

**Appendix A**  
**FY 2009 Puerto Rico State Plan (PROSHA) Enhanced FAME Report prepared by Region II**  
**Summary of Findings and Recommendations**

<b>Special Study Findings – State Activity Mandated Measures (SAMM)</b>		<b>Recommendations</b>
<b>1</b>	PROSHA has a significant number of open cases with unsatisfied overdue abatement. (p.3)	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 11(c) investigators to better recognize and document serious hazards.
	There was a lack of case file documentation in situations where CSHOs observed the abatement of cited hazard(s) during the inspection. (p.4)	
	Employers, who requested additional time to correct hazards after the citations were issued, did not provide the required information that will allow PR OSHA to correctly grant a Petition for Modification of Abatement Date (PMA). (p.4)	
<b>Special Study Findings – Mandated Activities Report for Consultation (MARC)</b>		<b>Recommendations</b>
<b>2</b>	Forty-one of the 760 serious hazards issued, or 5.39%, were not verified corrected in a timely manner. (p.27)	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)
<b>3</b>	PROSHA conducted a total of 23 private-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%. (p.28)	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. (Rec-3 move to place in order)
<b>Special Study Findings – Complaint Investigation</b>		<b>Recommendations</b>
<b>4</b>	<i>Complaint tracking (non formal complaints: This report is used to determine if complaints need to be closed that are still open. Four (Mayaguez, Arecibo, Ponce and San Juan) of the 6 Area Office reports reflect several open non formal complaint investigations. These reports should be reviewed and those investigations that are still open where satisfactory responses were received, should be marked closed. Additionally, in several instances there are a number of cases which are closed, but the days to satisfy are still running as the date the response letter was received was not entered into the IMIS. (p.65)</i>	Implement internal controls such as supervisory review and final approval before complaint investigation (non-formal complaints) and complaint inspections are closed.
<b>5</b>		In cases in which complaint inspections are not opened in a timely manner - make a notation in the file explaining the delay.
<b>6</b>		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.
<b>Special Study Findings – Fatality Investigation</b>		<b>Recommendations</b>
<b>7</b>	A total of 16 fatality case files were reviewed by the OSHA BSE Team. There was no evidence of “next of kin” notification letters in 7 of the case files reviewed and, in 2 case files, notification of enforcement action could not be found either. (p.35)	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).
<b>8</b>	In another case file, there was no apparent attempt to document whether a fall protection violation of was willful when the contractor had been cited for the same violation approximately three years earlier. There were no notes in the case file indicating the employer was asked the basic questions that are asked when pursuing a willful violation. (p.35)	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.

<b>Special Study Findings – Fatality Investigation</b>		<b>Recommendations</b>
9	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 PR OSHA’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.4)	Ensure that the PROSHA policy of notifying the Bureau of Inspections before granting penalty reductions in excess of 50% is followed.
10	<i>In reference to a specific case file review:</i> There was evidence in the case file that would indicate that no attempt was made to evaluate whether the violation was willful. This should have been explored, given the employer was cited for excavation hazards in early 2006. There is also no documentation in the file that indicates the employer was ever interviewed. In this case, the resulting serious citation was issued with a low severity designation for the possible resulting injury with a corresponding injury of death. The injury designation should have been High severity with the corresponding higher penalty. (p.35)	It also is recommended that training be provided to all field staff, including supervisory staff, to ensure proper violation classification.
<b>Special Study Findings – Employee &amp; Union Involvement</b>		<b>Recommendations</b>
11	Eighty-two case files were reviewed consisting of 40 safety files and 42 health files. 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. (p.48)	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.
<b>Special Study Findings – Citations &amp; Penalties</b>		<b>Recommendations</b>
12	In 10 of the 40 safety inspections case files evaluated, there was not enough evidence to support the violation. In addition, in 17 case files where various General Duty Clause citations were issued, the citation did not conform to the documentation requirements, as per the PROSHA Field Operations Manual. In 10 of the case files, the violations do not appear to have been classified appropriately. (p.49)	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 violations as described in PROSHA’s FOM (OSHO Instruction CPL 2.45C, April 2000; Chapter IV).
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.
14		See Recommendations 9 and 10
15	<i>In reference to a specific health case file reviewed:</i> In another case, there was evidence that there had been needle stick injuries at the 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. (p.54)	On a case-by-case basis; CSHOs and supervisors should evaluate whether to expand un-programmed partial inspections to a comprehensive scope.

<b>Special Study Findings – Abatement</b>		<b>Recommendations</b>
16	Local 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 are past due. (p.54)	<p>Provide additional training to all field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established policy including:</p> <ul style="list-style-type: none"> <li>• Ensure appropriate abatement periods are assigned for unabated violations.</li> <li>• Ensure that all abatement information accepted satisfies the order to comply prior to closing the case.</li> <li>• For cases with CDI (Corrected during Inspection), ensure that the file documents the method of abatement and that the CSHO observed the abatement.</li> </ul>
17	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.56)	<p>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>
18		<p>PROSHA should train all appropriate personnel on the FOM requirements for PMAs and should implement internal controls, such as supervisory review and approval to ensure that PMA requirements are met before granting PMAs.</p>
19	<p>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.</p> <p>These 283 cases represent a total of 1034 cited hazards of which 184 have been abated leaving 850 (or 82%) unabated. In addition, the study identified an additional 344 cases which have unabated violations prior to October 1, 2008. (p.54)</p>	<p>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.</p>
20	Page 55 outlines some instances where Failure to Abate (FTA) violations may have been issued.	<p>Ensure that Failure To Abate notices are issued where appropriate.</p>
<b>Special Study Findings – Contested Cases</b>		<b>Recommendations</b>
21	There were 11 health cases reviewed with informal conferences (IFC). In two cases there were no notes of the IFC. In 10 cases there was no evidence that either union or employee representatives were notified and afforded an opportunity to participate in the informal conference. (p.59)	<p>Relating to informal conferences, PROSHA representatives must thoroughly document the following in the case file: The fact that notification to the parties of the date, time and location of the informal conference was made; indicate the date the informal conference was held in the diary sheet; at the conclusion of the conference, all main issues and potential courses of action must be summarized and documented.</p>
22	In the event that a case is contested PROSHA area offices forward the cases directly to the "legal division" rather than trying to settle post contest. PROSHA's FOM allows that formal settlements can occur at the area office level. (p.60)	<p>PROSHA Area Offices should be allowed to attempt to settle cases, including those which would result in formal settlement agreements, before sending contested cases to PROSHA's in house Counsel for settlement.</p>

<b>Special Study Findings – Debt Collection</b>		<b>Recommendations</b>
<b>23</b>	During the special study it was determined that there are a significant number of open inspections (344) that are in the debt collection process at the Legal Division. In addition, through analysis of PROSHA’s debt collection report, there are currently 107 cases at PROSHA offices that are overdue for debt collection action. (p.61)	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.
<b>Special Study Findings – Information Management (IMIS)</b>		<b>Recommendations</b>
<b>24</b>	<i>Pages 62 through 65 detail specific data management issues that should be addressed.</i>	PROSHA must ensure that the IMIS management reports identified with potential vulnerabilities are accurately and timely 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.
<b>25</b>	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. (p.62)	Area Offices must correct rejected forms promptly and if they experience problems and cannot correct the form they should contact OMDS for assistance.
<b>26</b>	A total of 476 draft forms were found for five offices. Although the majority are recent, there are a few deficiencies in saving forms to final. (p.63)	Area Offices must review and update draft forms on a periodic basis.
<b>27</b>	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. (p.63)	Area Offices must track and ensure OSHA 31 Forms are being completed in a timely manner.
<b>28</b>	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. There are a number of open inspections where abatement is complete but still remain open. (p.64)	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.
<b>29</b>	<i>Debt Collection Report:</i> 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 department 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.

<b>Special Study Findings – Consultation Program</b>		<b>Recommendations</b>
30	In ten (10) of eleven (11) cases, the employer requested an extension but does not give the reasons why nor do they describe interim protective measures. (p.70)	PR OSHA 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.
31	Overall, only 5% of employees were interviewed (114 interviewed out of 2,187 employees covered in the cases reviewed for the audit). Where visits were conducted at worksites with labor representation, there is no evidence in the case files that labor officials were contacted or were offered the opportunity to participate in the consultation visit. (p.70)	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.
32	Only one health file in audit sample had industrial hygiene sampling conducted (The Audit included: 11 Health, 8 visits coded as “Both” which means that both Safety and Health issues were addressed). In the one case in audit sample where sampling was done, pre/post calibration of audio-dosimeters and the sound level meter was not accomplished. (p.71)	Health consultants should be reminded of the importance of evaluating health hazards found in the workplace. PR OSHA must also ensure that ALL consultants conducting health visits have the required competencies, meeting the intent of Appendix K of CSP 02-00-002.
33	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. (p.71)	It is highly 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.
34	The appropriate documentation was not found for follow-up visits and this absence was verified by the Director of Voluntary Programs. (p.72)	PR OSHA must document ALL visits in writing as required by the CSP 02-00-002.
35	Two of the four SHARP files reviewed indicated that these employers were not eligible to be SHARP participants because their Form 33 scores did not meet the criteria set forth in CSP-02-00-002. Additionally, a comprehensive safety and health hazard survey was not conducted in 2 cases. (p.72)	PR OSHA 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.
36		Form 33 refresher training should be provided for existing staff and full Form 33 training provided for new staff members.
<b>Special Study Findings – Discrimination Program</b>		<b>Recommendations</b>
37	<i>Pages 74 through 75 outline a number of case file documentation and organization issues.</i>	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. Actual 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. This will also be of great assistance to supervisors, the Program Manager and the Counsel.
38	Interviews of investigators and supervisors revealed a lack of understanding and confusion and the appeals process, and the procedures for merit cases. (p.75)	PROSHA needs to 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.

<b>Special Study Findings – Discrimination Program</b>		<b>Recommendations</b>
39	The reviewers found numerous formats, styles, and organization of the Final Investigative Reports. (p.75)	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.
40	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. (p.75)	Investigators should be granted access to Whistleblower IMIS so that they may better track their cases.
41	Interviews revealed that several investigators wanted a team leader or another contact who investigators may ask legal, procedural, or substantive questions. (p.75)	It is suggested that PROSHA assign a team leader or contact who investigators may ask legal, procedural, or substantive questions.
42	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. (p.75)	It is suggested that PROSHA managers look in to the plausibility of having two (2) full-time 11(c) investigators, instead of spreading the works among CSHOs. This would allow for efficiency, timeliness, depth of understanding, and morale among CSHOs.
43	Of the reviewed files, only two case files contained a Complainant Questionnaire (p.75)	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.
44	Several investigators during interviews stated that they used screening checklists that help to identify all elements, timeliness, and jurisdiction. Several of these were located in case files and were a great resource for the investigators to timely and efficiently screen complaints. (p.75)	It is suggested that all investigators adopt the screening checklist used by some investigators to help identify all elements, timeliness, and jurisdiction.
45	The reviewers found numerous formats, styles, and organization of the Final Investigative Reports. (p.75)	PROSHA should follow the Federal Manual's template for Final Investigative Reports.
46	The Secretary's Findings were form letters that only stated the element that was missing and gave appeal rights. Basic information was missing such as the allegation, defense, timeliness, jurisdiction, and all elements. (p.75)	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.
47	Of the reviewed twenty-six cases, twenty-two of the OSHA-87 forms were signed by the CSHO, one was unsigned, and only three were signed by the Supervisor. (p.75)	The supervisor should sign off on all OSHA-87 forms.
<b>Special Study Findings – VPP</b>		<b>Recommendations</b>
48	PR OSHA has 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) (p.78)	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.

<b>Special Study Findings – VPP</b>		<b>Recommendations</b>
<b>49</b>	<p>The VPP team leader must have a Medical Access Order (MAO) that can be used to 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 provision and/or other device is available for PR OSHA staff to allow access to confidential employee medical records to ensure that recordkeeping is accurate. (p.78)</p>	<p>PR OSHA 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.</p>
<b>50</b>	<p>There were two VPP participants that were approved in 2004 and 2005 respectively that did not have their first re-approval visits within the required 42 month period.</p> <p>Additionally, there are three existing VPP sites, initially approved in 1998, where the interval between the date of their penultimate and their last VPP re-approval evaluation exceeded 60 months. (p.79)</p>	<p>Implement internal controls to assure that time intervals for re-approval evaluations, as outlined in OSHO Instruction TED 8.1, must be adhered to.</p>
<b>51</b>	<p>There are no written acknowledgments sent to employers regarding receipt of the application and/or acceptance of the application. There is no tracking mechanism to track these dates to ensure that all VPP applications were acknowledged within the 5 day period and that VPP on-sites were scheduled within 6 months of application acceptance. (p.79)</p>	<p>PROSHA should create a system that includes written acknowledgements and ensures that VPP on-sites are scheduled within six (6) months of application acceptance.</p>
<b>Special Study Findings – CSHO Training</b>		<b>Recommendations</b>
<b>52</b>	<p>This study has identified the gap between existing training status and the requirements of the TED. (p.81)</p>	<p>Develop and implement a comprehensive training plan to provide mandatory training for CSHOs to bring them up to the minimum training standards established in OSHA Instruction TED-01-00-018 “Initial Training Program for OSHA Compliance Personnel”.</p>