-approval visits within the required 42 month period.</p> <p>Additionally, there are three existing VPP sites, initially approved in 1998, where the interval between the date of their penultimate and their last VPP re-approval evaluation exceeded 60 months.</p>	<p>Implement internal controls to assure that time intervals for re-approval evaluations, as outlined in OSHA Instruction TED 8.1, must be adhered to.</p>	<p>See State Action Taken.</p>	<p>As of 10/22/2010; the Director of the Bureau of Technical Assistance developed a table to track the re-evaluations time frame for each VPP participant.</p>	<p>Completed.</p>
09-51	<p>The 2009 EFAME noted that there were no written acknowledgments sent to employers regarding receipt of the application and/or acceptance of the application. There is no tracking mechanism to track these dates to ensure that all VPP applications were acknowledged within the 5 day period and that VPP on-sites were scheduled within 6 months of application acceptance.</p>	<p>PROSHA should create a system that includes written acknowledgements and ensures that VPP on-sites are scheduled within six (6) months of application acceptance.</p>	<p>See State Action Taken.</p>	<p>As of 6/30/2010 The Director of Voluntary Programs developed an acknowledgment letter to be sent to employers when VPP applications are received.</p>	<p>Completed.</p>
09-52	<p>The 2009 EFAME identified the gap between existing training status and the requirements of TED 01-00-018.</p>	<p>Develop and implement a comprehensive training plan to provide mandatory training for CSHOs to bring them up to the minimum training standards established in OSHA Instruction TED-01-00-018 “Initial Training Program for OSHA Compliance Personnel”.</p>	<p>See State Action Taken.</p>	<p>OSHA Instruction TED-01-00-018, 10/21/2008, is followed with all new hired CSHOs (3 safety officers that began working between February and June 2008; 2 health officers - one who began in June 2008 and another one who had been working as a safety officer since April 2002, but was changed to IH in February 2009.</p>	<p>Completed.</p>

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				<p>These five CSHOs must be evaluated at the end of the three-year period that ends on 2011 and for which PROSHA must provide the minimum eight-course requirement.</p> <p>In order to comply with this new training requirement, PROSHA will continue to train our personnel at OTI pursuant to the recommended training paths for compliance personnel, and any other applicable recommendations.</p> <p>TED-01-00-018 went in to effect on October 21, 2008, and was not retroactive, in order to comply with this new training requirement, PROSHA will continue to train our personnel at OTI pursuant to the recommended training paths for compliance personnel, and any other applicable recommendations.</p>	