



**Puerto Rico Department of Labor  
Puerto Rico Occupational Safety and Health  
Administration**

***Federal Annual Monitoring Evaluation (FAME) Report  
October 1, 2009 - September 30, 2010***

**U.S. Department of Labor  
Occupational Safety and Health Administration  
Region II New York**

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## I. EXECUTIVE SUMMARY

### a. Introduction

This evaluation of the Puerto Rico Safety and Health Administration (PROSHA) State Program covers the period of October 1, 2009 through September 30, 2010.

For FY 2010, PROSHA's initial total 23(g) grant amount was \$7,929,769 which included federal/state matching funds of \$2,438,800 and state overmatch funds of \$3,052,169.

PROSHA's Strategic Plan for FY 2010 consisted of two broad strategic goals, each with supplemental performance goals.

PROSHA's Strategic Goal #1 aimed to improve workplace safety and health for all workers, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses and fatalities. PROSHA targeted five high-hazard industries aimed at reducing injuries and illnesses by 1% per year for 5 years. The targeted industries included: The Printing, Publishing and Allied Industries (goal 1.1.1A); Metal Doors and Windows (goal 1.1.1B); Warehousing and Storage (goal 1.1.1C); and Water Treatment Plants (Goal 1.1.1D). In addition, (Goal 1.1.2) focused on reducing the construction fatality rate by focusing on the four leading causes of fatalities in the construction industry (caught in-between, falls, struck by and electrical hazards).

PROSHA exceeded this goal for all industries. Injury and illness rates have decreased compared to the baselines established for each industry. In the construction industry, fatality rates were reduced by 73% compared to the baseline established in 2006.

PROSHA's Strategic Goal #2 aimed to: Change workplace culture to increase employer and worker awareness of, commitment to, and involvement in safety and health. This goal included six performance sub-goals; only one goal was not met (2.1.1B), four were met and one was exceeded (2.1.1A).

Performance Goal 2.1.1A aimed to increase by 40% the number of targeted employers in general industry that have either implemented an effective safety and health program or improved their existing program after an enforcement inspection. The goal was exceeded by 5.4%.

Performance goal 2.1.1B aimed to achieve a 75% rate of targeted employers in general industry that have implemented an effective safety and health program or improved their existing program after a comprehensive consultation visit. This goal was not met by 12%.

Performance Goal 2.2.2A-2.2.2D aimed to: Provide training to employers and workers on the skills necessary for effective worker involvement in safety and health matters for: 75% of employers inspected or provided consultations under goal #1. This goal was met (100% provided training) for all four industries: Printing, Publishing and Allied Industries, Water Treatment Industry, Metal Doors and Windows Industry and the Warehousing and Storage Industries.

Performance Goal 2.3.1 aimed to: Provide training and/or occupational safety and health reference materials to 100% of private workplaces identified as Hardware Stores. This goal was met.

The Puerto Rico Occupational Safety and Health Administration (PROSHA) administers the Puerto Rico State Plan, which is part of the Puerto Rico Department of Labor and Human Resources. There is a Central Administrative Office and six Area Offices for enforcement activities. PROSHA's Consultation Program is funded under the 23(g) grant agreement and its services are provided primarily from the Central Office.

In the private sector, PROSHA covers all employers with the exception of employers within the maritime industry, e.g. marine cargo handling, long shoring, shipbuilding and ship repairing. Employers of the Commonwealth and local government are under PROSHA's jurisdiction.

The United States Postal Service (USPS), all federal agencies, and military facilities are under federal OSHA jurisdiction.

Federal OSHA safety and health standards are adopted identically by PROSHA. 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.

### **Puerto Rico State Plan Profile**

*State Plan:* Initial Plan Approval - August 15, 1977  
Operational Status Agreement – December 8, 1981  
18(b) Certification - September 7, 1982

*Designee:* Miguel Romero, Secretary  
Puerto Rico Department of Labor and Human Resources

#### Excluded Coverage:

- Private Sector: Maritime Operations, including Maritime Cargo Handling, Long Shoring, Shipbuilding and Ship Repairing
- Federal Agencies, including Military Facilities and USPS

#### Employee Coverage:

- Public Sector: 270,357 employees
- Private Sector: 716,422 employees
- Total: 1,366,000 employees

Operational Grant: Final FY 2010 Award

FY 2010 Federal Share: \$ 2,588,900  
FY 2010 State Share: \$ 2,588,900  
FY 2010 100% State Funds: \$ 3,052,169

Total FY 2010 Grant: \$ 8,229,969

Staffing:

	Allocated
Enforcement	53
Consultation	8

Inspection Activities - Enforcement and Consultation

In addition to progress toward achieving its strategic goals, PROSHA continued to maintain a credible enforcement presence in the Commonwealth even though the actual inspection outcome was slightly below the projected goal for FY 2010; A total of 1,462 inspections were conducted in FY 2010. This was 3.2% lower than their planned goal of 1,510 inspections.

PROSHA's consultation activities were 5.7% above the number planned for FY 2010. PROSHA projected 140 visits (121 private; 19 public) and conducted 148 (141 private; 7 public).

Mandated Activities

State Activity Mandated Measures: PROSHA performed satisfactorily relating to the majority of the fifteen established mandated enforcement measures discussed in this report. Outliers include timely complainant notification of inspection results; assuring timely hazard correction; average number of calendar days from opening conference to citations issued (lapse time); and percent of programmed inspections where serious, willful or repeat violations were issued.

OSHA had identified these issues as part of the 2009 EFAME and PROSHA continues to demonstrate its commitment to take the appropriate steps to address the issues.

Among the recommendations that are covered in detail elsewhere in this report, OSHA has the following recommendations for PROSHA: Ensure complainants are notified of the results of inspections in a timely manner as part of the case file review process; ensure abatement is assured in a timely manner by improvements in management oversight including periodic review of management reports; improve case lapse time through expedited case file reviews and periodic review of management reports; provide training for compliance officers to better recognize serious hazards; improve inspection targeting mechanisms to ensure that most hazardous worksites are inspected under Local Emphasis Programs.

Mandated Activities Report for Consultation (MARC): PROSHA performed satisfactorily relating to three of the five established mandated consultation measures. The two outliers were the percent of initial visits and percent of serious hazards verified corrected in a timely manner in the private and public sectors. PROSHA continues their efforts in promoting consultation

services to elicit requests from high hazard industries, in both sectors and to ensure timely hazard abatement by improvements in management oversight including periodic review of appropriate management reports.

### Voluntary Protection Programs

During FY 2010 a total of 16 worksites participated in the Voluntary Protection Programs. PROSHA's VPP Program mirrors the Federal VPP program with one exception. While the highest award, Guanin, is similar to OSHA's Star while the Cemi is similar to OSHA's Merit. In addition, the category Taino was established for smaller employers that are working towards meeting all the core elements of the Guanin and/or Cemi eligibility requirements. PROSHA continues to make progress toward growing the Safety and Health Achievement Recognition Program (SHARP). There are currently twenty establishments participating in SHARP. During FY 2010 there were two sites newly awarded SHARP and seven SHARP sites renewed.

#### b. Summary of the report

The following summarizes the findings of the 2009 EFAME, PROSHA's response and the status of corrective actions as described in PROSHAS 2009 EFAME Corrective Action Plan. An itemized and detailed description of all findings of the 2009 EFAME, PROSHA's response and the status of corrective actions is contained in Section III of this report.

It is Region 2's assessment that PROSHA has taken the appropriate and adequate steps to address all of the 52 recommendations from the 2009 EFAME report.

### Abatement

The 2009 EFAME identified that PROSHA had issues regarding obtaining abatement for violations in both enforcement and consultation cases. Abatement was not obtained in a timely manner, requests for extensions were did not always meet the criteria necessary to grant the extensions given (including a description of the employer's interim protective measures), and corrective actions for hazards noted as corrected during the inspection were not adequately documented.

PROSHA managers are systematically tracking the status of abatement in the IMIS system and require staff to follow up with employers to obtain abatement. PROSHA has provided training to both the enforcement and consultation staff and instructed the appropriate staff to properly document abatement submissions and abatement observed in the field. PROSHA requires that employer submit requests for extensions of abatement period that meet all of the requirements for submission prior to granting extensions.

### Complaint Investigations

The 2009 EFAME noted that Complaint Investigation reports were not administratively managed adequately.

PROSHA has implemented internal controls such as increased supervisory oversight, to ensure that Complaint Investigations reports were documented adequately, tracked and closed in a

timely manner.

### Fatality Investigations – Contacting Next of Kin

The 2009 EFAME noted that PROSHA did not always send the appropriate notifications to the next of kin of accident victims.

PROSHA has trained the appropriate staff on the policies and procedures relating to fatality investigations, including making the appropriate communications to the family of victims. PROSHA Supervisors verify that all appropriate communication occurs.

### Enforcement Inspections

The 2009 EFAME found that there were several issues with enforcement inspections including: insufficient documentation of prima facie evidence, potentially misclassified violations, improperly documented general duty clause violations, lack of documentation of employee and employee representative contact and interviews, and cases in which failure-to-abate violations may have been appropriate but were not issued.

PROSHA has completed a series of comprehensive training sessions for the appropriate staff.

Area Directors (ADs) and Compliance Officers (CSHOs) were trained on the Field Operations Manual (FOM) policies relating to documentation required to establish a prima facie case. If the AD determines that the case does not adequately document the prima facie evidence then it is returned to the CSHO for the pertinent corrections.

PROSHA staff was trained on the policies and procedures for properly classifying the severity of violations and developing and issuing willful violations

PROSHA reinforced the requirement that field staff interview employees and make reasonable efforts to include employee representatives in the inspection process.

PROSHA retrained the enforcement staff on the FOM requirements for proper documentation and issuance of violations of the general duty clause and Failure To Abate (FTA) violations.

### Enforcement Inspection Settlements

The 2009 EFAME noted that there a number of cases with informal conferences (IFCs) where there was no evidence that either union or employee representatives were notified and afforded an opportunity to participate, nor were there other notes describing the issues discussed in the IFC.

The 2009 EFAME also noted PROSHA was not attempting to settle contested cases at the Area Office level before forwarding the cases directly to the “legal division.” PROSHA’s FOM allows formal settlements to occur at the area office level.

PROSHA has instructed the appropriate staff that they must notify employee representatives and afford them an opportunity to participate in the informal conference process. The Area Directors

are required to document in a narrative the discussions held in IFCs, including discussions of penalty reductions. Documents provided by the employer, such as abatement evidence, photos, etc. must now be placed in the case file.

As established in the new FOM, Area Directors are authorized to conduct informal conferences and to attempt to settle cases before sending them to PROSHA's Legal Division. PROSHA has made the decision that, although the FOM allows it; Area Directors are not to conduct post contest settlement agreements.

### Debt Collection

The 2009 EFAME noted that there were a significant number of open inspections that were in the debt collection process at the Legal Division or were overdue for debt collection action.

PROSHA trained all its AD on the compliance policies and procedures to ensure the timely processing of debt collection at the Area Offices as established in the FOM.

PROSHA explained that the government of Puerto Rico is going through an economic crisis and identified this as a challenge to collecting penalties from public sector establishments.

PROSHA's Legal Division is exploring options that would compel public sector establishments to produce abatement and payment of all the unpaid penalties.

### Integrated Management Information System (IMIS) Data Management

The 2009 EFAME noted that IMIS data management required increased internal oversight.

Three IMIS Clerk positions were filled. The IMIS Clerks were trained on the IMIS System.

IMIS will be rendered obsolete when OSHA Information System (OIS) rolls out. PROSHA has participated in the OIS training that given presented by OSHA.

Until OIS is rolled out field offices now contact Office of Management Data Systems (OMDS) to correct discrepancies in IMIS date and the IMIS clerks provide follow-up until the problem is corrected.

Early indications are that IMIS data is now being effectively managed.

### IMIS – Time Keeping

The 2009 EFAME noted that PROSHA employees were not consistently tracking their activity in the IMIS system via OSHA 31 reports.

All employees required by their position to submit OSHA 31 forms have been instructed to do so. PROSHA managers verify that the required forms are submitted in a timely manner.

### Public Sector Consultation Visits In High Hazard Industries



In 2009 PROSHA conducted 13.04% of initial visits in high hazard establishments. The goal was 100%.

In 2010 PROSHA conducted 28.5% of initial visits in high hazard establishments. This is a significant increase over the 2009 data, however that sample size is small (2 of 15 initial visits in 2009 and 3 of 11 initial visits in 2010). The goal of 100% visits in high hazard in the public sector may not be realistic.

In late 2010 PROSHA sent outreach letters to government agencies (including those specifically identified as high hazard establishments) promoting the PROSHA onsite consultation service with the intent on soliciting consultation visits from high hazard establishments.

#### Private Sector Consultation Visits – Employee Representative Involvement

The 2009 EFAME noted that a relatively low percent (5%) of cases reviewed where visits were conducted at worksites with labor representation, there was no evidence in the case files that labor officials were contacted or were offered the opportunity to participate in the consultation visit.

The Director of the Bureau of Technical Assistance and the Director of Voluntary Programs reviewed this finding with the consultants. Refresher training on the Consultation Policies and Procedures Manual was given in October 2010. The Director of Voluntary Programs verifies that the consultation program is complying with CSP 02-00-002 in this regard. The Mandated Activity Report for Consultation (MARC) notes that in 2010 PROSHA consultants conferred with employees in all site visits.

#### Onsite Consultation Inspection Documentation

The 2009 EFAME noted that documentation was lacking where formal training was done during a visit or as part of a separate Training/Assistance Visit. Additionally; appropriate documentation was not found for consultation follow-up visits.

The majority of consultation files reviewed did not contain all of the required documents in them (such as the employer's OSHA 300 log).

PROSHA developed customizable templates inform the employer about the training done in the workplace. PROSHA also documents the names of training participants and the topics covered.

PROSHA creates a letter describing the results of the follow up visit and submits it to the employer.

PROSHA developed a check list it is now used by the consultants and the Division's staff to keep track of the documentation required in the consultation visit files.

#### Voluntary Protection Program (VPP) – Annual Reporting

The 2009 EFAME noted that PROSHA had not required current VPP participants that were covered by the Process Safety Management Standard to submit the annual self evaluation PSM Questionnaire.

PROSHA now requires that VPP covered by PSM are required to complete the questionnaire. The affected VPP participants have been notified of the requirement.

#### VPP Timeliness

The 2009 EFAME noted that some VPP re-approval visits were not scheduled in a timely manner.

There is no system to track that all VPP applications were acknowledged within 5 days of receipt and that VPP on-sites were scheduled within 6 months of application acceptance.

The Director of the Bureau of Technical Assistance developed a tracking system to track the re-evaluations time frame for each VPP participant and to track that onsite visits are conducted on schedule.

#### SHARP Program

The 2009 EFAME noted that of the 4 SHARP files reviewed 2 of the sites were not eligible to be SHARP participants. Additionally, a comprehensive safety and health hazard survey was not conducted in 2 cases.

PROSHA's Director of the Bureau of Technical Assistance and the Director of Voluntary Programs discussed this finding with the consultants and reviewed the requirements for SHARP participation and Safety and Health Program Assessment Worksheet Form 33 (Form 33)

#### Discrimination Investigation Program – Case File Documentation and Organization

The 2009 EFAME identified deficiencies with documentation, letters to complainants, and organization of Discrimination Investigation Case Files.

PROSHA instructed Discrimination Investigators to use the organization standards as outlined in the Federal Manual.

PROSHA is exercising additional internal oversight of over review of discrimination case files to confirm that the case files are adequately documented and that they are organized and that letters to complainants noting the Secretary's findings are complete.

#### Discrimination Investigators' Expertise

The 2009 EFAME noted that discrimination investigators and supervisors demonstrated a lack of understanding and confusion and the appeals process, and the procedures for merit cases.

All discrimination investigators were trained by the Legal Division. It is PROSHA's assessment

that the current investigative staff fully understands the appeal process related to discrimination cases and the complainants' rights.

### Training

The 2009 EFAME identified the gaps between existing training status and the requirements of TED 01-00-018.

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).

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.

In order to comply with this new training requirement, PROSHA will continue to train its personnel at OTI pursuant to the recommended training paths for compliance personnel, and any other applicable recommendations.

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 its personnel at OTI pursuant to the recommended training paths for compliance personnel, and any other applicable recommendations.

### c. Monitoring methodology

Monitoring of PROSHA consisted of both formal and ad hoc meetings, as well as regular review of data from a variety of sources to track the PROSHA's progress in achieving its strategic goals, annual performance goals, that PROSHA's actions in response to the 2009 EFAME were appropriate, and to ensure that PROSHA is meeting its mandated responsibilities under the Act

## **II. Major New Issues**

There are no major new issues related to State Plan Monitoring in FY2010.\

## **III. Assessment of State Action and Performance Improvements in response to Recommendations from the FY2009 EFAME**

The following section itemizes the findings of the 2009 EFAME, OSHA's recommendation relative to each finding, PROSHA's response and corrective action and the status of the corrective action as of this writing.

### **Finding 09-1:**

- 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).

**Recommendation 09-1:**

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.

**PROSHA Response to Recommendation 09-1:**

- 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.

**Status 09-1:**

- 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 CSHOs.
- c) PROSHA plans to audit the status of abatement management by performed by June 30, 2011.

**Finding 09-2:**

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.

**Recommendation 09-2:**

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)

**PROSHA Response to Recommendation 09-2:**

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.

**Status 09-2:**

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.

Refresher training on the Consultation Policies and Procedures Manual was given on October 15 and 21, 2010.

PROSHA plans to audit the process by the end of the third quarterly of 2011.

**Finding 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 hazard establishments. Goal was not met. Reference point is 100%.

**Recommendation 09-3:**

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.

**PROSHA Response to Recommendation 09-3:**

During the Month of December, 2010 Voluntary Programs Division sent letters to Puerto Rico Government Agencies. The letters were 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.

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.

**Status 09-3:**

Completed.

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.

**Finding 09-4 (Consisting of Recommendations 09-4, 09-5, and 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.

**Recommendations 09-4, 09-5, and 09-6**

- 09-4. Implement internal controls such as supervisory review and final approval before complaint investigation (non-formal complaints) and complaint inspections are closed.
- 09-5. In cases in which complaint inspections are not opened in a timely manner - make a notation in the file explaining the delay.
- 09-6. 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.

**PROSHA Response to Recommendation 09-4, 09-5, and 09-6:**

- 09-4: Area Directors were instructed to use the ACE and Standard reports to track all complaint investigations.
- 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.
- 09-6: ADs were instructed to make the pertinent notations in the daily case diary. On October 6, 2010 the Assistant 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.

PROSHA plans to audit these issues by the end of the third quarter 2011.

**Status 09-4, 09-5, and 09-6:**

Completed.

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.

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.

PROSHA plans to audit these issues by the end of the third quarter 2011.

**Finding 09-7 (Numbering is based on the Recommendation #.)**

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.

**Recommendation 09-7:**

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).

**PROSHA Response to Recommendation 09-7:**

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.

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.

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.

**Status 09-7**

Completed.

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.

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 16<sup>th</sup> to the 24<sup>th</sup>, 2010 by OSHA Training Institute.

PROSHA plans to audit this issue by the end of the third quarter 2011.

**Finding 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

**Recommendation 09-8:**

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.

**PROSHA Response to Recommendation 09-8:**

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.

The Area Directors retrained CSHOs on this matter in January of 2011.

**Status 09-8:**

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.

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.

As of 1/21/2011; CSHOs were trained on the compliance policies and procedures relating to documenting willful violations as established in the FOM.

**Finding 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 approval was only requested in one case.

**Recommendation 09-9:**

Ensure that the PROSHA policy of notifying the Bureau of Inspections (BI) before granting penalty reductions in excess of 50% is followed.

**PROSHA Response to Recommendation 09-9:**

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.

**Status 09-9:**

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.

As to fatality cases, PROSHA has set a policy which stipulates that all citations related to the fatality can not entail a penalty reduction.



**Finding 09-10:**

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.

There was no documentation in the file that indicates the employer was ever interviewed.

The severity of the violation issued may have been misclassified as low (vs. High).

**Recommendation 09-10:**

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.

**PROSHA Response to Recommendation 09-10:**

Re: Willful Citations - see Finding, Recommendation, Response and Status for 09-8.

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.

This training also addressed proper classification and gravity of the violations.

Course 1230-Accident Investigation was conducted in Puerto Rico from November 16th to the 24th, 2010 by OSHA Training Institute.

**Status 09-10:**

Completed.

**Finding 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.

**Recommendation 09-11:**

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.

### **PROSHA Response to Recommendation 09-11:**

All field staff and Area Directors were trained and required to comply with the policy of union/employee representative involvement during and after inspections and to document properly each case file.

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.

As of December 13, 2010, the ADs were trained on the FOM policy relating to Union/Employee Representative involvement during and after inspections.

As of January 21, 2011, the ADs trained the CSHOs on the FOM policy relating to Union/Employee Representative involvement during and after inspections.

### **Status 09-11:**

Completed.

### **Finding 09-12 (Consisting of Recommendations 09-12, 09-13, and 09-14):**

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.

### **Recommendation 09-12, 09-13, and 09-14:**

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 (OSHO Instruction CPL 2.45C, April 2000; Chapter IV).

09-13 Implement internal controls to ensure that all cases are reviewed on a supervisory level and that all violations issued meet the prima facie requirements.

09-14 See Recommendations 09-9 and 09-10.

### **PROSHA Response to Recommendation 09-12, 09-13, and 09-14:**

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.

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.

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.

**Status 09-12, 09-13, and 09-14:**

Completed.

**Finding 09-15 (Numbering is based on the Recommendation #.):**

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.

**Recommendation 09-15:**

On a case-by-case basis; CSHOs and supervisors should evaluate whether to expand un-programmed partial inspections to a comprehensive scope.

**PROSHA Response to Recommendation 09-15:**

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.

**Status 09-15:**

Completed.

**Finding 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.

**Recommendation 09-16:**

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 accepted satisfies the order to comply prior to the closing the case.
- ♦ For cases with CDI (Corrected during Inspection), ensuring that the file documents the method of abatement and that the CSHO observed the abatement.

**PROSHA Response to Recommendation 09-16:**

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 trained the CSHOs on the compliance policies and procedures to ensure that abatement issues are handled in accordance with the new FOM.

**Status 09-16:**

Completed.

PROSHA plans to audit this issue in late FY 2011/early FY 2012.

**Finding 09-17 (Consisting of Recommendations 09-17 and 09-18):**

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

**Recommendations 09-17 and 09-18:**

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.

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.

### **PROSHA Response to Recommendations 09-17 and 09-18:**

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.

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 Abatement Date (PMA). This training was conducted as of 12/13/2010.

### **Status 09-17 and 09-18:**

Completed.

### **Finding 09-19 (Numbering is based on the Recommendation #.):**

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.

### **Recommendation 09-19:**

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

### **PROSH Response to Recommendation 09-19:**

Area Directors were 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.

**Status 09-19:**

Completed.

**Finding 09-20:**

The 2009 EFAME noted that there were instances where Failure to Abate (FTA) violations may have been warranted, but were not issued.

**Recommendation 09-20:**

Ensure that Failure To Abate notices are issued where appropriate.

**PROSH Response to Recommendation 09-20:**

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.

**Status 09-20:**

Completed.

PROSHA plans to audit this issue in late FY2011/early FY2012.

**Finding 09-21:**

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.

**Recommendation 09-21:**

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.

**PROSH Response to Recommendation 09-21:**

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.

Area Directors were instructed to follow these instructions in April, 2010.

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.

**Status 09-21:**

Completed.

PROSHA plans to audit this issue in late FY2011 or late FY 2012.

**Finding 09-22:**

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.

**Recommendation 09-22:**

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.

**PROSH Response to Recommendation 09-22:**

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.

Also, each Area Director was retrained in the compliance policies and procedures as established in the new FOM. That training was completed on 12/13/2010.

**Status 09-22:**

Completed.

**Finding 09-23):**

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.

**Recommendation 09-23:**

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.

**PROSH Response to Recommendation 09-23:**

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.

The Government of Puerto Rico is going through one of the biggest economic crises 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.

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.

PROSHA's Legal Division exercised the full extent of 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.

PROSHA's Legal Division is exploring options that would compel the Department of Education to produce abatement and payment of all the unpaid penalties.

**Status 09-23:**

Training was completed.

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.

**Finding 09-24:**

The 2009 EFAME noted that IMIS Data management requires increased oversight.

**Recommendation 09-24:**

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.

**PROSH Response to Recommendation 09-24:**

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.

Area Directors and IMIS Clerk are required to use IMIS reports as a tool to manage both the program and the staff performance.

**Status 09-24:**

Completed.

PROSHA plans to audit IMIS/OIS late in FY 2011 or early in FY 2012.

**Finding 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.

**Recommendation 09-25:**

Area Offices must correct rejected forms promptly and if they experience problems and cannot correct the form they should contact OMDS for assistance.

**PROSH Response to Recommendation 09-25:**

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 been corrected, but when the Area IMIS clerks check, the problem persists. And the IMIS clerks provides follow-up until the problem is corrected.

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.

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.

**Status 09-25:**

Completed

**Finding 09-26:**

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.

**Recommendation 09-26:**

Area Offices must review and update draft forms on a periodic basis.

**PROSH Response to Recommendation 09-26:**

As of 10/6/2010, the Bureau of Inspections sub director is responsible for running appropriate reports and providing follow-up every two weeks; the ADs have to verify if they have draft forms.

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.

**Status 09-26:**

Completed.

**Finding 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.

**Recommendation 09-27:**

Area Offices must track and ensure OSHA 31 Forms are being completed in a timely manner.

**PROSH Response to Recommendation 09-27:**

The Area Directors were instructed on October 6, 2010 to track and ensure OSHA 31 forms are being completed weekly.

Since October 29, 2010 all CSHOs are required to submit 31 forms on a weekly basis.

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.

**Status 09-27:**

Completed.

**Finding 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.

**Recommendation 09-28:**

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.

**PROSH Response to Recommendation 09-28:**

On October 6, 2010 the Area Directors were instructed to run case audit reports every two weeks and take the appropriate action.

The IMIS clerk continues working with IMIS reports to correct any problems.

**Status 09-28:**

Completed.

**Finding 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 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.

**Recommendation 09-29:**

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.

**PROSH Response to Recommendation 09-29:**

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.

The ADs follow up the contested case in the Legal Division for appropriate action.

Since October 6, 2010, the Bureau of Inspections sub director has been verifying that the Area Directors follow this instruction.

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.

**Status 09-29**

Completed.

**Finding 09-30:**

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.

**Recommendation 09-30:**

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.

**PROSH Response to Recommendation 09-30:**

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.

**Status 09-30:**

Completed.

**Finding 09-31:**

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.

**Recommendation 09-31:**

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.

**PROSH Response to Recommendation 09-31:**

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 interviewing employees during their consultation visits.

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.

**Status 09-31:**

Completed.

**Finding 09-32:**

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 the audit sample where sampling was done, pre/post calibration of audio-dosimeters and the sound level meter was not accomplished.

**Recommendation 09-32:**

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.

**PROSH Response to Recommendation 09-32:**

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.

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.

**Status 09-32:**

Completed.

**Finding 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.

**Recommendation 09-33:**

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.

**PROSH Response to Recommendation 09-33:**

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.

**Status 09-33:**

Completed.

**Finding 09-34:**

The 2009 EFAME noted that the appropriate documentation was not found for consultation follow-up visits.

**Recommendation 09-34:**

PROSHA must document all visits as required by the CSP 02-00-002.

**PROSH Response to Recommendation 09-34:**

As of 06/30/2010:

A letter template was developed to inform the employers about the results of the follow up consultation visits.

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.

The check list has been in use since June 2010.

The Director of Voluntary Programs follows up to ensure compliance with this requirement.

Refresher training on the Consultation Policies and Procedures Manual was given on October 15 and 21, 2010.

**Status 09-34:**

Completed.

**Finding 09-35 (Consisting of Recommendation 09-35 and 09-36):**

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.

**Recommendations 09-35 and 09-36:**

- 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.
- 09-36 Form 33 refresher training should be provided for existing staff and full Form 33 training provided for new staff members.

**PROSH Response to Recommendation 09-35 and 09-36:**

- 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.

Refresher training on the Consultation Policies and Procedures Manual was given on October 15 and 21, 2010.

- 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.

**Status 09-35 and 09 36:**

Completed.

**Finding 09-37 (Numbering is based on the Recommendation #.):**

The 2009 Special Study identified deficiencies with documentation and organization of Discrimination Investigation Case Files.

**Recommendation 09-37:**

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.

**PROSH Response to Recommendation 09-37:**

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.

Since October 15, 2010 all the Investigators have been instructed on how they will manage discrimination cases, including case file organization.

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.

**Status 09-37:**

Completed.

**Finding 09-38:**

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.

**Recommendation 09-38:**

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.



**PROSH Response to Recommendation 09-38:**

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.

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.

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.

**Status 09-38:**

Completed (pending Regional review of Discrimination Manual described above).

**Finding 09-39:**

The 2009 EFAME noted that the reviewers found numerous formats, styles, and organization of the Final Investigative Reports.

**Recommendation 09-39:**

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.

**PROSH Response to Recommendation 09-39:**

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.

Since October 15, 2010 all the Investigators have been instructed on how they will manage discrimination cases, including case file organization.

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.

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.

**Status 09-39:**

Completed.

**Finding 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.

**Recommendation 09-40:**

Investigators should be granted access to Whistleblower IMIS so that they may better track their cases.

**PROSH Response to Recommendation 09-40:**

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.

**Status 09-40:**

Completed.

**Finding 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.

**Recommendation 09-41:**

It is suggested that PROSHA assign a team leader or contact who investigators may ask legal, procedural, or substantive questions.

**PROSH Response to Recommendation 09-41:**

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.

**Status 09-41:**

Completed.

**Finding 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.

**Recommendation 09-42:**

It is suggested that PROSHA managers look in to the plausibility of having two (2) full-time 29(a) investigators.

**PROSH Response to Recommendation 09-42:**

PROSHA has reviewed this recommendation and concludes that, though desirable, the discrimination investigation caseload does not supports two full-time 29(a) investigators.

**Status 09-42:**

Completed.

**Finding 09-43:**

The 2009 EFAME noted that of the discrimination investigation cases reviewed; only two case files contained a Complainant Questionnaire

**Recommendation 09-43:**

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.

**PROSH Response to Recommendation 09-43:**

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 required to use the Complainant Questionnaire and include it in the case file.

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.

**Status 09-43:**

Completed

**Finding 09-44:**

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.

**Recommendation 09-44:**

It is suggested that all investigators adopt the screening checklist used by some investigators to help identify all elements, timeliness, and jurisdiction.

**PROSH Response to Recommendation 09-44:**

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.

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.

On October 18, 2010, Investigators were trained on the complaint intake process. PROSHA adopted all the forms, including the screening checklist. Also, when the investigators send the cases once an investigation is over, the BI checks the entire case.

**Status 09-44:**

Completed.

**Finding 09-45:**

The 2009 EFAME noted that regarding Whistleblower reports; the reviewers found numerous formats, styles, and organization of the Final Investigative Reports.

**Recommendation 09-45:**

PROSHA should follow the Federal Manual's template for Final Investigative Reports.

**PROSH Response to Recommendation 09-45:**

Since October 15, 2010, the investigators have been instructed to use the Federal Manual's

template for Final Investigative Reports.

**Status 09-45:**

Completed.

**Finding 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.

**Recommendation 09-46:**

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.

**PROSH Response to Recommendation 09-46:**

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.

**Status 09-46:**

Completed.

**Finding 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.

**Recommendation 09-47:**

The supervisor should sign off on all OSHA-87 forms.

**PROSH Response to Recommendation 09-47:**

As of October 1, 2010, the Discrimination Supervisor has signs all the OSHA-87 forms.

**Status 09-47:**

Completed

**Finding 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 applicants until very recently (i.e. during FY 2010)

**Recommendation 09-48:**

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 evaluation.

**PROSH Response to Recommendation 09-48:**

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 PSM Questionnaire requirement were informed of the requirement. The Director of Voluntary Programs follows up with sites to ensure compliance with this requirement.

**Status 09-48:**

Completed.

**Finding 09-49:**

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.

**Recommendation 09-49:**

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.

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.

**PROSH Response to Recommendation 09-49:**

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.

Refresher training for the appropriate staff on the new Voluntary Protection Programs Policies and Procedures Manual was completed on October 7, 2010.

The Director of Voluntary Programs follows up the VPP teams to ensure compliance with this requirement.

**Status 09-49:**

Completed.

**Finding 09-50:**

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. 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.

**Recommendation 09-50:**

Implement internal controls to assure that time intervals for re-approval evaluations, as outlined in OSHO Instruction TED 8.1, must be adhered to.

**PROSH Response to Recommendation 09-50:**

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.

**Status 09-50:**

Completed.

**Finding 09-51:**

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.

**Recommendation 09-51:**

PROSHA should create a system that includes written acknowledgements and ensures that VPP on-sites are scheduled within six (6) months of application acceptance.

**PROSH Response to Recommendation 09-51:**

As of 6/30/2010 The Director of Voluntary Programs developed an acknowledgment letter to be sent to employers when VPP applications are received.

**Status 09-51:**

Completed.

**Finding 09-52:**

The 2009 EFAME identified the gap between existing training status and the requirements of TED 01-00-018.

**Recommendation 09-52:**

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".

**PROSH Response to Recommendation 09-52:**

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.

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.

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.

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.

**Status 09-52:**

Completed.





## **IV. FY 2010 State Enforcement**

### **A. Enforcement**

#### **Inspection Activity**

The FY 2010 Inspection Activity micro-to-host report (INSP8) shows that PROSHA conducted a total of 1,462 inspections during the fiscal year: 1,058 safety inspections and 404 health inspections. PROSHA accomplished 96.82% of the total planned inspections (1,510) for the fiscal year.

Eight hundred ninety (890) of the 1,462 inspections, or 60.8%, were classified as unprogrammed inspections: 16 accident investigations, 396 complaint inspections, 319 referrals, 26 follow-ups, and 133 un-programmed related inspections.

Of the 572 inspections that were classified as programmed (39.10% of the inspection total), 317 were planned and 255 programmed-related inspections.

#### **State Activity Mandated Measures (SAMM) Report Statistics**

##### **Complaint Inspections (SAMM 1)**

During this evaluation period, PROSHA received a total of 401 formal complaints, with an average of 5.37 days for initiating complaint inspections. PROSHA continues to exceed its strategic goal of responding to complaint inspections within 5 working days from notification.

##### **Complaint Investigations (SAMM 2)**

PROSHA received a total of 29 non-formal complaints, with an average of 0.24 days for initiating the complaint investigations. PROSHA continues to demonstrate prompt response to complaint investigations via phone/fax method, thus exceeding its 1-day response strategic goal.

##### **Complainant Notification (SAMM 3)**

Complainants were timely notified of the inspection results in 98.47% of the complaint inspections (385 out of 391). Reference point is 100%.

**OSHA Recommendation:** PROSHA should continue to strive for timely complaint notification in all cases and should document the reasons for delays occurred. PROSHA should evaluate case file before issuing citations and entering the data into IMIS.

##### **Response to Imminent Dangers (SAMM 4)**

All 13 referrals and complaints for imminent danger conditions were responded timely, for a 100% timely response rate. Reference point is 100%.

### Right of entry (SAMM 5)

There were no denials of entry for FY 2010. Reference point is 0.

### Timely Abatement of Violations (SAMM 6)

During FY 2010, PROSHA assured timely abatement of S/W/R violations on average of 96.67% in the private sector (610 out of 631). In the public sector the average was 87.64% (78 out of 89 SWR). The reference point is 100%.

OSHA Recommendation: PROSHA must ensure timely hazard correction by evaluating the abatement certification received from the employer and entering the data into IMIS. In cases in which abatement is not received in a timely manner PROSHA should encourage employers to submit adequate Petitions to Modify Abatement Dates, or should pursue Failure to Abate violations and penalties.

### Lapse time (SAMM 7)

During the evaluation period, PROSHA issued citations in 860 cases, 597 safety and 263 health cases. For the safety cases, PROSHA had a lapse time of 72.24 days (the national average was 47.3 days). The lapse time for the health cases was calculated at 88.55 days (the national average was 61.9 days). Both safety and health indicators were higher than the national average.

OSHA Recommendation: PROSHA must continue to implement mechanisms (e.g., expedited case file reviews, review of management reports, and ensuring that CSHOs efficiently manage their workload) in order to improve its citation lapse times.

### Classification of Violations (SAMM 8)

During FY 2010 PROSHA issued citations in 495 programmed inspections (445 for safety and 50 for health), of which 213 inspections resulted in the issuance of S/W/R violations.

One-hundred and eighty-nine (189) of the safety programmed inspections, or 42.47%, resulted in the issuance of violations classified as S/W/R. Twenty-seven (27) of the programmed health inspections, or 54.0%, resulted in the issuance of violations classified as S/W/R. The national averages were 58.4% for safety and 50.9% for health.

PROSHA is aware of their lower than average rate of issuing of S/W/R violations and continues to work on their Local Emphasis Programs (LEPs) as part of their Strategic Plan with the intent of improving their targeted inspection program, focusing on the most hazardous workplaces in the Commonwealth.

OSHA Recommendation: PROSHA should continue to implement mechanisms (e.g., supervisory oversight of case files staff and case file review in order to ensure that citations are issued at the appropriate severity.

### Violations per Inspection (SAMM 9)

A total of 858 inspections resulted in violations issued: 1,594 violations classified as S/W/R and 1,312 classified as other-than-serious. This resulted in an average violation per inspection of 1.85 for S/W/R and 1.52 for other-than-serious. The national averages were 2.1 for S/W/R and 1.2 for other-than-serious.

### Penalties (SAMM 10)

During this fiscal year, PROSHA issued 1,124 serious violations in the private sector with an average penalty per serious violation of \$1,228.00. The 3-year average national data was \$1,360.4.

### Public Employee Program (SAMM 11)

PROSHA conducted a total of 435 inspections in the public sector, which accounts for 29.75% of their total enforcement inspection activity (435/1462). The 3-year average data for Puerto Rico is 26.8%.

### Review Procedures (SAMM 12)

Eighty-nine (89) cases were contested with an average lapse time from the receipt of contest to the first level decision of 198.75 days. The 3-year national average was 217.8 days.

### Discrimination Program (SAMM 13, 14, 15)

A total of seven (7) discrimination complaints were completed in FY 2010; all within 90 days for a 100% timely completion rate. One (1) of these was found to be meritorious (14.29%) and none were settled (0.0%).

### **Federal Program Changes and Standards Adoption**

During FY 2010 a total of 13 Federal Program Changes (FPC) were issued:

As of September 30, 2010, PROSHA adopted a total of five (5) OSHA instructions; two (2) of them whose adoption was required. PROSHA responded timely to all FPC requirements.

In addition, four (4) Federal standards were issued during FY 2010; all were submitted for adoption. The notice of intent to adopt was timely in all of the four standards:

- Final Rule – Cranes and Derricks in Construction - confirmation of effective date; 75 FR, No. 152 (47906-48177), August 9, 2010; Anticipated adoption date: December 9, 2010.
- Final Rule – Technical Amendment concerning Safety Standards for Steel

Erection – 75 FR No. 94 (27428-27429) May 25, 2010; Anticipated adoption date: August 17, 2010.

- Final Rule – Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards– 75 FR No. 51 (12681-12686) March 14, 2010; Anticipated adoption date: August 14, 2010.
- Final Rule – Revising Standards in the Acetylene Standards– 74 FR No. 153 (40441-40447) November 10, 2009; Anticipated adoption date: March 12, 2010.

Creole PROSHA Instructions – PROSHA has created a number of internal (State-initiated) directives addressing various State-only administrative/program instructions:

- CPL 10-001 Reglas de PROSHA concernientes al Acceso y Mantenimiento de los Récords Médicos de Empleados (Rules of PROSHA concerning Access to Employees’ Medical Records) – This directive was approved on January 4, 2010.

### **Variances**

No variance requests were received or processed during this evaluation period.

### **V. Other**

#### **Voluntary Compliance Programs**

#### **Onsite Consultation Visits**

According to the MARC reports, PROSHA conducted 148 on-site consultation visits in FY 2010: 141 in the private sector and 7 in the public sector. The outcome showed to be 16.53% above projections in the private sector and achieving a 105.71% of the total visits conducted in both sectors. PROSHA provided training and educational services in 23 out of the 148 consultations visits that were conducted (1 informal and 22 formal).

It is worth mentioning that PROSHA has a comprehensive and very active outreach and training program. Numerous outreach activities, including training seminars and speeches are conducted by PROSHA’s experienced consultants, compliance officers and management throughout the year.

#### **Door to Door in Construction**

This is an initiative to promote safety and health through on-site consultation visits to construction projects inspected in the San Juan Area Office with cases closed with no pending or contested citations. Those general contractors accepting to participate in this initiative should agree to abate all the hazards identified, receive three additional consultation visits in a year, and post a banner in a conspicuous place in the project, which reads as follows: “PROSHA is Safety”.

During FY 2010, one (1) construction project accepted to participate in this initiative. There are five (5) ongoing projects participating in the initiative in San Juan, Humacao and Manati.

### **Voluntary Protection Program (VPP)**

The Puerto Rico State Plan has a comprehensive Voluntary Protection Program, which mirrors federal OSHA's VPP. The highest award, the Guanin, is similar to OSHA's Star program, while the Cemi is similar to the Merit award. In addition, PROSHA has a smaller category called the Taino for smaller employers and/or those working towards meeting all the core elements of the Guanin and/or Cemi.

PROSHA's Voluntary Protection Programs currently has sixteen (16) participants approved at the Guanín level.

During this fiscal year (1) new VPP site was approved in the Guanín level: Stryker Puerto Rico, Arroyo, PR on March 11, 2010. Two (2) VPP applications were received: Pfizer Global Manufacturing, Vega Baja, PR on May 6, 2010 and Monsanto Caribe LLC, Juana Diaz, PR on June 11, 2010. Two (2) sites were re-certified: Caribe GE International Electric Meters, Corp., San German, PR on November 2, 2009 and GE Industrial of Puerto Rico, Humacao, PR on March 11, 2010.

Two companies withdrew their applications: Abbott Pharmaceuticals Puerto Rico, Ltd., on May 7, 2010 and Cutler Hammer de Puerto Rico on June 21, 2010.

Two companies withdrew their participation: GE Puerto Rico Investment, Inc. on July 8, 2010 due to business closing and Caribbean Refrescos on September 20, 2010 after an onsite evaluation visit.

### **Safety and Health Achievement and Recognition Program (SHARP)**

PROSHA has been engaged in implementing the Safety and Health Achievement and Recognition Program (SHARP). This is the Program's third full year of deployment of the SHARP requirements established by 29 CFR 1908 and the CSP 02 (TED 3.6) Consultation Policies and Procedures Manual (CPPM). During FY 2010, two (2) new establishments were approved in the SHARP:

- Smiles of Beauty Dental Group, PSC, Mayaguez on October 1, 2009.
- "Laboratorio Clínico La 100", Mayaguez on October 1, 2009.

The participation for a second or third term of two years in the SHARP was approved for the following sites: Laboratorio Clínico Cedro Arriba, Naranjito, on October 8, 2009; Laboratorio Clínico y Bacteriológico de Lares on November 9, 2009; Laboratorio Clínico Ortega, Naranjito, on January 4, 2010; Jardín de Oro, Guaynabo, on May 18, 2010; Clinica Dental Dra. Janet Diaz, Yauco, on May 18, 2010; IBG PSP Orthodontic, Guaynabo, on May 18, 2010; and Garaje Gil, Vega Alta, on September 1, 2010.

In total, there are 20 establishments participating in the Safety and Health Achievement Recognition Program.

## **Mandated Activities Report for Consultation (MARC) (Private Sector)**

Total Visits: PROSHA conducted a total of 141 consultation visits in FY 2010.

### Percent of Initial Visits in High Hazard Establishments (MARC 1):

118 of the 139 “initial” visits conducted during FY 2010, or 84.89%, were to establishments under the State’s definition of high hazard establishments. The reference point is no less than 90%. PROSHA continues to promote its onsite consultation service, but is somewhat at the mercy of those employers who seek its services.

### Percent of Initial Visits to Smaller Businesses (MARC 2)

PROSHA conducted 139 out of 139 “initial” visits to smaller establishments (less than 250 employees), for a 100%. The reference point is no less than 90%.

PROSHA conducted 132 out of its 139 “initial” visits to smaller establishments (less than 500 employees), for a 94.96%. The reference point is no less than 90%.

### Percent of Visits where Consultants Conferred with Employees (MARC 3)

PROSHA conferred with employees on consultation visits 100% of the time for both “initial visits (139) and follow-up visits (1). There were no training & assistance visits in FY 2010. Reference point is 100%.

### Percent of Serious Hazards Verified Corrected in a Timely Manner (MARC 4a):

A total of 647 serious hazards were identified during FY 2010, of which 627 hazards, or 96.91%, were verified corrected in a timely fashion. PROSHA has made significant progress towards meeting the 100% timely verification measure (as compared to previous evaluation periods).

### Percent of Serious Hazards not verified corrected in a timely manner (MARC 4b):

Thirteen (13) of the 647 serious hazards issued, or 2.01%, were not verified corrected in a timely manner. PROSHA has conducted training for its consultants and re-emphasized the importance of timely hazard correction. PROSHA has acted appropriately in its efforts.

### Percent of Serious Hazards referred to enforcement (MARC 4c):

Seven (7) of the 647 serious hazards, or 1.08%, were referred to enforcement after employers failed to correct them during the consultation process.

### Percent of Serious Hazards verified corrected (in original time or onsite (MARC 4d):

Four-hundred eighty-nine (489) of the 647 serious hazards, or 75.58%, were verified corrected.

OSHA Recommendation MARC's a-d: PROSHA must ensure timely hazard correction by continuing its efforts to evaluate abatement certifications received from employers and entering the data into IMIS.

Number of Uncorrected Serious Hazards past 90 days (MARC 5)

PROSHA had no outstanding uncorrected serious hazards past 90 days.

### **Mandated Activities Report for Consultation (MARC) (Public Sector)**

Total Visits: PROSHA conducted seven (7) consultation visits in the public sector during FY 2010 (all were classified as "initial" visits).

Percent of Initial Visits in High Hazard Establishments (MARC 1):

Two (2) "initial" visits, or 28.57%, were coded as high hazards establishments.

Percent of Initial Visits in Smaller Businesses (MARC 2):

All seven (7) "initial" visits, or 100%, were conducted in establishments with less than 250 employees.

Four (4) of the 7 "initial" visits, or 57.14%, were conducted in establishments with less than 500 employees.

Percent of Visits where Consultation Conferred with Employees (MARC 3):

PROSHA conferred with employees on all consultation visits (100% of the time). Reference point is 100%. There were follow up and no training & assistance visits in FY 2010. Reference point is 100%.

Percent of Serious Hazards Verified Corrected in a Timely Manner (MARC 4a):

Thirty-two (32) of 62 serious hazards identified, or 51.61%, were corrected in a timely fashion. There was a decrease of 31.0% during this period compared to FY 2009 (82.61%).

Percent of Serious Hazards not verified corrected in a timely manner (MARC 4b):

Nineteen (19) of the 62 serious hazards issued, or 30.65%, were not verified corrected in a timely manner.

Percent of Serious Hazards referred to enforcement (MARC 4c):



Eleven (11) of the 62, or 17.74% of serious hazards were referred to enforcement after employers failed to correct them during the consultation process.

Percent of Serious Hazards verified corrected (in original time or onsite (MARC 4d):

Eleven (11) of the 62, or 17.74% of serious hazards were verified corrected.

OSHA Recommendation MARC’s a-d: PROSHA must ensure timely hazard correction by evaluating the abatement certification received from the employer and entering the data into IMIS.

Number of Uncorrected Serious Hazards past 90 days (MARC 5)

As of the end of the fiscal year, PROSHA had no outstanding uncorrected serious hazards past 90 days.

**Program Administration**

Complaints About State Program Administration (CASPs)

No CASPs were received during the evaluation period.

**VI. Assessment of State Progress in Achieving Annual Performance Goals**

**A. PROSHA Strategic Goal 1**

**Performance Goal 1.1.1A** Achieve 1% reduction from baseline measure of the most prevalent injuries/illnesses in the Printing, Publishing and Allied Industry.

Year	TRC (OSHA300) Rate	% Change	BLS TRC Rate	% Change	BLS DART Rate	% Change
2007	3.0	Baseline	4.1	Baseline	3.7 (CY 2006 Rate)	Baseline
2008	3.5	17% Increase	4.3	5% Increase	3.9 (CY 2007 Rate)	5% Increase
2009	1.7	43% Decrease	3.8	7.3% Decrease	3.5 (CY 2008 Rate)	5% Decrease
2010	1.2	60% Decrease	4.0	2.4 % Decrease	4.0 (CY 2009 Rate)	8% Increase

During FY 2010 PROSHA’s Bureau of Inspections (BI) identified 81 establishments to which the LEP Directive would apply. The Bureau of Inspections conducted 28 visits, seven (7) inspections and twenty-one (21) attempts. As a result of these inspections, four (4) establishments were cited with a total of 11 violations classified as follows: 7 serious violations and 4 “other violations”. Eight (8) related violations to the Printing, Publishing and Allied Industry were issued of the 7 inspections conducted.

The first baseline was established at 3.0 Total Recordable Cases Rate reported in the OSHA 300 Forms for FY 2007 with data provided by the employers of the Printing, Publishing and Allied Industry targeted by PROSHA.

The second baseline is the injury data for the NAICS group obtained from the Bureau of Labor Statistics (BLS) using the calendar year of 2007. The Total Recordable Injury Rate was 1.2 and the third baseline is the DART Rate established as 4.0. PROSHA met the goal of 1% reduction from baseline, thus, had an increase of .3 in the DART Rate.

Performance Goal 1.1.1B Achieve 1% reduction from baseline measure of the most prevalent injuries/illnesses in the Metal Doors and Windows Industry.

Year	TRC (OSHA300) Rate	% Change	BLS TRC Rate	% Change	BLS DART Rate	% Change
2007	9.2	Baseline	7.1	Baseline	5.8 (CY 2006 Rate)	Baseline
2008	*No Data	*No Data	6.9	3% Decrease	5.7 (CY 2007 Rate)	2% Decrease
2009	5.6	39% Decrease	4.4	38% Decrease	3.5 (CY 2008 Rate)	40% Decrease
2010	5.5	40% Decrease	5.6	21% Decrease	5.0 (CY 2009 Rate)	14% Decrease

\*No data available due to no inspections at the Metal Doors and Windows Industries.

During FY 2010 PROSHA’s Bureau of Inspections (BI) identified 20 establishments to which the LEP Directive applied. The Bureau of Inspections conducted 16 visits, 13 inspections and three (3) attempts. As a result of these inspections, seven (7) establishments were cited with a total of 32 violations classified as follows: 15 serious violations and 17 “other violations”. Thirteen (13) related violations to the Metal Doors and Windows Industries were issued of the 13 inspections conducted.

The second baseline is the injury data for the NAICS group of fabricated metal product manufacturing, obtained from the Bureau of Labor Statistics (BLS) using the calendar year of 2007. The Total Recordable Injury Rate was 5.6 and the third baseline was the DART Rate was 5.0. PROSHA met the goal of 1% reduction from the baseline.

Performance Goal 1.1.1C Achieve an additional 2% reduction from baseline measure of the most prevalent injuries/illnesses in the Warehousing and Storage Industry.

Year	TRC (OSHA300) Rate	% Change	BLS TRC Rate	% Change	BLS DART Rate	% Change
2008	2.1	Baseline	5.0	Baseline	4.5 (CY 2007 Rate)	Baseline
2009	4.2	100% Increase	3.7	26% Decrease	3.3 (CY 2008 Rate)	27% Decrease
2010	2.3	10% Increase	4.6	8 % Decrease	4.2 (CY 2009 Rate)	7% Decrease

During FY 2010 PROSHA's Bureau of Inspections (BI) identified 353 establishments to which the LEP Directive applied. The Bureau of Inspections conducted 156 visits, 111 inspections and 45 attempts. As a result of these inspections, 49 establishments were cited with a total of 338 violations classified as follows: 180 serious violations and 158 "other violations". One-hundred and twenty-nine (129) related violations to the Warehousing and Storage Industry were issued of the 111 inspections conducted.

The second baseline is the injury data for the NAICS group of the NAICS 493110 and 493120 group of the Warehousing and Storage Industry obtained from the Bureau of Labor Statistics (BLS) using the calendar year of 2007. The Total Recordable Injury Rate was 4.6 and the third baseline was the DART Rate was 4.2. PROSHA exceeded the goal of 2% reduction from the baseline based on BLS TRC and DART rates.

Performance Goal 1.1.1D Achieve an additional 1% reduction from baseline measure of the most prevalent injuries/illnesses in the Public Water Treatment Plant Industry.

Year	TRC (OSHA300) Rate	% Change	BLS TRC Rate	% Change	BLS DART Rate	% Change
2008	17	Baseline	11.5	Baseline	9.8 (CY 2007 Rate)	Baseline
2009	5.3	69% Decrease	* No data		* No data	
2010	3.9	77% Decrease	* *No data		**No data	

\* No data available from BLS because it is too small to be displayed for CY 2009. The BLS baseline was established in 2008 for this industry.

\*\* No data available from BLS because it is too small to be displayed at the time of SOAR write up.

The Local Emphasis Program Directive to target the Water Treatment Plant Industry (PROSHA Instruction CPL 2-0.0802) was issued on June 20, 2008. PROSHA Bureau of Inspections (BI) identified 157 establishments to which the Local Emphasis Program Directive applied. During FY 2010 PROSHA Bureau of Inspection conducted 57 visits, 38 inspections and 19 attempts. As a result of these inspections, 24 establishments were cited with a total of 115 violations classified as follows: 77 serious violations, 14 repeats, and 24 "other violations".

Using the data reported in the OSHA 300 Forms for FY 2007 and the data collected

directly from the employers of the Public Water Treatment Plant Industry targeted by PROSHA, the baseline was established at 17 Total Recordable Cases Rate.

The second baseline is the injury data for the NAICS group of the Public Water Treatment Plant Industry, obtained from the Bureau of Labor Statistics using the calendar year of 2007. The Total Recordable Injury Rate was 11.5. The third baseline was the DART Rate established as 9.8. PROSHA exceeded the goal of 1% reduction from the baseline based on TRC Rate (OSHA 300). No data was available for this NAICS group from BLS TRC and DART rates to compare with baselines from FY 2008.

Performance Goal 1.1.2 Decrease an additional 1% of the fatality rate in the construction industry by focusing on the four leading causes of fatalities (falls; struck by; crushed by; electrocutions & electrical injuries).

Year	Number of Fatalities	Workforce	Fatality Rate	% Change From Baseline
2006	12	89,000	1.35 (CY 2005 Rate)	Baseline
2007	13	94,000	1.38 (CY 2005 Rate)	2% Increase
2008	11	82,000	1.34 (CY 2005 Rate)	1% Decrease
2009	8	68,000	1.17 (CY 2005 Rate)	13% Decrease
2010	2	54,000	0.37 (CY 2005 Rate)	73% Decrease

During FY 2010, the fatality rate was calculated at 0.37 per 10,000 employees (*2 fatalities ÷ 54,000 workers*) ÷ *10,000 employees*).

PROSHA continued to maintain a successful program initiative such as the Door to Door in the Construction Industry initiative. The Door to Door initiative is used to promote safety and health on-site consultation visits in the construction projects throughout the Island. Those general contractors accepting to participate in this initiative should agree to abate all the hazards identified, receive three additional consultation visits in a year, and post a banner in a conspicuous place in the project, which reads as follows: “PROSHA is Safety”; one (1) new site was approved during FY 2010; five (5) construction projects are participating in this initiative.

Other PROSHA efforts regarding this goal included training sessions in the following areas:

- ◆ Excavations, Aguadilla
- ◆ PPE in the Construction Industry, Aguadilla
- ◆ Safety and Health in the Construction Industry, San German
- ◆ Fall Protection, Guayama
- ◆ Welding and Cutting in the Construction Industry, Ponce
- ◆ Electrical Safety in the Construction Industry, Guayama

The participation in these training sessions was as follows: 1,381 employer's representatives, and 922 employees. A total of two-hundred ninety-nine (299) booklets of informational materials were distributed in these trainings.

Formal training sessions were delivered in six (6) of the thirty-eight (38) onsite consultation visits where eight (8) employer representatives and 145 employees were trained.

During FY 2010, thirty-eight (38) on-site consultation visits were conducted in construction workplaces resulting in seventy-nine (79) hazards from 157 identified were notified to the employers and were related to the four (4) leading causes of fatalities in construction.

## **B. PROSHA Strategic Goal 2**

Performance Goal 2.1.1A Achieve an additional 40% of targeted employers in general industry that have either implemented an effective safety and health program or improved their existing program.

The Annual Performance Goal 2.1.1A for FY 2010 was exceeded. Through comprehensive inspections, coupled with training and technical assistance, 568 of the 910 general industry establishments inspected either implemented a safety and health program or improved their existing program for a 62.4% success rate. The success rate is a 22.4% increase compared to the 40% goal for FY 2010.

In addition, as part of the Program's effort, the Division of Voluntary Programs delivered three open training sessions on how to develop or improve an effective safety and health program. The participation in these training sessions included 98 employer representatives, 50 employees, 48 students, and nine persons from the general public. A total of 68 booklets of Safety and Health Guidelines for Programs Development were delivered in the training sessions.

Performance Goal 2.1.1B Achieve a 75% of targeted employers in general industry that have implemented an effective safety and health program or improved their existing program.

During FY 2010, the Division of Voluntary Programs conducted one hundred and ten (110) on-site consultation visits to employers in the general industry. Seventy (70) out of one hundred and ten (110) employers requesting consultation service implemented an effective safety and health program or improved their existing one. Sixty-three (63%) of the employers impacted by the on-site consultation visit developed or improved their safety and health program. The annual performance goal of 75% was not met, however in comparison with the 2007 baseline (59%) the goal was surpassed by 4%.

Performance Goal 2.2.2A Provide training to employers and workers on the skills necessary for effective worker involvement in safety and health matters for 75% of employers inspected or provided consultations in the Printing, Publishing and Allied Industry

PROSHA exceeded the goal. For FY 2010 PROSHA Bureau of Inspections conducted seven (7) training sessions out of (7) inspections conducted; forty-nine (49) employers and workers received training on the skills necessary for effective worker involvement in safety and health matters, for a 100%.

Performance Goal 2.2.2B Provide training to employers and workers on the skills necessary for effective worker involvement in safety and health matters for 75% of employers inspected or provided consultations in the Metal Doors and Windows Industry.

PROSHA exceeded the goal. For FY 2010 PROSHA Bureau of Inspections conducted thirteen (13) training sessions out of (13) inspections conducted; forty-nine (49) employers and workers received training on the skills necessary for effective worker involvement in safety and health matters, for a 100%.

Performance Goal 2.2.2C Develop and provide training to employers and worker on the skills necessary for effective worker involvement in safety and health matters for 75% of employers inspected or provided consultations in the Warehousing and Storage Industry.

PROSHA exceeded the goal. For FY 2010 PROSHA Bureau of Inspections conducted 111 training sessions out of 111 inspections conducted; forty-nine (49) employers and workers received training on the skills necessary for effective worker involvement in safety and health matters, for a 100%.

Performance Goal 2.2.2D Develop and provide training to employers and workers on the skills necessary for effective worker involvement in safety and health matters in for 75% of employers inspected or provided consultations in the Water Treatment Plant Industry in the Public Sector.

PROSHA exceeded the goal. For FY 2010 PROSHA Bureau of Inspections conducted 38 training sessions out of 38 inspections conducted; thirty-eight (38) employers and workers received training on the skills necessary for effective worker involvement in safety and health matters, for a 100%.

Performance Goal 2.3.1 Develop and disseminate occupational safety and health training and reference materials to 100% private workplaces identified as Hardware Stores.

PROSHA met the 100% goal to disseminate occupational safety and health training and reference materials to the Hardware Stores. In support of this goal, the Voluntary Programs Division developed one booklet - Safety and Health in the Hardware Industry - to be disseminated to training participants, employers visited to provide on-site consultation services, and to those that request informational materials in our office.

Five (5) open training sessions on the Safety and Health Guidelines for the Hardware Stores were delivered in Hato Rey on April 5, 2010, in Arecibo on April 9, 2010, in Gurabo on April 14, 2010, in Ponce on April 22, 2010 and in Cabo Rojo on April 23, 2010. The participation in these trainings was as follows: thirty-two (32) employer

representatives, seven (7) employees, twenty-seven (27) students and four (4) from the general public. A total of seventy (70) booklets were distributed in these training sessions.

The Voluntary Programs Division conducted three (3) on-site consultation visits, in which twenty-three (23) hazards were identified and notified to the employers.

**Appendix A**  
**New and Continuing Recommendations**

N/A - PROSHA has adequately addressed all recommendations from the 2009 EFAME and no new issues have been identified.



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09-1	<ul style="list-style-type: none"> <li>a) PROSHA had a significant number of open cases with unsatisfied overdue abatement.</li> <li>b) There was a lack of case file documentation in situations where CSHOs observed the abatement of cited hazard(s) during the inspection.</li> <li>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).</li> </ul>	<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"> <li>a) Each Area Director (AD) was instructed to run weekly the standard reports and take the appropriate action.</li> <li>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.</li> <li>c) PROSHA will audit adherence with this process by the end of the third quarterly of 2011.</li> </ul>	<ul style="list-style-type: none"> <li>a) As of 10/06/2010 the ADs are running standard reports on a weekly basis, and are making the corrections.</li> <li>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.</li> <li>c) PROSHA plans to audit the status of abatement management by performed by June 30, 2011.</li> </ul>	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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				Procedures Manual was given on October 15 and 21, 2010.  PROSHA plans to audit the process by the end of the third quarterly of 2011.	
<b>09-3</b>	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.	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.  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.	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.
<b>09-4 09-5 09-6</b>	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	09-4. Implement internal controls such as supervisory review and final approval before complaint investigation (non-formal complaints) and complaint inspections are closed.  09-5. In cases in which complaint	09-4: Area Directors were instructed to use the ACE and Standard reports to track all complaint investigations.  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.  09-6: ADs were instructed to	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.  ADs were instructed to	Completed.

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	satisfy were still running as the date the response letter was received had not been entered into the IMIS.	09-6. inspections are not opened in a timely manner - make a notation in the file 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.	make the pertinent notations in the daily case diary. On October 6, 2010 the Assistant 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.	make notations in the daily case diary to verify all the documents of the case before the CSHO enters the information in the system.  PROSHA plans to audit these issues by the end of the third quarter 2011.	
<b>09-7</b>	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.	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).	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.  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.  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	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.  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	Completed.

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			and immediately send the appropriate letters.	November 16 <sup>th</sup> to the 24 <sup>th</sup> , 2010 by OSHA Training Institute.  PROSHA plans to audit this issue by the end of the third quarter 2011.	
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.	The Area Directors retrained CSHOs on this matter in January of 2011.  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.  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.  As of 1/21/2011; CSHOs were trained on the compliance policies and procedures relating to documenting willful violations as established in the FOM.	Completed.

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<b>09-9</b>	<p>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 approval was only requested in one case.</p>	<p>Ensure that the PROSHA policy of notifying the Bureau of Inspections before granting penalty reductions in excess of 50% is followed.</p>	<p>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>	<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, PROSHA has set a policy which stipulates that all citations related to the fatality can not entail a penalty reduction.</p>	Completed.
<b>09-10</b>	<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>	<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.</p>	<p>Re: Willful Citations - see Finding, Recommendation, Response and Status for 09-8.</p>	<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</p>	Completed.

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				conducted in Puerto Rico from November 16th to the 24th, 2010 by OSHA Training Institute	
<b>09-11</b>	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.	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.  As of December 13, 2010, the ADs were trained on the FOM policy relating to Union/Employee Representative involvement during and after inspections.  As of January 21, 2011, the ADs trained the CSHOs on the FOM policy relating to Union/Employee Representative involvement during and after inspections.	Completed.
<b>09-12</b> <b>09-13</b>	The 2009 EFAME noted that in 10 of the 40 safety inspections case files evaluated, there was not enough evidence to support the	09-12 Provide training to all Supervisory and field staff regarding documentation on	See State Action Taken.	As of 12/13/2010, the ADs were trained on the FOM policy relating to documentation in the 1B	Completed.

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09-14	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>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 prima facie requirements.</p> <p>09-14 See Recommendations 09-9 and 09-10.</p>		<p>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>	

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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: <ul style="list-style-type: none"> <li>◆ Ensuring that appropriate abatement periods are assigned for unabated violations.</li> <li>◆ Ensuring that all</li> </ul>	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>abatement information accepted satisfies the order to comply prior to the closing the case.</p> <ul style="list-style-type: none"> <li>♦ For cases with CDI (Corrected during Inspection), ensuring that the file documents the method of abatement and that the CSHO observed the abatement.</li> </ul>		trained the CSHOs on the compliance policies and procedures to ensure that abatement issues are handled in accordance with the new FOM	
<b>09-17 18</b>	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>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</p>	9-17 and 9-18 See State Action Taken.	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.	Completed

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		for PMAs and should implement internal controls, such as supervisory review and approval to ensure that PMA requirements are met before granting PMAs.		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 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	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.

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			periodically reviews the Violation Abatement Report, to follow up on the Area Director's actions.		
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
09-21	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.	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.	See State Action Taken.	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.  Area Directors were instructed to follow these instructions in April, 2010.	Completed.  PROSHA plans to audit this issue in late FY2011 or late FY 2012.

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				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.	
09-22	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.	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.	See State Action Taken.	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.  Also, each Area Director was retrained in the compliance policies and procedures as established in the new FOM. That training was completed on 12/13/2010.	Completed.
09-23	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	PROSHA must review its debt collection process procedures and institute changes necessary to ensure timely resolution of debt	See State Action Taken.	As of 12/13/2010, the ADs were trained on the compliance policies and procedures to ensure the timely processing of debt	Training was completed.  Pending. Regarding

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	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.	collection cases and to ensure timely processing of such cases at the Area Office level.		<p>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 its authority to collect unpaid penalties, from sending and mailing</p>	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.

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				<p>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>	
<b>09-24</b>	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>	<p>Completed.</p> <p>PROSHA plans to audit IMIS/OIS late in FY 2011 or early in FY 2012.</p>

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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 been corrected, but when the Area IMIS clerks check, the problem persists. And the IMIS clerks provides follow-up until the problem is corrected. 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.  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.	Completed
09-26	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.	Area Offices must review and update draft forms on a periodic basis.	See State Action Taken.	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	Completed

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				forms.  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.	
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.	The Area Directors were instructed on October 6, 2010 to track and ensure OSHA 31 forms are being completed weekly.  Since October 29, 2010 all CSHOs are required to submit 31 forms on a weekly basis.  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.	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	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.	On October 6, 2010 the Area Directors were instructed to run case audit reports every two weeks and take the appropriate action.  The IMIS clerk continues working with IMIS reports	Completed



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	processes. Two hundred fifty eight (18%) of the open cases are contested.			to correct any problems.	
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 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.	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 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>	Completed

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09-30	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.	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	See State Action Taken.	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.	Completed.
09-31	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	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.	See State Action Taken.	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 interviewing employees during their consultation visits.	Completed.

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	visit.			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.	
09-32	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.	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.	See State Action Taken.	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.  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-	Completed

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				00-002 in this regard.	
<b>09-33</b>	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.

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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.	<p>As of 06/30/2010:  A letter template was developed to inform the employers about the results of the follow up consultation visits.</p> <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>	Completed.
09-35 09-36	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	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	See State Action Taken.	09-35 On October 4, 2010, the Director of the Bureau of Technical Assistance and the Director of Voluntary Programs	Completed.

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	forth in CSP-02-00-002. Additionally, a comprehensive safety and health hazard survey was not conducted in 2 cases.	<p>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>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>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</p>	

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				Manual was given on October 15 and 21, 2010. The Director of Voluntary Programs gives follow up to compliance with this requirement.	
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, 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>	Completed.

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09-38	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.	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.	See State Action Taken.	<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 February 24, 2011 to</p>	Completed (pending completion of Discrimination Manual described above).



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				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</p>	Completed.

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				organized.	
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

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
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.	<p>In September 2010 the Complaint Questionnaire was revised and is included in the PROSHA Instruction DIS 0-0.9 amended Discrimination Manual.</p> <p>On October 15, 2010, all the investigators were trained and 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</p>	Completed

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09-44	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.	It is suggested that all investigators adopt the screening checklist used by some investigators to help identify all elements, timeliness, and jurisdiction.	See State Action Taken.	<p>on February 24, 2011 to Carol Tiedeman and Steve Kaplan, and was written in the CAP.</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 forms, including the screening checklist. Also, when the investigators send the cases once an investigation is over, the BI checks the entire case.</p>	Completed.

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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 applicants until very recently (i.e. during FY 2010)	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 evaluation.	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 PSM Questionnaire requirement	Completed.

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				were informed of the requirement. The Director of Voluntary Programs follows up with sites to ensure compliance with this requirement.	
09-49	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>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>	See State Action Taken.	<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>	Completed.

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09-50	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. 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.	Implement internal controls to assure that time intervals for re-approval evaluations, as outlined in OSHA Instruction TED 8.1, must be adhered to.	See State Action Taken.	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.	Completed.
09-51	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.	PROSHA should create a system that includes written acknowledgements and ensures that VPP on-sites are scheduled within six (6) months of application acceptance.	See State Action Taken.	As of 6/30/2010 The Director of Voluntary Programs developed an acknowledgment letter to be sent to employers when VPP applications are received.	Completed.
09-52	The 2009 EFAME identified the gap between existing training status and the requirements of TED 01-00-018.	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".	See State Action Taken.	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	Completed.

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				<p>2002, but was changed to IH in February 2009.</p> <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>	



Appendix C  
Enforcement Comparison

**Puerto Rico State Plan  
FY 2010 Enforcement Activity**

	PR	State Plan Total	Federal OSHA
<b>Total Inspections</b>	<b>1,462</b>	<b>57,124</b>	<b>40,993</b>
Safety	1,058	45,023	34,337
% Safety	72%	79%	84%
Health	404	12,101	6,656
% Health	28%	21%	16%
Construction	462	22,993	24,430
% Construction	32%	40%	60%
Public Sector	435	8,031	N/A
% Public Sector	30%	14%	N/A
Programmed	572	35,085	24,759
% Programmed	39%	61%	60%
Complaint	396	8,986	8,027
% Complaint	27%	16%	20%
Accident	16	2,967	830
Insp w/ Viols Cited	753	34,109	29,136
% Insp w/ Viols Cited (NIC)	52%	60%	71%
% NIC w/ Serious Violations	62%	62.3%	88.2%
<b>Total Violations</b>	<b>2,826</b>	<b>120,417</b>	<b>96,742</b>
Serious	1,279	52,593	74,885
% Serious	45%	44%	77%
Willful	12	278	1,519
Repeat	50	2,054	2,758
Serious/Willful/Repeat	1,341	54,925	79,162
% S/W/R	49%	46%	82%
Failure to Abate	29	460	334
Other than Serious	1,456	65,031	17,244
% Other	52%	54%	18%
Avg # Violations/ Initial Inspection	3.4	3.4	3.2
<b>Total Penalties</b>	<b>\$3,959,011</b>	<b>\$ 72,233,480</b>	<b>\$ 183,594,060</b>
Avg Current Penalty / Serious Violation	\$ 1,224.10	\$ 870.90	\$ 1,052.80
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 959.80	\$ 1,018.80	\$ 1,068.70
% Penalty Reduced	54.1%	47.7%	40.9%
<b>% Insp w/ Contested Viols</b>	<b>25.2%</b>	<b>14.4%</b>	<b>8.0%</b>
Avg Case Hrs/Insp- Safety	19.3	16.2	18.6
Avg Case Hrs/Insp- Health	29.2	26.1	33
Lapse Days Insp to Citation Issued- Safety	53.7	33.6	37.9
Lapse Days Insp to Citation Issued- Health	62.4	42.6	50.9
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	260	1,715	2,510

## Appendix D

### Puerto Rico State Activity Mandated Measures (SAMM) Report

<i>State Activity Measures (SAMMs)</i>			
Measure	Reference	FY10	FY11 1 <sup>st</sup> Quarter
1. Avg days to Initiate Cmp Inspections	5 days/ 5 days Strat Goal	<b>5.37</b>	<b>2.76</b>
2. Average days to Initiate Cmp Investigations	1 day	<b>0.24</b>	<b>0.42</b>
3. % Complaints where complainants were notified on time	100%	<b>98.47%</b>	<b>98.06%</b>
4. % Complaints/referral responded within 1 day - Imminent Danger	100%	<b>100%</b>	<b>100%</b>
5. # Denials where entry not obtained	0	<b>0</b>	<b>0</b>
6. % SWR verified abated within abatement date plus 30 days			
Private	100%	<b>96.67%</b>	<b>84.54%</b>
Public	100%	<b>87.64%</b>	<b>72.22%</b>
7. Avg. days from opening conference to Citation Issuance			
Safety	47.3	<b>72.24</b>	<b>82.31</b>
Health	61.9	<b>88.55</b>	<b>101.07</b>
8. % Programmed Inspections with SWR Violations			
Safety	58.3%	<b>42.47%</b>	<b>35.61%</b>
Health	50.9%	<b>54.0%</b>	<b>80.0%</b>
9. Avg. Violations per inspections with violations			
S/W/R	2.1	<b>1.85</b>	<b>1.76</b>
Other	1.2	<b>1.52</b>	<b>1.55</b>

## Appendix D

### Puerto Rico State Activity Mandated Measures (SAMM) Report

<i>State Activity Measures (SAMMs)</i>			
Measure	Reference	FY10	FY11 1 <sup>st</sup> Quarter
10. Avg. Initial Penalty per Serious (Private Sector Only)	\$1,361.3	<b>\$1,228.0</b>	<b>\$1,049.31</b>
11. % of Total Inspections in Public Sector	100%	<b>29.75%</b>	<b>26.07%</b>
12. Avg. Contest Lapse Time	215.1	<b>198.75</b>	<b>180.34</b>
13. % 11c Cases completed within 90 days	100%	<b>100%</b>	<b>100%</b>
14. % 11c meritorious cases	21.2%	<b>14.29%</b>	<b>33.33%</b>
15. % 11c meritorious cases settled	85.9%	<b>.00%</b>	<b>100%</b>

# Appendix E

## Puerto Rico State Indicator Report (SIR)

Q4 SIR 72 101007 093319 PROBLEMS - CALL Yvonne Goodhall 202 693-1734

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### OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

INTERIM STATE INDICATOR REPORT (SIR)

STATE = PUERTO RICO

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	5298 62.4 8493	201 70.0 287	11403 63.8 17860	298 63.5 469	21912 65.1 33647	487 59.4 820	43788 65.9 66434	997 59.8 1666
B. HEALTH	488 30.6 1597	5 10.6 47	1094 33.7 3249	13 13.4 97	2232 35.0 6378	15 8.3 180	4202 35.1 11960	27 8.3 325
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	4663 72.7 6413	84 50.9 165	9421 71.2 13232	142 49.8 285	17649 69.1 25525	238 48.0 496	34350 67.1 51214	550 50.8 1082
B. HEALTH	451 57.8 780	4 28.6 14	880 53.9 1632	5 31.3 16	1756 55.4 3168	6 16.7 36	3238 53.4 6066	19 29.2 65
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	17341 81.6 21261	210 49.6 423	33678 81.5 41304	413 48.0 860	62211 81.0 76839	762 48.8 1560	117447 80.1 146593	1513 48.4 3126
B. HEALTH	3233 69.6 4645	43 42.6 101	6183 70.5 8776	104 52.3 199	11743 70.2 16725	171 47.5 360	21554 69.6 30947	292 45.6 641
4. ABATEMENT PERIOD FOR VIOLS								

## Appendix E

### Puerto Rico State Indicator Report (SIR)

	3054	12	6515	22	12732	41	25040	63
A. SAFETY PERCENT >30 DAYS	15.0	5.1	16.3	4.9	17.2	5.0	17.7	3.8
	20398	234	39855	451	74010	823	141219	1660
	255	0	633	1	1406	7	2977	11
B. HEALTH PERCENT >60 DAYS	5.6	.0	7.3	.7	8.5	3.4	9.6	3.3
	4548	50	8681	136	16580	204	30862	337

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

INTERIM STATE INDICATOR REPORT (SIR)

STATE = PUERTO RICO

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
OTHER-THAN-SERIOUS	587112	67752	1106734	138677	2038916	245154	3500911	451108
	837.5	559.9	803.1	554.7	894.3	511.8	967.6	495.2
	701	121	1378	250	2280	479	3618	911
B. HEALTH								
OTHER-THAN-SERIOUS	249175	20950	434447	31050	732953	61570	1039303	105295
	817.0	675.8	801.6	705.7	835.8	648.1	842.2	615.8
	305	31	542	44	877	95	1234	171
6. INSPECTIONS PER 100 HOURS								
A. SAFETY	9778	377	20529	613	38849	1102	76136	2172
	5.8	4.7	5.7	3.7	5.5	3.6	5.5	3.7
	1679	81	3593	164	7112	308	13925	591
B. HEALTH	1864	112	3844	229	7547	450	14276	806
	2.1	2.7	2.0	2.6	1.9	2.8	1.8	2.9
	908	42	1940	89	3898	159	8070	282
7. VIOLATIONS VACATED %	1123	21	2474	31	5103	63	10425	151
	3.7	4.4	4.3	3.3	4.7	3.8	5.0	4.3
	29962	473	57441	936	108213	1674	207527	3485
8. VIOLATIONS RECLASSIFIED %	844	39	1978	89	4276	151	9196	330
	2.8	8.2	3.4	9.5	4.0	9.0	4.4	9.5

## Appendix E

### Puerto Rico State Indicator Report (SIR)

	29962	473	57441	936	108213	1674	207527	3485
9. PENALTY RETENTION %	15767907	217827	30073309	345762	57457651	685074	111052615	1295093
	64.5	60.4	63.9	61.0	63.0	53.8	62.8	51.4
	24439885	360908	47032897	567238	91194322	1272886	176868726	2518767

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

INTERIM STATE INDICATOR REPORT

STATE = PUERTO RICO

	----- 3 MONTHS-----	----- 6 MONTHS-----	----- 12 MONTHS-----	----- 24 MONTHS-----
PERFORMANCE MEASURE	PRIVATE	PUBLIC	PRIVATE	PUBLIC

D. ENFORCEMENT (PUBLIC SECTOR)

1. PROGRAMMED INSPECTIONS %

	201	3	298	6	487	10	997	14
A. SAFETY	70.0	4.1	63.5	5.2	59.4	4.8	59.8	3.8
	287	73	469	115	820	207	1666	368
	5	5	13	19	15	41	27	55
B. HEALTH	10.6	9.1	13.4	17.3	8.3	18.5	8.3	13.3
	47	55	97	110	180	222	325	415

2. SERIOUS VIOLATIONS (%)

	210	30	413	98	762	147	1513	278
A. SAFETY	49.6	34.5	48.0	45.2	48.8	36.5	48.4	36.7
	423	87	860	217	1560	403	3126	757
	43	87	104	135	171	222	292	419
B. HEALTH	42.6	52.7	52.3	47.7	47.5	46.1	45.6	39.0
	101	165	199	283	360	482	641	1074

## Appendix E

### Puerto Rico State Indicator Report (SIR)

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = PUERTO RICO

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
<b>E. REVIEW PROCEDURES</b>								
1. VIOLATIONS VACATED %	610 22.5 2709	42 31.1 135	1134 23.2 4888	80 30.0 267	2052 21.9 9366	128 30.1 425	3827 23.0 16668	181 24.8 729
2. VIOLATIONS RECLASSIFIED %	306 11.3 2709	34 25.2 135	585 12.0 4888	65 24.3 267	1100 11.7 9366	140 32.9 425	2217 13.3 16668	209 28.7 729
3. PENALTY RETENTION %	4940512 65.3 7563023	36273 15.2 238725	7526155 62.3 12074308	52873 12.2 432175	12856359 58.1 22143463	62048 10.2 608850	23378285 58.4 40052611	106896 10.1 1060925

## **Appendix F**

**Puerto Rico State OSHA Annual Report (SOAR)**

**(available separately)**