



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

**Enhanced Federal Annual Monitoring Evaluation (FAME) Baseline Special
Evaluations (BSE) Report
October 1, 2008 - September 30, 2009**

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

TABLE OF CONTENTS

<u>I. EXECUTIVE SUMMARY.....</u>	<u>- 1 -</u>
Summary of the Report.....	- 1 -
Findings and Recommendations	- 3 -
<u>II. STATE'S PROGRESS TOWARD ACHIEVING ITS STRATEGIC PLAN PERFORMANCE GOALS.....</u>	<u>- 8 -</u>
Inspection Activities.....	- 9 -
Mandated Activities.....	- 9 -
<u>III. PUERTO RICO STATE PLAN PROFILE.....</u>	<u>- 10</u>
-	
<u>IV. SUMMARY OF RECOMMENDATIONS AND STATE ACTIONS FROM FY 2008 FAME.....</u>	<u>- 12 -</u>
<u>V. MAJOR NEW ISSUES.....</u>	<u>- 15 -</u>
<u>VI. ASSESSMENT OF STATE PERFORMANCE.....</u>	<u>- 15 -</u>
Inspection Activity.....	- 16 -
Public and Private Sector Consultation Activity.....	- 16 -
Door to Door in Construction.....	- 16 -
PROSHA's Progress Toward Attaining its Strategic Goals.....	- 16 -
Assessment of State Performance on Mandated and Other Related Activities	- 24 -
Training and Education Program	- 26 -
Mandated Activities Report for Consultation	- 27 -
Public Sector Consultation	- 28 -
<u>VII. SUMMARY OF FY 2009 BSE.....</u>	<u>- 29 -</u>
Stakeholder Contact	- 29 -
BSE.....	- 31 -
Case File Review	- 33 -
Fatalities	- 35 -
Targeting/Inspections.....	- 36 -
BLS Rates (Illness, Injury and Fatality)	- 38 -
Employee and Union Involvement.....	- 48 -
Citations and Penalties	- 49 -
Abatement.....	- 54 -
Review Procedures.....	- 57 -
Debt Collection	- 61 -
Public Employee Program	- 62 -
Information Management	- 62 -
<u>VIII. FEDERAL PROGRAM/STATE INITIATED CHANGES.....</u>	<u>- 67 -</u>
Standards Adoption	- 67 -
State Initiated Changes.....	- 68 -
Variances.....	- 69 -
<u>IX. CONSULTATION ACTIVITIES.....</u>	<u>- 69 -</u>
Private Sector Consultation.....	- 69 -
Public Sector Consultation	- 69 -
Consultation Program Review	- 69 -
<u>X. DISCRIMINATION PROGRAM.....</u>	<u>- 73 -</u>
<u>XI. COMPLAINTS AGAINST STATE PROGRAM ADMINISTRATION (CASPA).....</u>	<u>- 77 -</u>
<u>XII. VOLUNTARY COMPLIANCE PROGRAMS.....</u>	<u>- 77 -</u>
VPP Review	- 77 -
Process Safety Management (PSM).....	- 78 -
Employer Eligibility.....	- 78 -
Excessive time intervals between VPP onsite evaluations.....	- 79 -
VPP Application Processing and Tracking.....	- 79 -
<u>XIII. PROGRAM ADMINISTRATION.....</u>	<u>- 81 -</u>
CSHO Training.....	- 81 -

APPENDIX A Summary of Findings and Recommendations

APPENDIX B FY 2009 ENFORCEMENT ACTIVITY

APPENDIX C FY 2009 SOAR (available separately)

APPENDIX D FY 2009 Micro-to-Host Reports

I. EXECUTIVE SUMMARY

Summary of the Report

This report assessed the Puerto Rico Occupational Safety and Health Administration's (PROSHA) progress towards achieving the performance goals established in their Federal Fiscal Year (FY) 2009 Annual Performance Plan and reviewed the effectiveness of programmatic areas related to enforcement activities during the period of October 1, 2008 to September 30, 2009.

The report indicates the need for improvement in many of the operating practices of the Puerto Rico enforcement program to meet Federal effectiveness criteria. Continued close Federal monitoring and increased technical assistance may be needed to effect the necessary improvements in the Commonwealth's program.

PR OSHA conducted 1,334 inspections in FY 2009 and conducted 168 public and private sector consultation visits. (Puerto Rico operates its private sector consultation program under its 23(g) State Plan grant.) Among the problems identified in the report are:

- Insufficient safety and health compliance officer (CSHO) training. A number had not taken the Initial Compliance (#1000) course or other core courses.
- Abatement is not tracked, verified or documented; abatement modifications are granted without required information.
- Victims' families are not contacted and are not provided copies of citations.
- Fatalities are not fully investigated to determine cause or willfulness.
- Hazards are not cited; violations are not properly documented or classified.
- The General Duty clause is the most frequently cited standard as it is used to enforce the Commonwealth's Workplace Domestic Violence law, with 80% of the violations being other-than-serious (contrary to Federal practice of General Duty violations always being serious).
- Penalties are reduced more than 50% at informal conference without the required Director's approval.
- Post contest formal settlement is not attempted; all contested cases are immediately referred to the legal division. Many open cases are in debt collection. Sixty percent of these cases are public employers who, beginning in 2002 are subject to monetary penalties.
- Data is not entered and IMIS reports are not used to manage the program.
- Employees are not interviewed, health hazards are not evaluated, extensions of correction dates are granted without documentation, and follow-up visits are not documented in the private sector consultation program.
- SHARP exemption status was granted to ineligible employers.
- Discrimination case files lack documentation and findings are presented via form letters. CSHOs conduct investigations as a collateral duty and do not understand the appeals process nor do they have access to the IMIS whistleblower application. The report suggests that PROSHA should consider establishing a dedicated discrimination investigation staff.

The annual performance plan results, reported by PROSHA in the territory's OSHA Annual Report (SOAR), indicate that the program has made advancements towards achieving its strategic goals. Evaluation of goal achievement or significant progress toward goal accomplishment has been reviewed, and the results are identified in this report.

The Special Study also identified major program strength's achieved by PROSHA. The PROSHA program has been effective in reducing injuries, illnesses, and fatalities in the industries that have been targeted in their strategic plan. Responses and notifications to complainants were within accepted parameters and explained the findings of complaint investigations and the inspection results. PROSHA's total violations per inspection and current average penalty per serous violation compared favorably to the Federal program.

PROSHA Plan Background

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, longshoring, shipbuilding and ship repairing, as well as the United States Postal Service (USPS) and all federal agencies, including military facilities, which remain under federal jurisdiction. Safety and health issues in the public sector (Commonwealth and local government) are fully covered by PROSHA.

The PROSHA program contains provisions for the issuance of monetary penalties for public employers found not to be in compliance with applicable standards.

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.

In FY 2009, Puerto Rico continued across-the-board cost cutting measures instituted during FY 2008. As a result of an early retirement initiative coupled with a hiring freeze, PR OSHA lost approximately 27% of its enforcement personnel including three Area Directors, ten Compliance Safety and Health Officers and three Consultants as well as two of the three OSHA attorneys that handled contested cases and debt collection procedures. As a cost cutting measure, the Puerto Rico Government instituted two administrative recesses totaling four days during FY 2009. Furthermore, a 2008 hiring freeze has lead to several staffing losses through attrition. The PROSHA program, which does not have final approval status, operates under unadjusted 1980 staffing benchmarks of 23 safety and 34 health staff members. Their allocated staff is 33 safety/15 health with 25 safety/13 health currently on board.

Study Methodology

This Baseline Special Evaluation (BSE) of the PROSHA's State Program covers the period of October 1, 2008 through September 30, 2009 (Fiscal Year 2009). The BSE included a comprehensive examination of PROSHA's program including enforcement, consultation services, Voluntary Protection Programs, and the Discrimination (29(a)) Program.

The special study audit was conducted on site at the PROSHA main office in Hato Rey, Puerto Rico

during February 17, 2010 through February 26, 2010 and also on March 3rd, March 4th and March 8th, 2010. The audit team consisted of six members.

The OSHA team's evaluation consisted of case file reviews, interviews of PROSHA staff, reviews of the programs including key statistical analysis and areas of interest identified by stakeholders. In addition, the study focused on areas not recently reviewed, such as the outcome of PROSHA contested cases and settlement procedures.

The special study of the PROSHA program focused mainly on FY09 enforcement activities however, in certain instances, such as IMIS data evaluation, activities from more recent time frames were reviewed.

This report is also an assessment of the State's progress toward achieving its performance goals established in the 2009 Annual Performance Plan and to review the effectiveness of programmatic areas related to enforcement and consultation activities.

BSE Findings and Recommendations

Findings:

Program strengths:

- The PROSHA program has been effective in reducing injuries, illnesses, and fatalities in the industries that have been targeted in their strategic plan.
- Timeliness of responses and notifications to complainants for the majority of the complaint investigations and inspections were within accepted parameters.
- Responses to Complainants explaining the findings of complaint investigations and inspection results were included in all complaint case files reviewed.
- PROSHA's total violations per inspection and current average penalty per serious violation compared favorably to the Federal program.
- Case files evaluated generally contained the OSHA forms required.

During the BSE, a number of significant challenge areas were identified that will need to be resolved by PROSHA in FY 2010. These include:

- Fatality Investigations – Next of Kin Letters: In approximately 40% of fatality investigations reviewed there was no evidence the required next of kin letters were sent.
- Union and Employee Involvement: PROSHA's staff has not always documented that they afforded employees and/or employee representatives the requisite opportunities to participate during enforcement and on-site consultation activities including: the ability to accompany the CSHO during physical inspections of the workplace for the purpose of aiding the inspection or consultation visit; attendance at opening and closing conferences; and the opportunity for involvement in the final settlement of enforcement cases.
- Abatement of hazards: PROSHA has a significant number of open cases with unsatisfied overdue abatement.

There was a lack of case file documentation in situations where CSHOs observed the abatement of cited hazard(s) during the inspection. There was no evidence in these case files to ascertain if identified hazards that were corrected during the inspections were actually corrected in the appropriate manner and employees were protected from the hazard.

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). Missing information in the PMA requests included: notification of employees that the employer requested an extension; certification that the PMA request was posted for employees to see; and a description of the interim protection measures taken by the employer to safeguard employees during the extension periods.

Similarly, employers who received PROSHA's on-site consultation services were inappropriately granted extensions of their correction due dates for the hazards found during consultation visits. No evidence was provided to PROSHA that these employers were safeguarding employees against the hazard with interim protection measures during these extension periods.

- Case settlement: 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. Penalty reductions ranged from 42.5% to 100% with an average penalty reduction of 60%. In two cases reviewed, the cost of abatement by employer was incorrectly used as the basis to reduce the penalty amount to \$0 and violations were reclassified from "Serious" to "Other than Serious".

Some cases were missing informal conference notes including the basis for the settlement reached with the employer.

- Recognition and Exemption Programs - Employer Eligibility: PROSHA does not have an adequate mechanism for verifying employers' eligibility to be VPP Participants. No Medical Access Order provision and/or other devices are available for PROSHA staff to allow access to confidential employee medical records to ensure that the employer's OSHA recordkeeping is accurate. PROSHA has not adopted nor implemented procedures for VPP applicants and participants to ensure that employers are in compliance with OSHA's Process Safety Management Standard.

With respect to the OSHA Safety and Health Achievement Recognition Program (SHARP), the OSHA BSE Team found that 50% of the SHARP employers in the audit sample were ineligible to be in SHARP and should not have been granted exemptions from programmed inspections.

- Debt Collection – During the special study it was determined that there are a significant number of open inspections that are in the debt collection process at the Legal Division. Due to the fiscal situation of the government in Puerto Rico, most of the penalties imposed on public agencies are not being paid, as the agencies do not have the funds to do so. As a result, there has been a significant rise in debt collection cases in Legal Division since 2002. 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.

- General Duty Clause - PROSHA inappropriately used the General Duty Clause [Section 6(a)(1) of the PR OSH Act 16] in situations where a specific standard or regulation has already been promulgated and adopted. Where the General Duty Clause was used, all of the case file documentation required by PROSHA's "Field Operations Manual" (FOM) was not present in the case file.

PROSHA approved a Domestic Violence Instruction to expedite employer compliance with Act No. 217 of September 29, 2006. That law requires employers to develop and implement protocols and conduct training for the handling of domestic violence issues in their worksites. This Instruction allows PROSHA to cite with the General Duty Clause and classify as "Other-than-serious". PROSHA should cite and code this as a local law rather than using the "General Duty Clause" for this purpose.

- Adherence to adopted procedures and protocols: The OSHA BSE Team found that case file documentation, procedures for citing citation items "in the alternative"; methodology for calculation of penalties, and organization of case files deviated significantly from PROSHA's "Field Operations Manual."
- Data Management – The OSHA BSE Team found that standardized reports from the Integrated Management Information System (IMIS) revealed problematic issues with outstanding debt collection, unsatisfied violation abatement, and length of time that inspections have been open, etc. that will need to be addressed systematically by PROSHA.
- Union and Employee Involvement: PROSHA must develop procedures and protocols to ensure that employees and representatives of employees are fully involved in enforcement and other related activities.
- Abatement of hazards: CSHOs, supervisors, and Area Directors need to be retrained about the importance of documenting the abatement of cited hazard(s) that occur(s) during the inspection. Evidence should be added to these case files to document that identified hazards were actually corrected in the appropriate manner and that employees were protected from the cited hazard.
- PROSHA must follow its own procedures for granting a Petition for Modification of Abatement Date (PMA) and ensure that all required information is obtained and reviewed. Similarly, a process needs to be implemented for extension of the correction dues dates for hazards found during on-site consultation visits.
- Case settlement: The existing policy for granting penalty reductions that result in more than a 50% reduction of the total for all penalties initially proposed (after any deletions or any reclassification) only upon after approval of PROSHA's Bureau of Inspections' Director must be adhered to

Recommendations:

The following represent OSHA's significant recommendations - Similar or grouped recommendations are described and the recommendation number for individual recommendations are noted.

BSE Enforcement (see Recommendation 1)

The recognition and correction of workplace hazards could be enhanced through increased management oversight and through improved staff training. PROSHA needs to ensure that high hazard worksites are appropriately targeted and that serious hazards found in the workplace are properly identified and promptly corrected.

Consultation (see Recommendation 2-3)

Ensure timely hazard abatement by improvements in management oversight including periodic review of appropriate management reports.

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..

Complaint Inspections (see Recommendations 4-6)

The supervisory review process for complaint investigations should be strengthened to ensure that complaint items are adequately addressed and complaints are handled in a timely manner.

Fatalities (see Recommendations 7-10)

Improvements are needed in procedures pertaining to handling fatality cases and include: making the appropriate communication to the family of victims (i.e., "next of kin" letters); providing training to all field staff on the proper procedures for addressing employer's affirmative defenses as well as training about proper citation classification (including those for willful violations); and ensuring that penalty reductions are in accordance with established PROSHA policy.

Employee / Union Involvement (see Recommendation 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.

Citations and Penalties (see Recommendations 12-13)

Training should be provided to staff to ensure that correct methodologies for citing hazards are being followed. Improvements should be made in the case file review process to ensure that all issued violations meet prima facie requirements.

Apparently Missed Violations (see Recommendations 14-15)

CSHOs and supervisors should evaluate whether to expand unprogrammed partial inspections to a comprehensive scope.

Abatement (see Recommendations 16-20)

Internal controls need development to assign appropriate abatement timeframes for unabated violations which also will require supplementary staff training. Additionally, Petitions for Modification of Abatement (PMA) procedures must be strictly adhered to, requiring that additional internal controls be developed by PROSHA.

Settlement and Review Procedures (see Recommendations 21-22)

Informal conference records should be improved to better document that proper settlement procedures are being followed. In order to expedite the settlement of contested cases, PROSHA should consider letting Area Offices settle these cases before they are sent to in-house counsel for processing.

Debt Collection (see Recommendation 23)

PROSHA must review its debt collection process procedures and institute the changes necessary to ensure timely resolution of debt collection cases and ensuring timely processing of such cases at the Area Office level.

Information Management (see Recommendations 24-29)

PROSHA must ensure that all required data is entered into the IMIS system in an accurate and timely manner. Data that must be entered correctly includes: finalized OSHA data forms; time utilization data; abatement information; penalty collection information; and case settlement information.

Consultation Program Review (see Recommendations 30-36)

Procedures in PROSHA's Consultation Policies and Procedures Manual should be strictly adhered to including procedures for: extended correction due dates; interviewing employees during visits; evaluating health hazards; documenting follow-up visits; determining eligibility for recognition and exemption programs; and properly using forms to document the effectiveness of employers' safety and health programs.

Discrimination Program (see Recommendations 37-47)

Protection provided to "whistleblowers" could be bolstered through better administrative procedures and through increased staff training on the subject. Additionally, the assignment of full time discrimination staff would allow for greater efficiency, timeliness, and depth of understanding for the program.

VPP (see Recommendations 48-50)

VPP procedures could be strengthened by improving documentation and by following established procedures related to the timely scheduling of VPP on-site evaluations. For those VPP applicants and sites covered by the Process Safety Management Standard (PSM), procedures should be implemented to ensure that these sites have fully compliant PSM programs. Additionally, employers' recordkeeping must be thoroughly reviewed by PROSHA to ensure that only eligible employers are in the program

CSHO Training (see Recommendation 51)

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".

Significant Issues

During FY 2009, the Commonwealth of Puerto Rico continued with across-the-board cost cutting austerity measures instituted during FY 2008. These measures, which also applied to PROSHA, included early retirement legislation and a hiring freeze. PROSHA lost thirteen enforcement personnel due to early retirement during this period including three Area Directors, seven Compliance Safety and Health Officers and three Consultants.

II. STATE'S PROGRESS TOWARD ACHIEVING ITS STRATEGIC PLAN PERFORMANCE GOALS

PROSHA's Strategic Plan for FY 2009 consisted of three 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 four 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); Public Sewage and Water Treatment Plants (Goal 1.1.1D). This goal was exceeded in all four targeted industries.

In addition, under Goal 1.1.2, PROSHA strived to decrease the fatality rate by an additional 1% in the construction industry by focusing on the four leading causes of fatalities (falls; struck by; crushed by; electrocutions & electrical injuries). This goal was exceeded..

PROSHA's 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 eight performance sub-goals which were met or exceeded.

Performance goal 2.1.1A aimed to achieve a 27% rate 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. This goal was exceeded by 9%.

Performance goal 2.1.1B aimed to achieve a 69% 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 exceeded by 39%.

Performance goal 2.2.1 aimed to include worker involvement in 100% of PROSHA's initiatives. This goal was met.

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 for all industries (100% provided training).

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.

PROSHA's Goal #3 aimed to secure public confidence through excellence in the development and delivery of PROSHA's programs and services. This goal consisted of three sub goals including: Initiating inspections in at least 90% of fatalities and catastrophes within one working day (3.1.1); initiating investigation of worker non-formal complaints within 1 working day or conducting an on-site inspection of a formal complaint within 5 working days in 90% of the cases (3.1.2); and completing investigation of 95% of discrimination cases within 90 days (3.1.3). PROSHA exceeded all of these sub goals.

Inspection Activities

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 and consultation outcome was slightly below the projected goal for FY 2009. A total of 1,334 inspections were conducted in FY 2009. This was 20.5% lower than their planned goal of 1,679 inspections. The State's consultation activities were 8.7% below the number planned for FY 2009. PROSHA projected 184 visits (150 private; 34 public) and conducted 168 (145 private; 23 public). PROSHA has lost 13 compliance officers (approximately 27% of its enforcement resources) due to early retirement which was a significant contributing factor to the State Plan not meeting its goals.

Mandated Activities

State Activity Mandated Measures (SAMM): PROSHA performed satisfactorily relating to the eight of the fifteen established mandated enforcement measures discussed in this report. Outliers include: percent of serious hazards verified corrected in a timely manner; average number of calendar days from opening conference to citations issued (lapse time); percent of programmed inspections where serious, willful or repeat violations were issued; average initial penalty; average violation per inspection; average lapse time from receipt of contest to first level decision; percent of meritorious 11(c) complaints that are settled.

Mandated Activities Report for Consultation (MARC) Private Sector: PROSHA performed satisfactorily relating to four of the five established mandated consultation measures. The only outlier was the percent of serious hazards verified corrected in a timely manner.

Mandated Activities Report for Consultation (MARC) Public Sector: PROSHA performed

satisfactorily relating to two of the five established mandated consultation measures. There were three outliers; percent of initial visits in high hazard establishments; percent of serious hazards verified corrected in a timely manner and percent serious hazard verified corrected in original time or onsite.

III. 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: 207,856 employees
- Private Sector: 821,490 employees
- Total: 1,029,346 employees

Operational Grant:

- FY 2009 Federal Share: \$ 2,396,200
 - FY 2009 State Share: \$ 2,396,200
 - FY 2009 100% State Funds: \$ 5,457,800
 - Total FY 2009 Grant: \$ 10,250,200
- For FY 2009, PROSHA's initial total 23(g) grant amount was \$10,250,200, which included federal/state matching funds of \$2,396,200 and state overmatch funds of \$5,457,800.

Plan Benchmark Staffing

- Safety Enforcement: 23
- Health Enforcement: 34

Allocated Staff

- Safety Enforcement: 33
- Health Enforcement: 15
- Consultation: 9

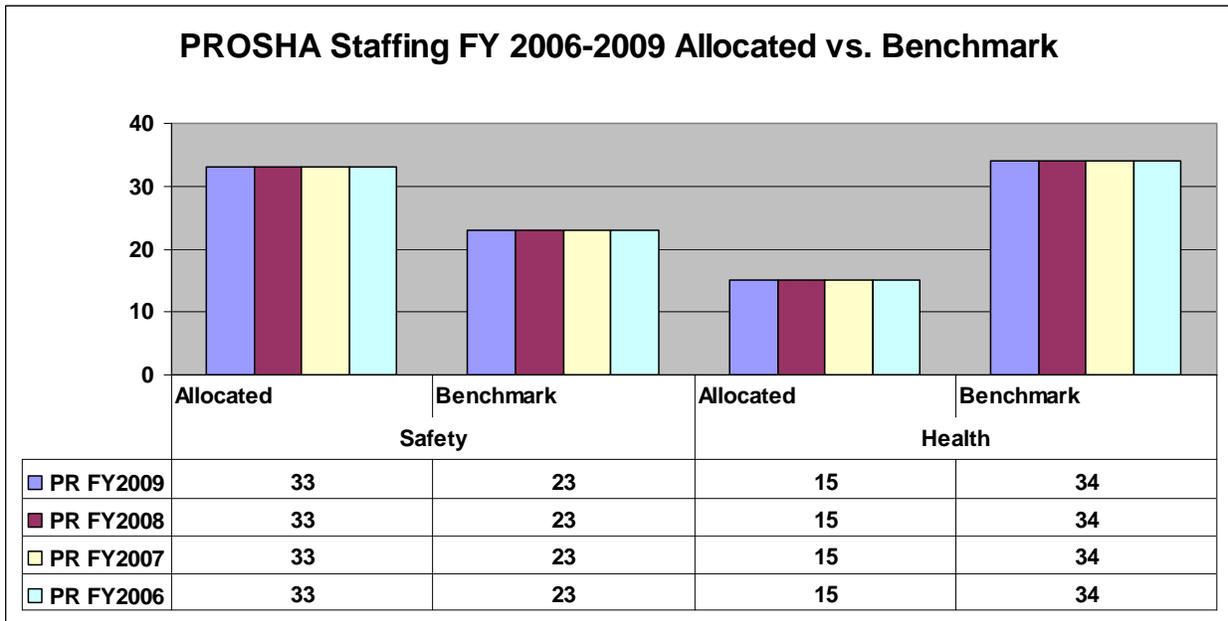
- Total Staff (all full time only): 135

Actual Staffing in FY 2009

- Safety Enforcement: 25
- Health Enforcement: 13
- Consultation: 6
- Total Staff (all full time only): 112

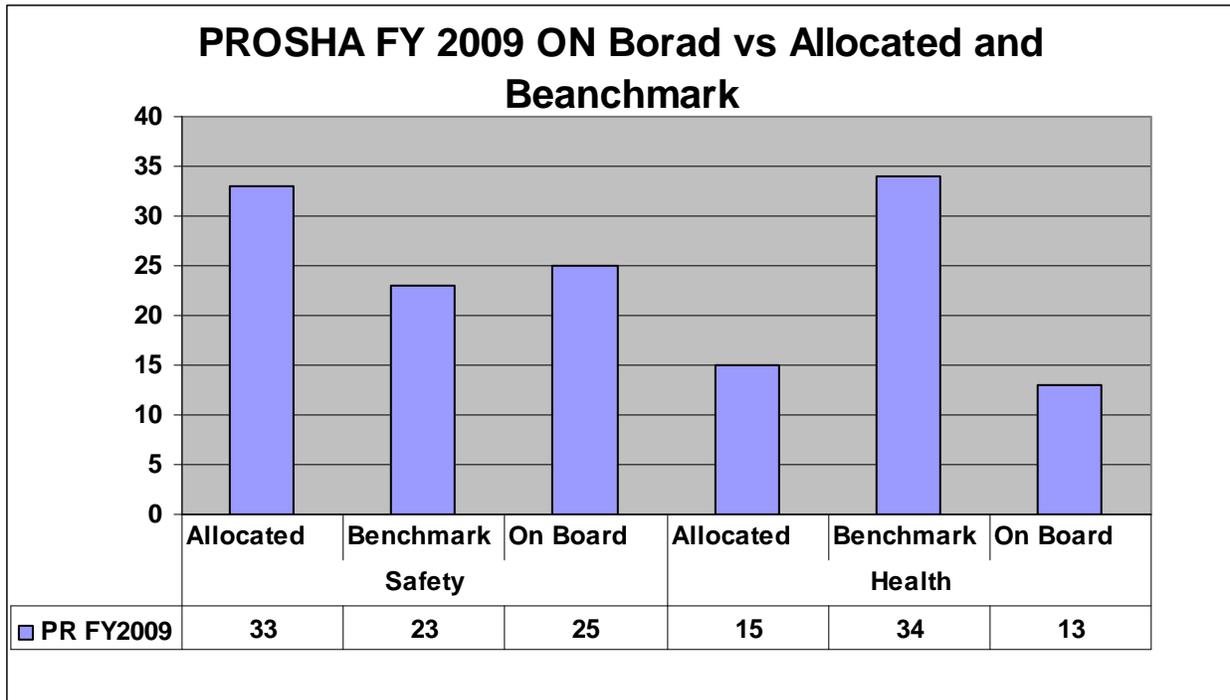
See Charts below:

Allocated Staff vs. Benchmarks for FY 2009



¹ Source: PROSHA FY 2009 Grant Application Appendix B – Exhibit VI Personnel Funding Breakout Chart – 23(g)

Total Number of CSHOs on Board – FY 2009



¹ Source: PROSHA FY 2009 Grant Application Appendix B – Exhibit VI Personnel Funding Breakout Chart – 23(g)

IV. SUMMARY OF RECOMMENDATIONS AND STATE ACTIONS FROM FY 2008 FAME

OSHA Recommendation #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: PROSHA should continue improving the inspection targeting system, in order to identify the more hazardous worksites.

State Action/Response: PROSHA gave instructions to the Bureau of Enforcement Director and all the Area Directors to look at the available information such as, but not limited to, BLS, State Insurance Fund Corporation and evaluate the industry trends in each area office, to continue improving the inspection targeting system.

OSHA Findings: PROSHA was successful in achieving this goal during FY 2009, achieving a 43% reduction in Total Case Incidence Rate (TCIR) from the baseline rate of 3.0 which was established in FY 2007

OSHA Recommendation #2 (SMM 2): Average number of days to initiate Complaint Investigations: PROSHA must ensure complaint investigations are initiated in a timely manner in order to meet the one day response goal.

State Action/Response: PROSHA identified and corrected a data entry error in two area offices on the third quarter in FY2008. The significant deviations were discussed with the Bureau of Inspections Sub-director and the Area Directors and they were provided instructions on how to correct data entry errors without delay. Also, Area Directors provided refresher training to inspectors on the complaint policies and procedures established in PROSHA.

OSHA Findings: During FY 2009, the average number of days to initiate complaint investigations

was reduced to 0.14 days.

OSHA Recommendation #3: (SAMM 3): Percent of Complaints where Complainants are notified on time. PROSHA must ensure timely complainant notification by evaluating the case file before issuing citations and entering the data into IMIS. This recommendation should be followed in order for all complainants to be notified in a timely manner and to meet the reference standard.

State Action/Response: This item is evaluated in the analysis of the quarterly report and recommendations are sent to the areas by the Bureau of Inspections Director to be followed up with and corrected. Training sessions were delivered to the PROSHA compliance officers: hazards recognition and "What we find when reviewing the case files?"

OSHA Findings: During FY 2009 complainants were notified of the inspection results in a timely manner in 98.07% of the complaint inspections (407 out of 415).

OSHA Recommendation #4(SAMM 6): Percent of S/W/R Violations verified: PROSHA must ensure timely hazard correction by evaluating the abatement certification received from the employer and entering the data promptly into IMIS. This recommendation should be followed in order to ensure all S/W/R violations are abated in a timely manner in order to meet the reference standard.

State Action/Response: PROSHA developed a local report to review which violations do not have a verified date.

OSHA Findings: During FY 2009, PROSHA assured timely abatement of S/W/R violations for 96.58% of the private sector (677 out of 701) citations issued. In the public sector timely abatement was assured for 91.80% (56 out of 61 SWR) of the citations issued.

OSHA Recommendation #5(SAMM 7): Average number of calendar days from opening conference to Citations Issued: PROSHA must continue to 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.

State Action/Response: PROSHA performed an internal case file review to identify which part of the case file preparation takes more time; while in the CSHOs hands, Area Directors corrections or in the secretary or IMIS Clerk citation write up. At this moment the Evaluations Division is auditing the case files specifically reviewing for SAMMs #6, 7, 8, 9, and 10.

In addition, PROSHA provided training for compliance officers to better recognize serious hazards; and is working in the targeting mechanisms to ensure that most hazardous worksites are inspected under Local Emphasis Programs under the State Plan.

OSHA Findings: During the evaluation period, PROSHA issued citations in 852 cases: 631 safety and 221 health cases. For the safety cases, PROSHA had a lapse time of 70.36 days (the national average was 43.8 days). The lapse time for the health cases was calculated at 89.84 days (the national average was 57.4 days). Both safety and health indicators were higher than the national average.

OSHA Recommendation #6 (SAMM 8): Percent of Programmed Inspections with S/W/R Violations: PROSHA must implement mechanisms (e.g., improve targeting mechanisms, closely evaluate case files, perform onsite reviews with compliance officers to evaluate hazard recognition skills and provide training where gaps are found) in order to improve in this area.

State Action/Response: PROSHA continues to provide training to personnel on hazard recognition and the FOM. The Area Directors evaluated CSHOs' performances and provided support in areas of need for improvement; on the job evaluations were conducted by the Evaluation Division.

OSHA Findings: During FY 2009 PROSHA issued citations in 580 programmed inspections (536 for safety and 44 for health), of which 229 inspections resulted in the issuance of S/W/R violations.

205 of the safety programmed inspections, or 38.25%, resulted in the issuance of citations for violations classified as S/W/R. 24 of the programmed health inspections, or 54.55%, resulted in the issuance of citations for violations classified as S/W/R. The national averages were 58.6% for safety and 51.1% for health.

OSHA Recommendation #7 MARC 4 a-d (Private Sector Consultation): PROSHA must ensure timely hazard correction by evaluating the abatement certification received from the employer and entering the data into IMIS. This recommendation should be followed in order for all serious hazards to meet the reference standard.

State Action/Response: The consultants were instructed to evaluate, in a timely manner, the abatement certification received from the employer and to enter the data into IMIS. Also, the Director of the Voluntary Programs Division runs the uncorrected hazard report on a weekly basis and gives each consultant a copy of the report so they are aware of the status of each case.

OSHA Findings:

According to the MARC report dated 11/02/2009 there were a total of 760 serious hazards identified during FY 2009, of which 709 hazards, or 93.29%, 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).

Forty-one of the 760 serious hazards issued, or 5.39%, were not verified corrected in a timely manner.

Ten of the 760 serious hazards, or 1.32%, were referred to enforcement after employers failed to correct them during the consultation process.

Five-hundred sixty seven of the 760 serious hazards, or 74.61%, were verified abated in original time or onsite.

OSHA Recommendation #8 MARC 4 a-d (Public Sector Consultation): PROSHA must ensure timely hazard correction by evaluating the abatement certification received from the employer and entering the data promptly into the IMIS. This recommendation should be followed in order for all

serious hazards to meet the reference standard.

State Action/Response: The consultants were instructed to evaluate, in a timely manner, the abatement certification received from the employer and to enter the data into IMIS. Also, the Director of the Voluntary Programs Division runs the uncorrected hazard report on a weekly basis and gives each consultant a copy of the report so they are aware of the status of each case.

OSHA Findings:

According to the MARC report dated 11/02/2009, 95 of 115 serious hazards identified, or 82.61%, were corrected in a timely fashion. There was an increase of 25.47% during this period compared to FY 2008 (57.14%).

PROSHA has made significant progress towards meeting the 100% timely verification measure (as compared to previous evaluation periods).

Four of the 115 serious hazards issued, or 3.48%, were not verified corrected in a timely manner.

Sixteen of the 115, or 13.91% of serious hazards were referred to enforcement after employers failed to correct them during the consultation process.

Thirty-four of the 115 serious hazards or 29.57% identified were verified abated in original time or onsite.

V. MAJOR NEW ISSUES

During FY 2009 the Commonwealth of Puerto Rico continued with across-the-board cost cutting measures instituted during FY 2008. These measures, which also applied to PROSHA, included early retirement legislation. PROSHA lost personnel to early retirement during this period including three Area Directors, ten Compliance Safety and Health Officers and three Consultants. This number represents approximately 27% of PROSHA's enforcement staff. PROSHA reported that these retirements negatively impact their overall ability to reach the goals established at the beginning of the fiscal year. In addition, the Legal Division of the Department of Labor and Human Resources lost two of its three OSHA attorneys that handled contested cases and debt collection procedures. This is a significant loss to PROSHA as the contest rate was approximately 9.7% which equates to approximately 129 contested cases for FY 2009.

As a cost cutting measure the Puerto Rico Government instituted two administrative recesses totaling four days during FY 2009. PROSHA established an acceptable contingency plan to ensure the necessary services are provided during each recess. The Puerto Rico Government does not expect to institute any recesses during FY 2010.

VI. ASSESSMENT OF STATE PERFORMANCE

A. Assessment of State Progress in Achieving Annual Performance Goals.

Inspection Activity

The FY 2009 Inspection Activity micro-to-host report (INSP8) shows that PROSHA conducted a total of 1,334 inspections during the fiscal year, falling short of its goal to conduct 1679 inspections by 20%. The total inspection activity included 1,003 safety inspections which is 79% of the goal of 1274, and 332 health inspections which is 82% of its goal of 405.

Of the 1,334 total inspections conducted, 488 (or 36.6%) were classified as unprogrammed inspections. The unprogrammed inspections included: 15 accident investigations, 227 complaint inspections, 146 referrals, 4 follow-ups, and 95 un-programmed related inspections.

Of the 515 inspections that were classified as programmed (38.6% of the inspection total), 262 were planned and 253 programmed-related inspections.

Public and Private Sector Consultation Activity

According to the MARC reports, PROSHA conducted 168 on-site consultation visits in FY 2009: 145 in the private sector and 23 in the public sector. The number of private and public sector visits fell short of the projected goal by 3% and 32%, respectively. PROSHA lost three consultants to early retirement in January of 2009 which contributed to this shortfall.

Door to Door in Construction

The Door to Door Construction Industry initiative promotes the development or improvement of a safety and health program by the employer through on site consultation visits to general contractors in construction projects with 50 or more employees, which last for 12 months or more. The general contractor must demonstrate an interest in complying with the safety and health standards and regulations, and its commitment to protecting the workforce. Also, construction sites inspected by the Area Offices have the same opportunity to participate in this initiative. Each Area Office must provide to the Voluntary Programs Division a list of those construction projects that were subject to programmed inspections, which are currently closed and have no pending or contested citations.

After the second visit to the project, if the consultant notices a genuine interest and commitment by the general contractor towards the worker's safety and health during the first and second full visits, the consultant offers the general contractor the opportunity to participate in a continuing consultation service which consists of receiving an on-site full consultation visit, at least every three (3) months during the duration of the project. The general contractor must request in writing its participation in this initiative, establishing its commitment, and agreeing to abate all safety and health hazards identified by the consultant at the construction project, and to develop or improve its safety and health program. At this time PROSHA provides a banner to the project site, so that the general contractor, subcontractor and employees always remember to follow the safety and health rules and regulations. [PROSHA Instruction 08-01 (TED 3.6) October 1, 2008]

During FY 2009, 8 construction projects participated in this initiative. Three (3) were in the metropolitan San Juan area and 5 in the municipalities of Ponce, Lajas, Moca, Aguada, and Humacao.

PROSHA's Progress Toward Attaining its Strategic Goals

PROSHA's Strategic Plan for FY 2009 consisted of three 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.

Performance Goal 1.1.1A Achieve an additional 1% reduction from baseline measure of the most prevalent injuries/illnesses in the Printing, Publishing and Allied Industry for a total of 3% for years 2007-2009.

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

During FY 2009 100 establishments to which the LEP CPL Directive 2-0.0601 for Printing, Publishing and Allied Industry (Issued 9/28/06) would apply were scheduled for inspection by PROSHA's Bureau of Inspections (BI). The Bureau of Inspections conducted 19 visits, 10 inspections and 9 attempts. As a result of these inspections, nine establishments were cited with a total of 37 violations classified as follows: 12 serious violations and 25 "other violations". Sixteen violations not related to the Printing, Publishing and Allied Industry were issued of the 10 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 which was established in FY 2007 and which was obtained from the Bureau of Labor Statistics (BLS) using calendar year 2006 data that which was the latest data available at the time. The Total Recordable Injury Rate for FY 2009 (CY 2008) was 3.8; a 7.3% decrease over the baseline of 4.1. In addition the DART Rate decreased by 5%, from 3.7 to 3.5; thereby exceeding the 3% reduction goal.

Performance Goal 1.1.1B Achieve an additional 1% reduction from baseline measure of the most prevalent injuries/illnesses in the Metal Doors and Windows Industry for a total of 3% for years 2007-2009.

Metal Doors and Windows Industries

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

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

During FY 2009 PROSHA's Bureau of Inspections (BI) identified 26 establishments to which the CP2-0.0602 Metal Doors and Windows Industry LEP (Issued 9/28/06) applied. The Bureau of Inspections conducted six visits, five inspections and 1 attempt. As a result of these inspections, four establishments were cited with a total of 15 violations classified as follows: 11 serious violations and 4 other than serious violations. Of the five inspections conducted, nine violations were issued not related to the Metal Doors and Windows Industry.

The first baseline was established at 9.2 Total Recordable Cases Rate reported in the OSHA 300 Forms for FY 2007 with data provided by the employers of the Metal Doors and Windows Industry targeted by PROSHA.

The second baseline is the injury data for the NAICS group representing fabricated metal product manufacturing that was established in FY 2007 which was obtained from the Bureau of Labor Statistics (BLS) for calendar year 2006. The Total Recordable Case Rate using BLS data for calendar year 2006 was established at 7.1 and the DART Rate was established at 5.8. In 2009 both rates showed a reduction of 38% and 40% respectively compared to their baselines. PROSHA exceeded the 3% reduction goal.

Performance Goal 1.1.1C Achieve an additional 1% reduction from baseline measure of the most prevalent injuries/illnesses in the Warehousing and Storage Industry for a total of 2% for years 2008-2009.

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

The Local Emphasis Program (LEP) Directive to target the Warehousing and Storage Industry, NAICS 493110 and 493120, (PROSHA Instruction CPL 2-0.0701) was issued on September 28, 2007. During FY 2009 283 establishments to which the LEP Directive would apply were scheduled for inspection by PROSHA's Bureau of Inspections (BI)

PROSHA Bureau of Inspection conducted 155 visits, 119 inspections and 36 attempts. As a result of these inspections, 78 establishments were cited with a total of 331 violations classified as follows: 151 serious violations and 180 "other than serious violations".

Using the data reported in the OSHA 300 Forms for FY 2007 and data collected directly from the employers of the Warehousing and Storage Industry targeted by PROSHA, the first baseline was established at 2.1 Total Recordable Cases Rate.

The second baseline which was established in FY 2008 is the injury data for the NAICS 493110 and 493120 group of the Warehousing and Storage Industry, obtained from the Bureau of Labor Statistics for calendar year 2007. The Total Recordable Injury Rate for FY 2009 (calendar year 2008) was 3.7, a 26% Decrease over the baseline of 5.0. In addition the DART Rate decreased by 27%, from 4.5 to 3.3 thereby exceeding the 2% reduction goal.

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 for a total of 2% for years 2008-2009.

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	

*No data was available from BLS for CY 2008. The BLS baseline was established in 2008 for this industry.

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 one hundred and eighty establishments to which the Local Emphasis Program Directive applied. During FY 2009 PROSHA Bureau of Inspection conducted 23 visits; 17 inspections and 6 attempts, 11 establishments were cited. Of the 84 violations cited, 68 were classified as serious and 16 were classified as "other than serious".

Using the data reported in the OSHA 300 Forms for FY 2008 with data collected directly by the employers of the Public Sewage and Water Treatment Plants Industry targeted by PROSHA, the Total Recordable Cases Rate was 5.3. This rate constituted an 11.5 decrease (or 69%) from the baseline of 17. PROSHA exceeded the goal of a 2% reduction from baseline.

The second baseline which was established is the injury data for the NAICS group of the Public Water Treatment Plant Industry, obtained from the Bureau of Labor Statistics from calendar year 2007. The Total Recordable Injury Rate baseline was established as 11.5. The third baseline was the DART Rate established as 9.8. No data was available for this NAICS group from BLS during FY 2009 to compare with baselines from FY 2008.

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

Construction Industry-Related Fatality Investigations

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 2006 Rate)	2% Increase
2008	11	82,000	1.34(CY 2007 Rate)	1% Decrease
2009	8	68,000	1.17(CY 2008 Rate)	18% Decrease

During FY 2009, the fatality rate was calculated at 1.17 per 10,000 employees (8 fatalities ÷ 68,000 workers) ÷ 10,000 employees).

PROSHA continued to maintain the successful 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 industry throughout the Island. Those general contractors participating in this initiative agree to abate all the hazards identified, receive an on-site full consultation visit, at least, every three (3) months for the duration of the project, and post a banner in a conspicuous place in the project, which reads as follows: "PROSHA is Safety". Eight construction projects are participating in this initiative.

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

- ◆ Fall Protection, Hato Rey
- ◆ Safety and Health in the Construction Industry, Hato Rey
- ◆ Safety and Health in the Construction Industry, Ponce
- ◆ PPE in the Construction Industry, Arecibo
- ◆ OSHA 10 Hour Outreach in Construction, Hato Rey
- ◆ OSHA 10 Hour Outreach in Construction, Ponce
- ◆ OSHA 10 Hour Outreach in Construction, Arecibo

The participation in these training sessions was as follows: three hundred and three employer's representatives, one-hundred and forty-two employees, thirty students and twenty-six from the general public. A total of two-hundred and twenty-four booklets of informational materials were distributed in these trainings.

During FY 2009, seventy on-site consultation visits were conducted in construction workplaces resulting in two hundred and ninety-seven hazards identified which were communicated to the general contractor. One hundred sixty-five of the two hundred ninety-seven hazards identified were related to the four (4) leading causes of fatalities in construction.

Formal training sessions were delivered at seven of the seventy on-site consultation visits during which eleven employer representatives and 292 employees were trained.

PROSHA Strategic Goal 2

Performance Goal 2.1.1A Enforcement Achieve a rate of 27% of targeted employers in general industry that have either implemented an effective safety and health program or improved their existing program after a PROSHA intervention.

Goal 2.1.1A for FY 2009 was exceeded. Through comprehensive inspections, coupled with training and technical assistance, 359 of the 983 general industry establishments inspected either implemented a safety and health program or improved their existing program for a 36% success rate. This success rate is a 9% increase compared to the 27% goal for FY 2009.

In addition, as part of the Program's effort, the Division of Voluntary Programs delivered two open training sessions on how to develop or improve an effective safety and health program. The participation in these training sessions included 136 employer representatives, 66 employees, 20 students, and three persons from the general public. A total of 225 booklets of Safety and Health Guidelines for Programs Development were delivered in the training sessions.

Performance Goal 2.1.1B Consultation - Achieve a 69% rate of targeted employers in general industry that have implemented an effective safety and health program or improved their existing program.

Goal 2.1.1B - FY 2009 PROSHA exceeded this goal. PROSHA conducted 98 on-site consultation visits for employers in general industry. Ninety-six of these employers (98%) implemented effective safety and health programs or improved their existing ones. The success rate is 39% greater than the goal established for FY 2009.

During FY 2009, PROSHA included worker involvement as part of the VPP process and Door to Door Initiative.

Performance Goal 2.2.1 One hundred percent (100%) of proposed PROSHA initiatives will include a worker involvement requirement.

Goal 2.2.1 - For FY 2009, one hundred percent (100%) of the PROSHA initiatives included worker involvement. Workers were involved in all LEP inspections (totaling 151 inspections) and consultation visits (168 consultations visits).

During this evaluation period, PROSHA continued targeting industries with the following LEP initiatives: *CPL 2-0.0802 Public Sewage and Water Treatment Plant Industries issued on June 20, 2008*; *CPL 2-0.0601 LEP-Printing, Publishing and Allied Industry*; and *CPL 2-0.0602 LEP-Metal Doors and Windows Industry, both issued on September 28, 2006*; and *CPL 2-0.0701 LEP-Warehousing and Storage Industry issued on September 28, 2007*.

The Voluntary Programs Division delivered two (2) open training sessions in safety and health programs and worker involvement in safety and health matters in Hato Rey, on April 17 and April 23, 2009. The participation was as follows: 55 employer representatives, 151 employees, 17 students and 2 from general public. A total of 225 booklets were delivered in these training sessions.

During FY 2009, PROSHA included worker involvement as part of the VPP process and Door to Door Initiative.

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 Industries.

Goal 2.2.2A – PROSHA exceeded the goal. For FY 2009 PROSHA conducted 10 inspections where 10 employers and workers received training on the skills necessary for effective worker involvement in safety and health matters for a 100% percent success rate. This success rate exceeds the goal for FY 2009. One consultation visit was conducted during FY 2009.

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.

Goal 2.2.2B – PROSHA exceeded the goal. For FY 2009 PROSHA conducted 5 inspections where 5

employers and workers received training on the skills necessary for effective worker involvement in safety and health matters for a 100% percent success rate. This success rate exceeds the goal for FY 2009. One consultation visit was conducted during FY 2009. Consultation was able to disseminate safety and health informational materials for employers in the Metal Doors and Windows Industry (225 booklets and 707 additional safety and health informational documents).

Performance Goal 2.2.2C Develop and provide training for 75% of employers and workers which receive consultations or inspections, on the skills necessary for effective worker involvement in safety and health matters in the Warehousing and Storage Industries.

Goal 2.2.2C – During FY 2009 PROSHA provided training to 100% of employers in the Warehousing and Storage Industry that received inspections or consultation visits. PROSHA exceeded the established goal. PROSHA identified 283 establishments where the LEP Directive applied. During FY 2009, PROSHA conducted 119 inspections at establishments within this industry. PROSHA provided training for employers and workers at all of the establishments inspected.

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

Goal 2.2.2D – During FY 2009 PROSHA provided training to 100% of the employers and workers inspected as part of the Water Treatment Plant Industry LEP. PROSHA Bureau of Inspections identified 180 establishments to which the LEP Directive applied and PROSHA conducted 17 inspections, during which training was provided to all (100%) of these sites, thus exceeding the goal. No consultation visits were conducted during FY 2009.

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

Goal 2.3.1 – For FY 2009 PROSHA met the 100% goal to disseminate Safety and Health materials to Hardware Stores. Division of Voluntary Programs continued disseminating occupational safety and health training and reference materials to 100% of the workplaces identified in the Hardware Stores Industry, NAICS 444130. PROSHA developed innovative approaches such as, outreach, training, seminars and relationship-building with Trade and Business Associations.

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 requested informational materials.

In addition, two open training sessions on Safety and Health in the Hardware Stores Industry were delivered in Hato Rey on April 13, 2009 and on September 14, 2009 in Arecibo. The participation in these training sessions was as follows: eight employers' representatives and seven employees. A total of nineteen booklets on Safety and Health in the Hardware Industry were distributed in these training sessions. No consultation visits were requested during FY 2009.

PROSHA Strategic Goal 3

Performance Goal 3.1.1 Initiate inspections in at least 90% of fatalities and catastrophes within

one working day.

Fifteen of sixteen fatality/catastrophe inspections were initiated within one day of notification during the evaluation period for a 94% response rate, exceeding the goal.

Performance Goal 3.1.2 Initiate investigation of worker non-formal complaints within 1 working day or conduct an on-site inspection within 5 working days of receipt of a formal complaint in 90% of the cases.

In terms of PROSHA's response to non-formal complaint investigations, all 125 non-formal complaints were initiated within one working day, for a 100% response rate, exceeding the goal.

Regarding the portion of the goal comprising percent of complaint inspections initiated within five working days, 409 of 414 formal complaints were initiated within the five days for a 99% response rate, exceeding the goal.

Performance Goal 3.1.3: Complete investigation of 95% of discrimination cases within 90 days.

During FY 2009, PROSHA completed a total of 22 discrimination investigations; all were completed within 90 days, for a 100% performance level, exceeding the goal.

Assessment of State Performance on Mandated and Other Related Activities

State Activity Mandated Measures (SAMM) Report Statistics

(Source: PROSHA's SAMM report of 11/02/09)

SAMM 1: Average number of days to initiate Complaint Inspections.

During this evaluation period, PROSHA received a total of 427 formal complaints, with an average of 2.75 days for initiating complaint inspections. PROSHA continues to exceed its strategic goal of responding to complaint inspections within 5 working days from notification. Goal was met.

SAMM 2: Average number of days to initiate Complaint Investigations.

PROSHA received a total of 118 non-formal complaints, with an average of 0.14 days for initiating the complaint investigations. PROSHA has demonstrated prompt response to complaint investigations via phone/fax method, compared to the FY 2008 average of 1.46 days. Goal was met.

SAMM 3: Percent of Complaints where Complainants are notified on time.

Complainants received inspection results in a timely manner in 98.07% of the complaint inspections (407 out of 415) compared to FY 2008 of 91.46%. Although they did not meet the goal, PROSHA is showing significant progress. Goal was not met. Reference point is 100%.

SAMM 4: Percent of Complaints and Referrals responded to within one day –Imminent Danger.

All nine referrals and complaints for imminent danger conditions where responded timely, for a 100% timely response rate. Goal was met. Reference point is 100%.

SAMM 5: Number of denials where entry not obtained.

There were no denials of entry for FY 2009. Goal was met. Reference point is 0.

SAMM 6: Percent of S/W/R Violations verified.

During FY 2009, PROSHA assured timely abatement of S/W/R violations for 96.58% of the private sector (677 out of 701) citations issued. Goal was not met. In the public sector timely abatement was assured for 91.80% (56 out of 61 SWR) of the citations issued. Goal was not met. The reference point is 100%.

SAMM 7: Average number of calendar days from opening conference to Citations Issued.

During the evaluation period, PROSHA issued citations in 852 cases: 631 safety and 221 health cases. For the safety cases, PROSHA had a lapse time of 70.36 days (the national average was 43.8 days). The lapse time for the health cases was calculated at 89.84 days (the national average was 57.4 days). Both safety and health indicators were higher than the national average thereby PROSHA lapse time exceeded both reference values. Goal was not met.

SAMM 8: Percent of Programmed Inspections with S/W/R Violations.

During FY 2009 PROSHA issued citations in 580 programmed inspections (536 for safety and 44 for health), of which 229 inspections resulted in the issuance of S/W/R violations.

Two hundred and five of the safety programmed inspections, or 38.25%, resulted in the issuance of citations for violations classified as S/W/R. Twenty four of the programmed health inspections, or 54.55%, resulted in the issuance of citations for violations classified as S/W/R. The national averages were 58.6% for safety and 51.1% for health. Goal was not met.

PROSHA is aware of this issue 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.

SAMM 9: Average Violations per Inspection with Violations.

A total of 852 inspections resulted in violations issued: 1,740 violations classified as S/W/R and 1,250 classified as other-than-serious. This resulted in an average violation per inspection of 2.04 for S/W/R and 1.46 for other-than-serious. The national averages were 2.1 for S/W/R and 1.2 for other-than-serious. PROSHA's average S/W/R violations per inspection was 3% below the national average and their average other-than-serious violations per inspection was 22% above the national average.

SAMM 10: Average Initial Penalty per Serious Violation (Private Sector Only).

During this fiscal year, PROSHA issued 1,113 serious violations in the private sector with an average penalty of \$1,105.06 per serious violation. The 3-year national average data was \$1,335.5. PROSHA's

average penalty per serious violation is 17% below the national average.

SAMM 11: Percent of Total Inspections conducted in the Public Sector. (Public Sector Only).

PROSHA conducted a total of 351 inspections in the public sector, which accounts for 26.29% of their total enforcement inspection activity (351/1335). The 3-year average for Puerto Rico reference point is 24.0%. Goal was met.

SAMM 12: Percent Lapse Time from receipt of Contest to first level decision.

Sixty-four cases were contested with an average lapse time from the receipt of contest to the first level decision of 175.18 days. The 3-year national average reference point is 244.4 days.

SAMM 13, 14, 15: 13) Percent of 11c Investigations completed within 90 days. 14) Percent 11c Complaints that are meritorious. 15) Percent of meritorious 11c complaints that are settled.

13) A total of 22 discrimination complaints were completed in FY 2009; all within 90 days for a 100% timely completion rate. Goal was met. **14)** Six of these were found meritorious (27.27%). **15)** Three (3) were settled (50.0%). Goal not met. Reference point is 86.0%.

Recommendation 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 to better recognize and document serious hazards.

Training and Education Program

PROSHA provided 104 training or conference sessions were provided: 72 were delivered at different workplaces and 32 were addressed to employers, employees and the general public in Hato Rey, Ponce, and Arecibo.

Due to the relevance of the H1N1 concern among workers, PROSHA developed a flyer with information regarding the virus and how to protect themselves; also two one-hour training sessions on precautionary measures in the workplace to protect against the H1N1 virus were conducted.

PROSHA commemorates the World Day for Safety and Health at Work on April 28 delivering a one-day conference on PPE Appropriate Selection for the Workplace.

The State Plan provided training and educational services in 17 out of the 168 consultations visits that were conducted (2 informal and 15 formal).

Also, the Voluntary Programs Division provides telephone and office visits assistance or orientations to employers and employees in safety and health matters. During this fiscal year the following services were provided to:

- 37 office visits requesting assistance or orientation in safety matters

- 204 telephone calls requesting assistance or orientation in safety matters
- 19 office visits requesting assistance or orientation in health matters
- 223 telephone calls requesting assistance or orientation in health matters

Mandated Activities Report for Consultation

Private Sector Consultation

(As per PROSHA's MARC report 11/02/09)

PROSHA conducted a total of 145 private-sector consultation visits in FY 2009 which is 96.67% of their projected goal of 150 visits.

There were a total of 88 safety visits conducted which is 17% below their projected goal of 106 visits and 49 health visits conducted which is 111% above their projected goal of 44 visits.

MARC 1: Percent of Initial Visits in High Hazard Establishments.

131 of the 137 "initial" visits conducted during FY 2009, or 95.62%, were to establishments under the State's definition of high hazard establishments. Goal was met. The reference point is no less than 90%.

MARC 2: Percent of Initial Visits to Smaller Businesses.

PROSHA conducted 133 out of 137 (or 97.08%) of its "initial" visits to smaller establishments with less than 250 employees. Goal was met. The reference point is no less than 90%.

PROSHA conducted 123 out of 137 (or 90%) of its "initial" visits to establishments with less than 500 employees. Goal was met. The reference point is no less than 90%.

MARC 3: Percent of Visits where Consultants Conferred with Employees.

PROSHA conferred with employees on consultation visits 100% of the time for both "initial visits (137) and follow-up visits (6). Goal was met. Reference point is 100%.

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

A total of 760 serious hazards were identified during FY 2009, of which 709 hazards, or 93.29%, 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). Goal was not met. Reference point is 100%.

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

Forty-one of the 760 serious hazards issued, or 5.39%, were not verified corrected in a timely manner.

MARC 4c: Percent of Serious Hazards referred to enforcement.

Ten of the 760 serious hazards, or 1.32%, were referred to enforcement after employers failed to correct them during the consultation process. Reference standard not established.

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

Five-hundred sixty seven of the 760 serious hazards, or 74.61%, were verified abated in original time or onsite. Goal was not met. Reference point is 100%.

MARC 5: Number of Uncorrected Serious Hazards past 90 days.

As of the end of the 4th quarter, PROSHA had no outstanding uncorrected serious hazards past 90 days. Goal was met. Reference point is 0%.

Recommendation 2: Ensure timely hazard abatement by improvements in management oversight including periodic review of appropriate management reports.

Public Sector Consultation

(As per PROSHA's MARC report 11/02/09)

PROSHA conducted a total of 23 private-sector consultation visits in FY 2009 which is 67.65% of their projected goal of 34 visits.

There were a total of 6 safety visits conducted which is or 62.5% below their projected goal of 16 visits and 17 health visits conducted which is or 6% below their projected goal of 18 visits.

MARC 1: Percent of Initial Visits in High Hazard Establishments.

Three "initial" visits, or 13.04%, were coded as high hazards establishments. Goal was not met. Reference point is 100%. It should be noted that most government agencies are not classified as high hazard establishments and therefore it is understood that attaining the reference point is very difficult.

MARC 2: Percent of Initial Visits in Smaller Businesses.

Twenty-one of the 23 "initial" visits, or 91.30%, were conducted in establishments with less than 250 employees. Goal was not met. Reference point is not less than 90%.

Nine (9) of the 23 "initial" visits, or 39.13%, were conducted in establishments with less than 500 employees. Goal was not met. Reference point is not less than 90%.

It should be noted that most government agencies are not small employers and therefore it is understood that attaining the reference point is very difficult.

MARC 3: Percent of Visits where Consultation Conferred with Employees.

PROSHA conferred with employees on all consultation visits (100% of the time). Goal was met. Reference point is 100%.

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

Ninety-five of 115 serious hazards identified, or 82.61%, were corrected in a timely fashion. There was an increase of 25.47% during this period compared to FY 2008 (57.14%). Goal was not met. Reference point is 100%.

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

Four of the 115 serious hazards issued, or 3.48%, were not verified corrected in a timely manner.

MARC 4c: Percent of Serious Hazards referred to enforcement.

Sixteen of the 115, or 13.91% of serious hazards were referred to enforcement after employers failed to correct them during the consultation process. Reference standard not established.

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

Thirty-four of the 115 serious hazards (29.57%) identified were verified abated in original time or onsite. Goal was not met. Reference point is 65%.

MARC 5: Number of Uncorrected Serious Hazards past 90 days.

As of the end of the 4th quarter, PROSHA had no outstanding uncorrected serious hazards past 90 days. Goal was met. Reference point is 0%.

Recommendation 3: 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.

VII. SUMMARY OF FY 2009 BSE

The purpose of the Special Evaluation Study is to assess the current performance of Puerto Rico's program and identify any structural or performance issues of concern. The study focused mainly on enforcement effectiveness and the findings of this study are detailed below.

Stakeholder Contact

As part of the study key stakeholders were contacted and their views on State Plan performance were solicited. The following stakeholder groups were solicited for input: UTIER - Union de

Trabajadores de la Industria de Energia y Riego; UIA - Union Independiente de Acueductos (PR Water Authority EE's); and The Union General de Trabajadores (Workers Union).

The Secretary of Safety and Health, of the Union General de Trabajadores expressed that overall; they felt that PROSHA was doing a good job and that they continue to have an open dialogue with public employee unions. They also felt that PROSHA was generally responsive to their needs and responded positively to their feedback. They stated that PROSHA includes the unions in opening conferences and PROSHA does notify unions when a Petition to Modify an Abatement Date (PMA) is received from an agency. In addition, they indicated that the unions are routinely invited to attend informal conferences and that these conferences are normally held jointly. Additionally they indicated that PROSHA invites the union to all safety and health conferences every year via email, fax and letters.

The union, however, does feel that the Secretary of Labor should work to further strengthen PROSHA's ability to enforce the law in Puerto Rico.

One specific issue was raised relating to PROSHA's lack of response to a workplace violence complaint they had filed against a hospital in San Juan.

Issue: A Workplace Violence complaint relating to the shooting of a patient was not investigated by PROSHA.

Finding: An inquiry into this issue revealed that there had been a miscommunication relating to the complaint. PROSHA had not investigated the issue as the agency has no jurisdiction over patients. The Agency considered the issue a police matter. Once the issue was clarified that the complaint was actually relating to overall security problems at the hospital and that workers were impacted PROSHA immediately took action.

The Secretary for Safety and Health for the Union de Trabajadores de la Industria de Energia y Riego (UTIER) stated that the union has worked with PROSHA on several inspections. In addition, they indicated that his union is always invited to attend opening conferences, walkarounds and closing conferences and that these conferences are normally held jointly. He also added that they interact well with PROSHA investigators during the investigative process.

Issue: The Secretary indicated the union representatives are not invited to attend informal and post contest conferences.

Findings: During the review of case files during the special study it was found that this assertion is valid. In most of the case files reviewed relating to union worksites, the unions are not being notified of post inspection conferences.

Issue: During the stakeholder discussion the union representative discussed a complaint inspection that PROSHA conducted in response to a complaint alleging power line workers were being forced to work on live electrical parts. After the inspection, an employee was subject to disciplinary action, allegedly for filing a complaint with PROSHA and for refusing to work with live electrical parts.

Findings: The study team discussed this issue with PROSHA and PROSHA will contact the union

and explain the employees discrimination rights and assist with the filing an 11(c) discrimination complaint if appropriate.

The Secretary also commented that he feels that PROSHA should focus on providing their inspectors training such as Electrical Power Transmission and Distribution to better serve the Autoridad de Energia Electrica employees in recognizing specific hazards tailored to their specific work exposures. The union has stated that they would like to develop a collaborative relationship with PROSHA in creating an Alliance to share safety and health information specific to the industry with PROSHA personnel.

BSE

The Region II Puerto Rico BSE (BSE) Study Team conducted a review of PROSHA's 23(g) Public and Private Employee State Plan program including enforcement, discrimination, IMIS system management, review procedures, cooperative programs and overall program management. The study included an on-site review from February 17 through February 26, March 3rd, March 4th and March 8th, 2010. The on site evaluation included a review of cases files which were opened and closed during FY 2009, covering the period from October 1, 2008 through September 30, 2009. A total of 138 case files were reviewed which included 107 enforcement and 31 consultation files.

Enforcement

A statistical review of PROSHA's Program was conducted using the IMIS Micro-to-Host Inspection and Enforcement Reports and a comparison was made against several monitoring measures from the State Activities Mandated Measures (SAMM). During the evaluation period of this study (October 1, 2008 through September 30, 2009), the PROSHA Program conducted 1,334 inspections of its projected inspection goal of 1,679. There was one significant factor which impacted PROSHA's ability to meet its inspection goal in FY 2009. The significant factor involved an early retirement package that was offered by the government in January 2009, which resulted in the retirement of 27% of the staff.

Of the 1,334 inspections conducted by PROSHA during FY 2009, 1,001 were safety-related (75%) while 333 (25%) were health-related. Total programmed inspections were 537 (40%) and 797 (60%) were unprogrammed inspections, which represented fatality investigations, complaints, referrals, follow-up inspections, monitoring inspections and other unprogrammed related activities. PROSHA's, Open Non-Contested Cases with Incomplete Abatement > 60 days, was an outlier in FY 2009. PROSHA had 311 out of 1,334 (23%) cases which had open abatement as compared to 2,010 out of 61,016 (3%) for State plans, and 2,234 out of 39,044 (6%) cases for Federal OSHA. The following is a statistical comparison of Puerto Rico to other state plans and Federal OSHA during FY 2009:

COMPARISON OF PUERTO RICO TO OTHER STATE PLANS AND FEDERAL OSHA

	Puerto Rico	State Plans	Federal OSHA
Total Inspections	1,334	61,016	39,044

Safety	1,001	48,002	33,221
% Safety	75%	79%	85%
Health	333	13,014	5,783
% Health	25%	21%	15%
Construction	508	26,103	23,935
% Construction	38%	43%	61%
Programmed	537	39,538	24,316
% Programmed	40%	65%	62%
Complaint	414	8,573	6,661
% Complaint	31%	14%	17%
Accident	16	3,098	836
Inspections with Violations Cited (NIC)	775	37,978	27,165
% Inspections with Violations Cites (NIC)	58%	62%	70%
% NIC with Serious Violations	55%	62%	87%
Total Violations	2,872	129,363	87,663
Serious	1,359	55,309	67,688
% Serious	47%	43%	77%
Willful	3	171	401
Repeat	55	2,040	2,761
Serious/Willful/Repeat	1,417	57,520	70,831
% S/W/R	51%	44%	81%
Other-than-serious	1,448	71,336	16,615
% Other-than-serious	50%	55%	19%
Failure to Abate	7	494	207
Average Violations Per Initial Inspection	3.3	3.3	3.1
Total FY 2009 Penalties	\$2,411,087	\$60,556,670	\$96,254,766
Average Current Penalty Per Serious Violation (Private Sector Only)	\$1,118.00	\$800.40	\$970.20
% Penalty Reduced	63.1%	51.9%	43.7.0%
Percent Inspections with Contested Violations	15.4%	13.0%	7.0%

Average Case Hours/Safety	18.9	15.7	17.7
Average Case Hours/Health	29.8	26.6	33.1
Lapse Days to Citation Issued – Safety	52.6	31.6	34.3
Lapse Days to Citation Issued – Health	65.4	40.3	46.7
Open, Non-Contested Cases with Incomplete Abatement > 60 days	311	2,010	2,234

Case File Review

Complaints:

PROSHA Field Operations Manual identified as CPL 2.45C, here after referred to as PROSHA FOM.

Federal Policy vs. PROSHA Policy Reference: Neither the Federal FIRM or PROSHA Policy specify the time frame within which a complaint must be opened. PROSHA FOM OSHO Instruction CPL 2.45C (FOM) Section IX E4, effective 12/20/2008, states: “If an inspection is warranted, it will be initiated as soon as resources permit. Inspections resulting from formal complaints of serious hazards will normally be initiated within five working days.”

Federal Policy vs. PROSHA Policy Reference: PROSHA FOM Section IX E.3, effective 12/20/2008, states:

If appropriate, the Area Office will inform the individual providing the information that an inspection will be scheduled and that he or she will be advised of the results.

After the inspection, the Area Office will send the individual a letter addressing each complaint item, with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued

A total of 40 formal complaints were reviewed by the study team. 35 of these complaints were opened within five days of receipt of the complaint.

In all cases reviewed it is apparent that all complaint items were addressed and the complainants were notified of the inspection results.

A total of 10 non-formal complaint investigations were reviewed and all but one was opened within one workday of receipt of the complaint.

In 2 of 10 ten investigations abatement documentation was not complete. In addition, in one safety non-formal investigation it was apparent the potential exposing employer was not included in the investigation, and in that case, the hazards were sufficient enough (excavation hazards) to warrant an on-site inspection.

Detailed Information.

Safety Cases:

A total of 25 safety complaint case files were reviewed. Complaint files evaluated consisted of 4 non-formal complaint investigations (which are responded to via phone call and faxed correspondence with the employer) and 21 formal complaints which were inspections.

Of the complaint investigations, 3 were from the private sector and one from public sector.

All complaint investigations were responded to in a timely manner and all complainants were notified of the response from employer.

In all but one case, all of the items alleged in the non-formal complaint investigations were addressed by the employer and responses by the employer were properly evaluated by the CSHO assigned to the complaint.

In one case file, the response from employer was missing; however, a note in the diary sheet in the case file indicated the employer abated. From the allegations in this complaint, it appeared there was another company (construction contractor) performing excavation work; however, there was no indication that an attempt was made to contact the contractor as a possible creating/correcting/exposing employer.

The hazards relating to this non-formal complaint investigation related to excavation hazards which should have been addressed through an inspection not the non-formal complaint investigation process.

Of the 21 safety formal complaints, 10 were from the private sector and 11 from the public sector. All but one inspection was opened in a timely manner; the response time for that case was approximately two months from the time the complaint was originally signed by complainant. All formal complaints contained complainant notification documentation.

In general, alleged complaint items were consistently addressed by the CSHO during the inspection.

Health:

A total of 6 health non-formal complaint investigation case files were reviewed; 4 in the private sector and 2 in the public sector. Five out of the 6 were opened within 1 working day, only 1 case (public sector) was not responded to in a timely manner.

All 6 health complaint investigations had evidence indicating that the complainant was notified of the investigation results. Copies of letters of notification were found in the case files.

A total of 15 formal complaint case files were reviewed; 9 in the private sector and 6 in the public sector. Eleven out of the 15 were opened within 5 working days.

All 15 health complaint inspection files had evidence indicating that the complainant was notified of the inspection results with copies of notification letters in the case files.

Recommendations:

Recommendation 4: Implement internal controls such as supervisory review and final approval before complaint investigation (non-formal complaints) and complaint inspections are closed.

Recommendation 5: In cases in which complaint inspections are not opened in a timely manner - make a notation in the file explaining the delay.

Recommendation 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.

Fatalities

A total of 16 fatality case files were reviewed by the OSHA BSE Team. All fatality inspections were opened within 1 working day and all files had hard copies of the OSHA 36 (Accident Report), and OSHA 170 (Findings of the Accident Investigation) forms.

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.

One fatality case file was classified as "In Compliance" when it should have been classified as "No Inspection" as it was not work related.

One fatality case file, resulting from a shooting outside a construction site, was classified as "In Compliance" when it should have been classified as "No Inspection". The worker was a sole proprietor and not covered under the Act.

One case related to a trench collapse which killed one worker. The employer conducted no soil typing and no protective system had been put in place. The issue of employee misconduct on the deceased's part was raised by co-workers but there was no apparent attempt by CSHO to fully investigate whether the misconduct claim was valid. Also, 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.

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.

There were three (3) fatality cases where the penalties were reduced in excess of 50% and the required approval from the Bureau of Inspections was not requested.

Recommendations:

Recommendation 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).

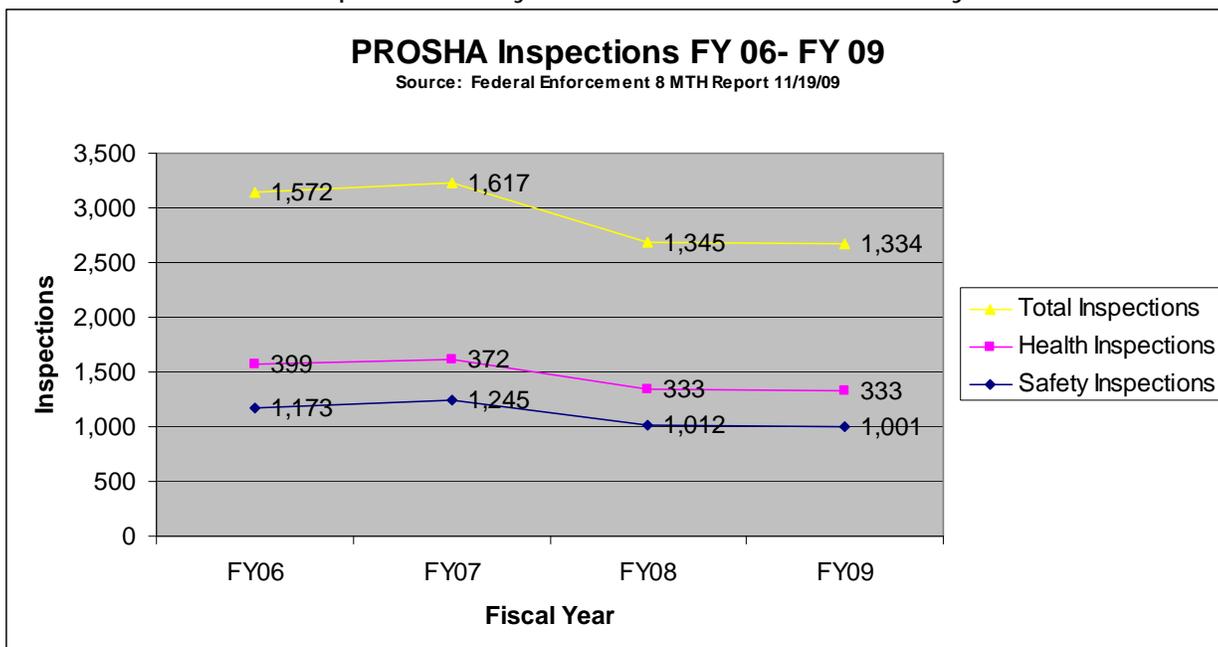
Recommendation 8: Provide training to all field staff, including supervisory staff, to ensure the application of PROSHA's Field Operations Manual guidance and procedures whenever there is evidence that a willful violation may exist, and to counteract any potential employer affirmative defense.

Recommendation 9: Ensure that the PROSHA policy of notifying the Bureau of Inspections before granting penalty reductions in excess of 50% is followed.

Recommendation 10: It also is recommended that training be provided to all field staff, including supervisory staff, to ensure proper violation classification.

Targeting/Inspections

Overall, the number of total inspections has been decreasing since FY 2007. This is attributable to the program losing staff since 2008 due to a hiring freeze combined with attrition as well as early retirement incentives implemented by the Commonwealth in January of 2009.



Targeted Activities

The state implemented programmed inspection programs for four high hazard industries identified under PROSHA's five-year strategic plan. Three of these industries are within the private sector and one is in the public sector. These focus areas include establishments within the following industries: **Warehousing and Storage Industries, Metal Doors and Windows Industries, Public Sewage and Water Treatment Plants, and Printing, Publishing and Allied Industries.**

During FY 2009 PROSHA conducted a total of 151 inspections in these industries as follows: 10 in Printing, Publishing and Allied Industries, 5 in the Metal Doors and Windows Industries, 119 in Warehousing and Storage Industries and 17 in Public Sewage and Water Treatment Plants. As a result a total of 388 violations were issued during FY 2009 including 242 Serious and 146 other than serious violations. Overall, targeting in Puerto Rico appears to be having the desired affect in the industries targeted. PROSHA far exceeded its projected goals relating to the reduction of injury and illness rates as follows:

Printing and publishing industry: Goal: Achieve a 3% reduction in injury and illness rates by the end of FY 2009. Result: Achieved a 43% reduction in establishments where PROSHA had interventions and 5% to 7.3% reductions in BLS DART and TCIR rates respectively from baseline.

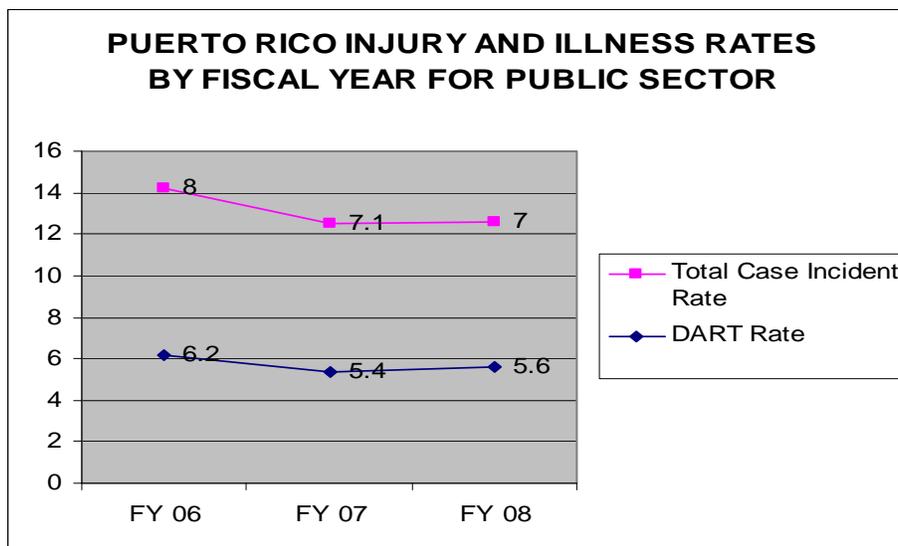
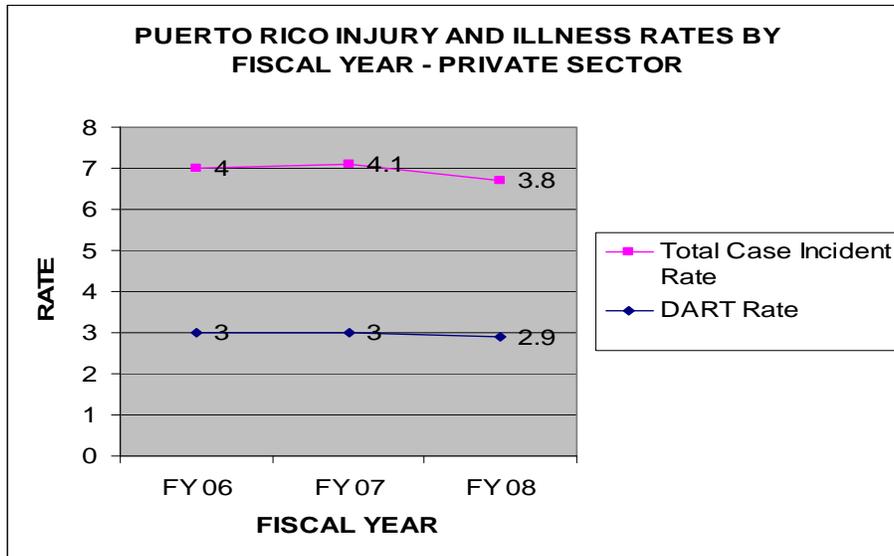
Metal Doors and Windows Industry: Goal: Achieve a 3% reduction in injury and illness rates by the end of FY 2009. Result: Achieved a 39% reduction in establishments where PROSHA had interventions and a 40% and 38% reduction in BLS DART and TCIR rates respectively from baseline.

Warehousing and Storage Industry: Goal: Achieve a 2% reduction in injury and illness rates by the end of FY 2009. Result: The industry experienced a 100% increase from the previous year's baseline. However, the industry as a whole achieved a 27% and 26% reduction in BLS DART and TCIR rates respectively from baseline.

Public Water Treatment Plant Industry: Goal: Achieve a 2% reduction in injury and illness rates by the end of FY 2009. Result: Achieved a 69% reduction in establishments where PROSHA had interventions. BLS had no data for the most recent calendar year (2008) for baseline BLS rates comparison.

PROSHA also made a concerted effort to offer outreach and training to the construction industry on the Island in an effort to effectuate a 1% reduction in the overall fatality rate during FY 2009 vs. FY 2008 and a 3% reduction from the baseline established in 2006. The fatality rate was reduced 13% from the previous year's rate and a total of 18% from baseline.

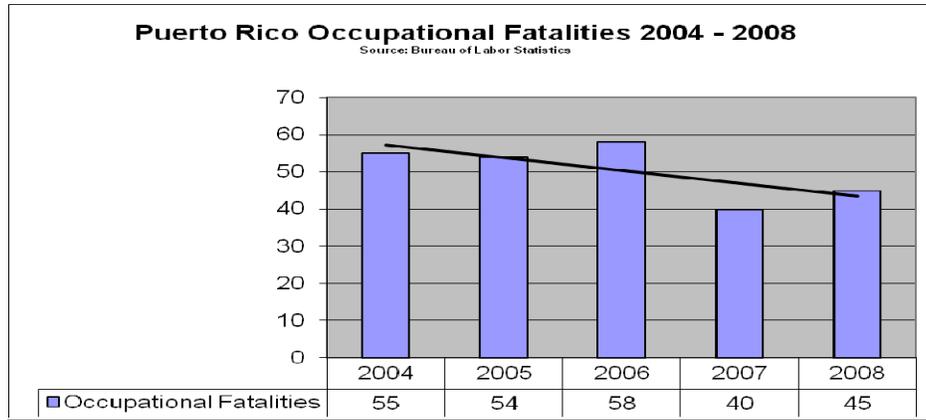
BLS Rates (Illness, Injury and Fatality)



In the private sector, over the three year period from calendar year 2006 through 2008, Puerto Rico's injury, illness rates have been experiencing a downward trend. The total case incident rate (TCIR) has decreased from 4.0 to 3.8 constituting a 5% decrease. The Days Away, Restricted or Transferred (DART) rates have declined from 3.0 to 2.9 constituting a 3.3% decrease.

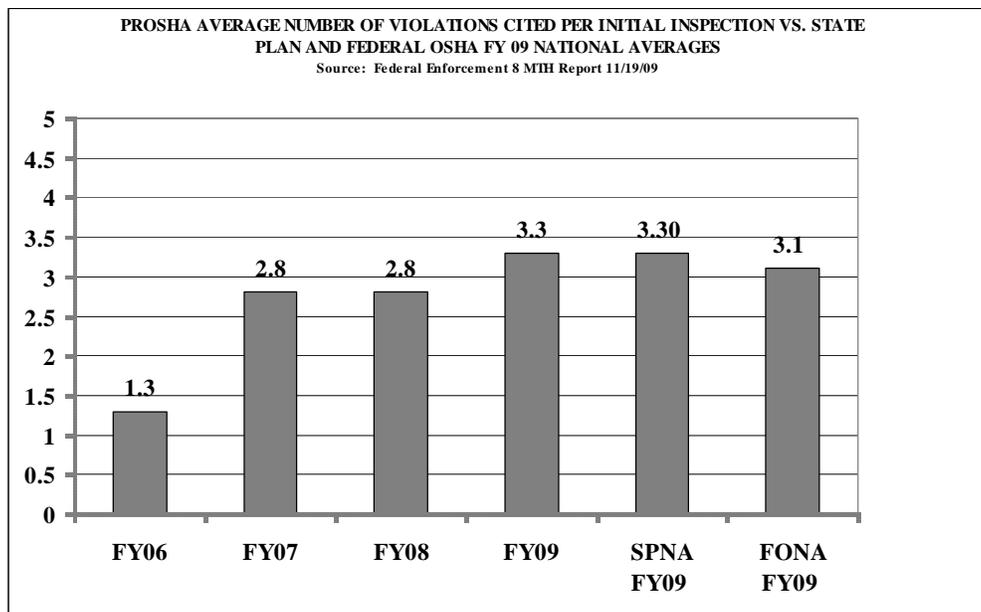
Similarly, in the public sector, over the same period, Puerto Rico's injury, illness rates have also been experiencing a downward trend. The total case incident rate (TCIR) has decreased from 8.0 to 7.0 constituting a 12.50% decrease. The Days Away, Restricted or Transferred (DART) rates have declined from 6.2 to 5.6 constituting a 9.7% decrease.

Fatality Rates



Puerto Rico's fatality rate is also experiencing a significant downward trend. The average 2007-2008 rates have decreased approximately 23.7% from the average 2004-2006 rates.

Violations per Inspection



For FY2009 PROSHA had a total of 3.3 violations per initial inspection which is the same rate compared to the State Plan National average of 3.3 and 6% greater than the Federal OSHA National average of 3.1

Most Frequently Cited Standards

A review was conducted of the most frequently cited standards by PROSHA. The top cited standard in general industry was the General Duty Clause with 63 serious, 358 other-than-serious, and 4 repeat violations. The general duty clause is used to cite Puerto Rico's Workplace Domestic Violence Law which applies to every employer on the island which is why this section of the PROSHAct is cited so often. Fifteen percent (15%) of the violations were classified as serious compared to 81% for Federal OSHA's top cited standard (1910.147). The second most frequently cited standard was Housekeeping with 68 serious, 77 other-than-serious and 3 repeat violations. This indicates that 46% of these violations were classified as serious compared to Federal OSHA's serious rate of 91%, for its second most cited standard (1910.212).

PROSHA Most Frequently Cited Standards – General Industry October 1, 2008 to September 30, 2009

	Standard		Serious	Other	Repeat	Total	% Serious
1	6a.001	General Duty Clause	63	358	4	425	15%
2	1910.22(a)	Housekeeping	68	77	3	148	46%
3	1910.141(a)	Sanitation	48	42	3	93	52%
4	1904.29(a)	Injury and Illness Recordkeeping	0	77	1	78	0%
5	1910.157(e)	Inspection, maintenance and testing of portable fire extinguishers	35	24	2	61	57%
6	1910.132(d)	Personal Protective Equipment Hazard Assessment and Selection	14	41	0	55	25%
7	1910.1200(h)	Hazard Communication Information and Training	34	16	0	50	66%
8	1910.178(l)	Powered Industrial Vehicle Operator Training	22	24	0	46	48%
9	1910.1200(e)	Written Hazard Communication Program	23	21	0	44	52%
10	1904.04(a)	Failure to Record Injuries, Illnesses and Fatalities	0	37	1	38	0%

Federal OSHA Most Frequently Cited Standards – General Industry
 October 1, 2008 to September 30, 2009

	Standard		Serious	Other	Repeat	Total	% Serious
1	1910.147	Lockout tagout program	2175	437	60	2687	81%
	1910.212	Machine guarding	1890	132	35	2071	91%
3	1910.178	PIV training	1075	328	17	1421	76%
4	1910.1200(e)	Hazard communications program	677	469	18	1164	58%
5	1910.305(g)	Flexible cords	886	230	18	1134	78%
5	1910.305(b)	Electrical cabinets, boxes and fittings	819	187	15	1021	80%
7	1910.1200(h)	Hazard communications training	670	294	23	994	67%
8	1910.303(b)	Electrical examination, installation and use of equipment	679	159	5	844	80%
9	1910.303(g)	Working spaces about electrical equipment	636	170	12	818	78%
10	1910.134	Respiratory protection program	391	348	8	747	52%

Comparison of the PROSHA's and Federal OSHA's top ten cited standards for general industry reveals that PROSHA shared three standards with Federal OSHA. These included two hazard communication standards and power industrial vehicle training.

An overall statistical analysis of the general industry tables revealed that PROSHA issued 307 (30%) serious violations out of 1,038 total violations. Federal OSHA issued 9,898 (77%) serious violations out of 12,901 total violations. This represents a percentage difference of 47%.

PROSHA Most Frequently Cited Standards – Construction
October 1, 2008 to September 30, 2009

	Standard		Serious	Other	Repeat	Total	% Serious
1	6a.001	General Duty Clause	11	173	0	184	6%
2	1926.501(b)	Unprotected sides and edges	93	4	23	120	77%
3	1926.1052(c)	Lack of Hand Rails on Staircase	22	5	2	29	76%
4	1926.502(a)	Fall Protection	21	0	5	26	77%
5	1926.451(c)	Criteria for support scaffold.	19	6	0	25	76%
6	1926.451(f)	Maximum intended load exceeded on scaffold	15	8	1	24	63%
7	1926.451(b)	Scaffold platform	19	1	3	23	83%
8	1926.451(g)	Scaffold Fall Protection	22	1	0	23	96%
9	1926.403(b)	Examination, installation, and use of equipment	16	4	0	20	80%
10	1926.454(a)	Scaffold Training	9	10	0	19	47%

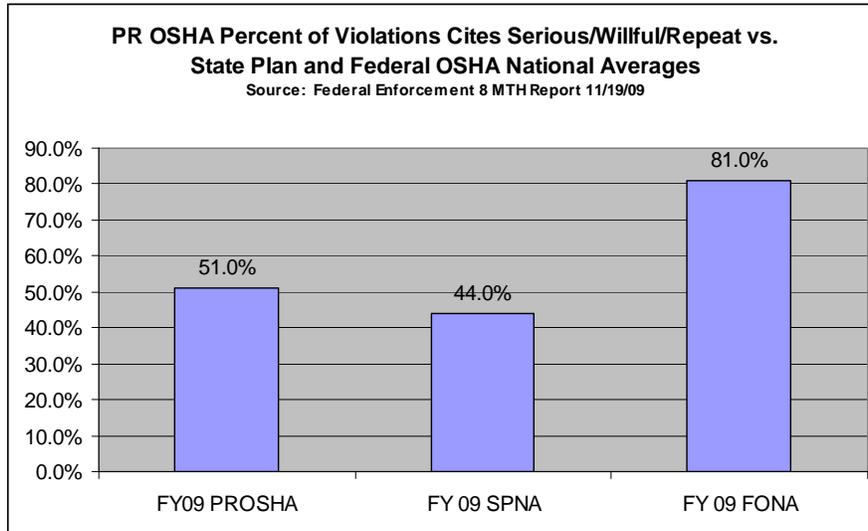
Federal OSHA Most Frequently Cited Standards – Construction
October 1, 2008 to September 30, 2009

	Standard		Serious	Other	Repeat	Total	% Serious
1	1926.501	Unprotected sides and edges	6036	312	450	6838	88%
2	1926.1053	Use of ladders	2763	256	65	3088	89%
3	1926.451(g)	Fall protection	2651	57	193	2915	91%
4	1926.503	Training	1672	107	8	1861	90%
5	1926.020	Accident prevention responsibilities	1451	334	40	1825	80%
5	1926.451(b)	Scaffold platform	1654	49	79	1790	92%
7	1926.453	Aerial lift requirement	1521	79	94	1697	90%
8	1926.100	Head protection	1492	98	63	1653	90%
9	1926.451(e)	Scaffold access	1239	35	87	1372	90%
10	1926.451(c)	Criteria for support scaffold.	1210	58	32	1301	93%

Comparison of the PROSHA's and Federal OSHA's top ten cited standards for construction reveals that PROSHA shared three standards with Federal OSHA. Those standards included scaffolds standards and fall protection.

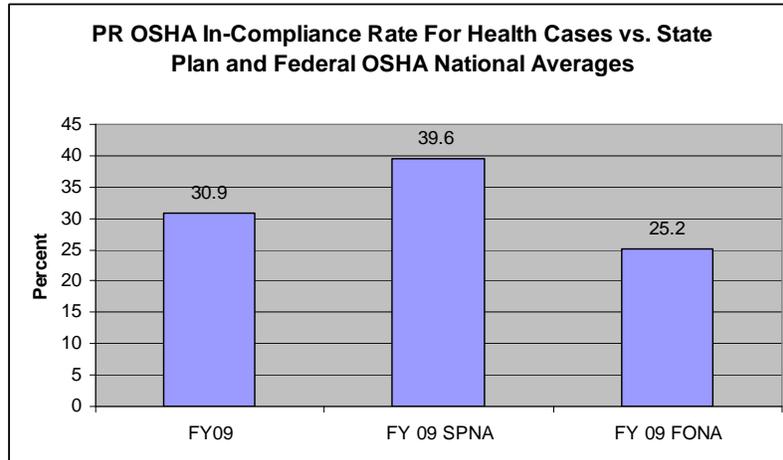
An overall statistical analysis of the tables revealed that PROSHA issued 247 (50%) serious violations out of 493 total violations. Federal OSHA issued 21,689 (89%) serious violations out of 24,340 total violations. This represents a percentage difference of 39%.

Percent Serious/Willful/Repeat Violations

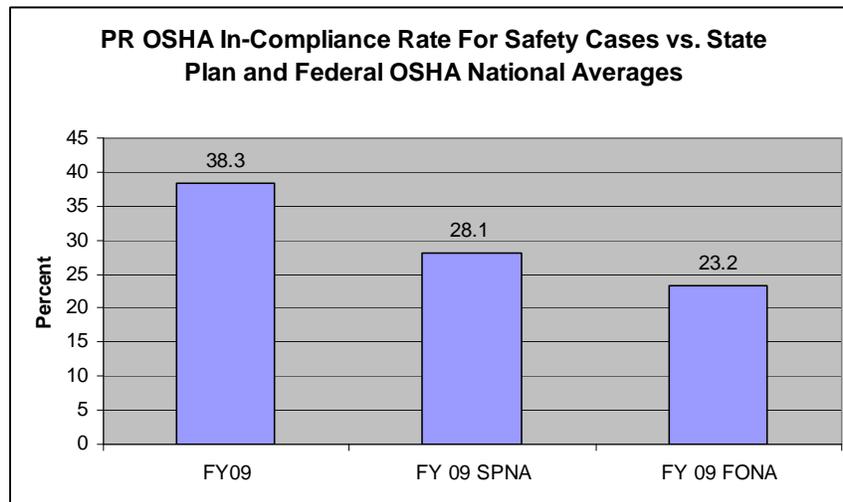


For FY2009 PROSHA cited 51% of its violations as Serious/Willful/Repeat violations. This figure indicates the PROSHA's program is documenting more serious, willful, repeat violations compared to its State Plan counterparts (44% cited S/W/R) and less than Federal OSHA (81% S/W/R).

Percent In-Compliance Health

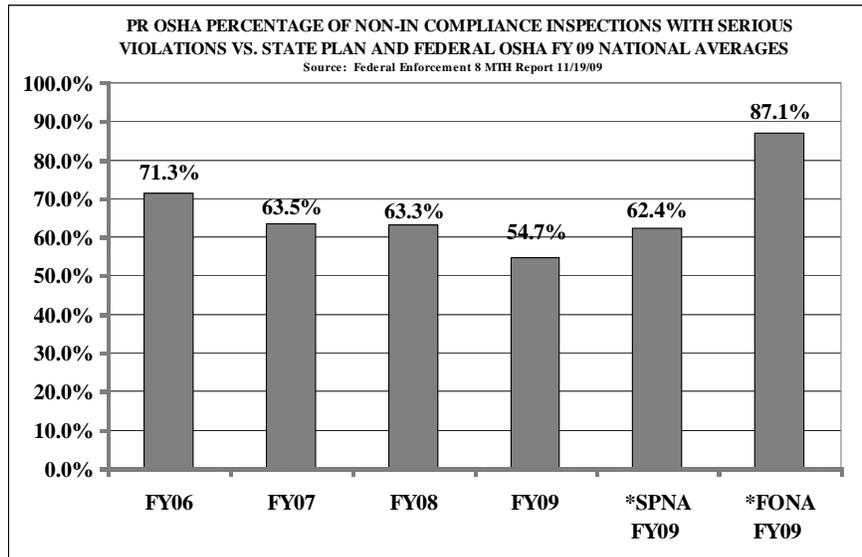


Percent In-Compliance Safety



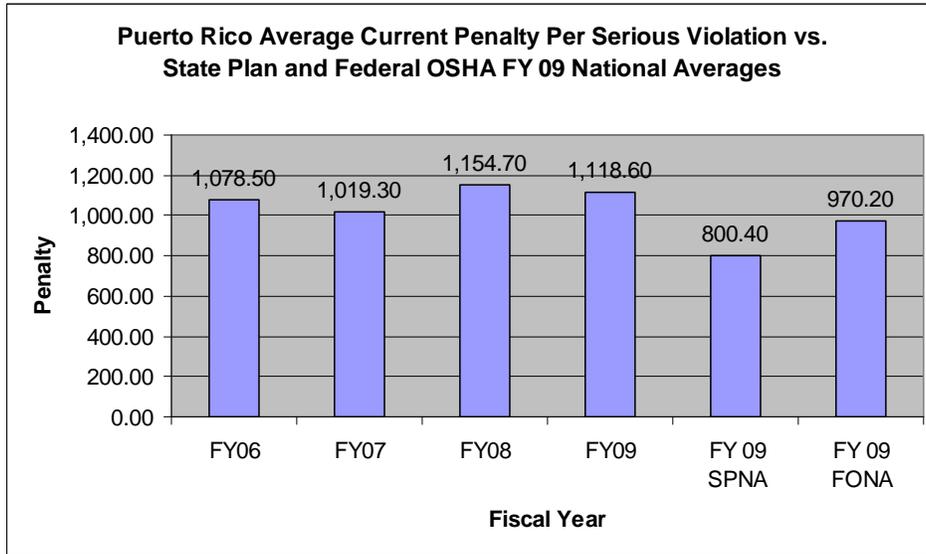
PROSHA's In-Compliance Rate (percent of cases where the employer is found to be in compliance with no citations issued) for health is approximately 9% lower than the State Plan National Average and 5% higher than the Federal OSHA National Average. PROSHA's In-Compliance Rate for Safety Cases is approximately 10% higher than the State Plan National Average and 15% higher than the Federal OSHA National Average.

Percent Serious



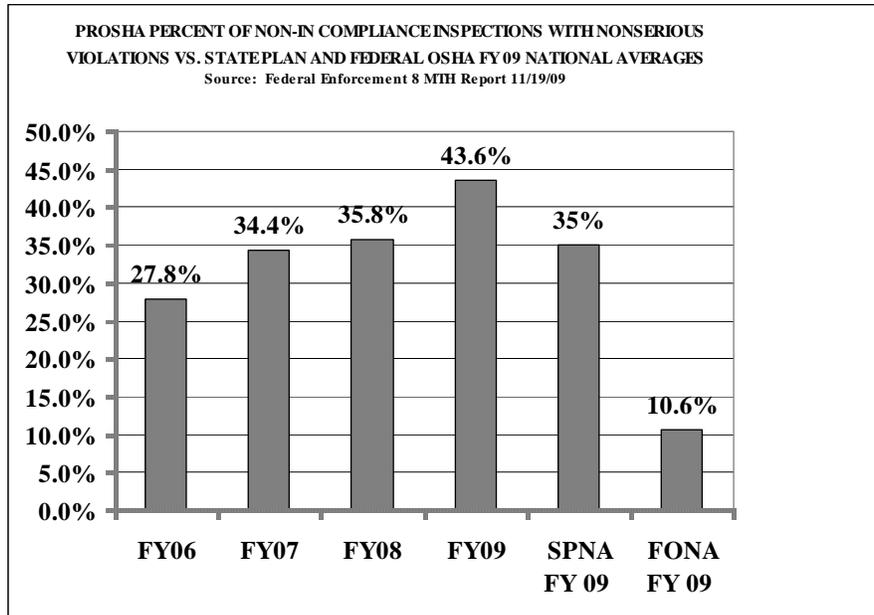
The percentage of PROSHA's non in-compliance inspections with serious violations for FY 2009 is approximately 8% lower than the State Plan National Average and 32% lower than the Federal OSHA National Average. The study has identified a gradual downward trend in this measure since a high of 71% in FY 2006.

Average Serious Penalties



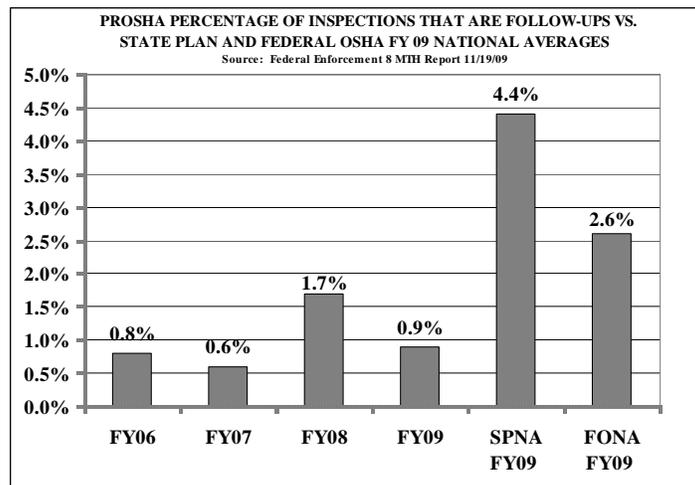
PROSHA's average current penalty per serious violation is \$1118.80 which is 40% higher than the State Plan national average and 15% higher than the Federal OSHA national average.

Percent Other Than Serious Only

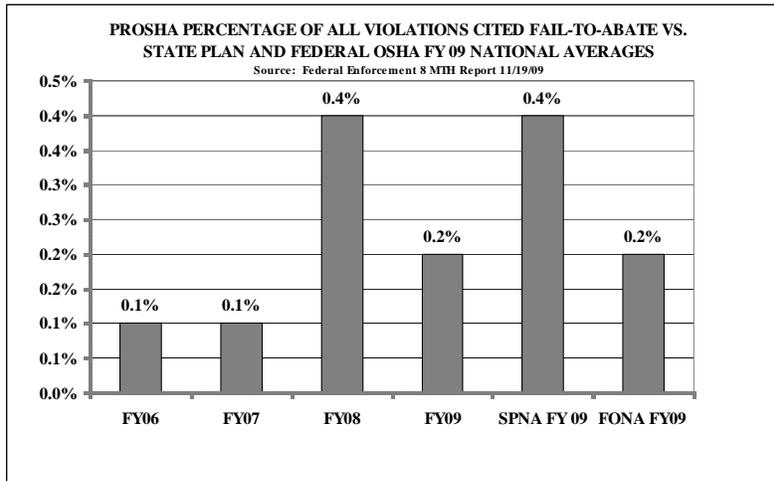


The percentage of PROSHA's non in-compliance inspections with non-serious violations for FY 2009 is approximately 9% higher than the State Plan National Average and 33% higher than the Federal OSHA National Average. The study has identified a gradual upward trend in this measure since a low of approximately 28% in FY 2006.

Percent Follow Up Inspections



PROSHA's percentage of follow up inspections has fluctuated since 2006. The FY 2009 percentage of follow up inspections is approximately 80% lower than the State Plan National Average and approximately 65% lower than the Federal OSHA National Average.



The percentage of all PROSHA violations cited Fail-To-Abate during FY 2009 was 0.2% which is 50% lower than the State Plan National Average and equal to the Federal OSHA National Average.

Employee and Union Involvement

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. In addition, there was no evidence in the case files that unions were invited to attend informal conferences, however, through discussion with PROSHA management and contact with stakeholders it is apparent the unions are invited. Additionally, in eleven public sector cases, the worksites were incorrectly coded non-union when they were actually union sites.

Safety:

In the majority of the 40 safety inspection case files evaluated, there was evidence employees were contacted during the inspections as evidenced by records of employee names and addresses, employee statements, etc., However, in only three of the 11 union case files, were employee representatives involved in the inspection process. Of the 11 union case files, only one was contested and there was no documentation that indicated the union was involved in the process. In addition, there was no evidence in the case files that unions were invited to attend informal conferences.

Health:

All 42 health cases reviewed had very detailed narrative descriptions, cases had employee interviews, and witness statement forms were used to document the interviews; only 5 cases were missing employee interview documentation.

Of the 15 private sector health case files evaluated all were non-union, except for 2; 1 case had union participation during the inspection process and was notified of the inspection results and was sent copy of citations.

There were 27 public sector health case files evaluated, 16 were coded as having union, all had employee representative participation during the inspection process, however, it should be noted that of the 11 cases not coded as union there is local knowledge that they are union establishments.

All of the 16 public sector health cases coded as union did not have documentation in case files to confirm that inspection results and copies and citations were sent to the union.

Recommendation 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.

Citations and Penalties

Adequate Evidence to Support Violations

Safety:

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.

PROSHA's requirements for case file documentation are equivalent to the Federal requirement for Stage III case files. In addition, the PROSH policy for documenting for General Duty Clause violations can be found in *PROSH* CPL 2.45C Field Operations Manual Chapter IV A.2. this is identical to the Federal policy in that it requires proof that:

- (1) The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed;
- (2) The hazard was recognized;
- (3) The hazard was causing or was likely to cause death or physical harm;
- (4) There was a feasible and useful method to correct the hazard.

The PROSHA Policy for determining the gravity of a violation is contained in PROSHA CPL 2.45C FOM Chapter VI B.6. The gravity of the violation affects the final penalty in that higher gravity penalties have higher corresponding penalties. The gravity takes two factors into account; the severity of the resulting injury that could occur, and the probability of that injury occurring.

PROSHA Severity Assessment Policy. The classification of the alleged violations as serious or other-than serious, in accordance with the instructions in Chapter IV of the PROSHA FOM, is based on the severity of the injury or illness that could result from the violation. This classification constitutes the first step in determining the gravity of the violation. A severity assessment is assigned to a hazard to be cited according to the most serious injury or illness which could reasonably be expected to result from an employee's exposure as follows:

- 1) High Severity: Death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses.
- 2) Medium Severity: Injuries or temporary, reversible illnesses resulting in hospitalization or a variable but limited period of disability.
- 3) Low Severity: Injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment.
- 4) Minimal Severity: Other-than-serious violations. Although such violations reflect conditions which have a direct and immediate relationship to the safety and health of employees, the injury or illness most likely to result would probably not cause death or serious physical harm.

Examples:

A case in which a Serious citation was issued for exposure to a hazard from a welding cable with broken insulation, a Lesser probability of injury was assigned even though the employee was allegedly exposed to the hazard 8 hrs/day.

A case in which a citation was issued for an unguarded circular rip saw with a Lesser probability of injury where the exposure occurred daily. Also in this case a citation was issued for an extension cord/receptacle not having the manufacturer's marking with a Lesser probability when the exposure was daily, and an unguarded saw violation was classified as likely to cause a Medium severity injury with a lesser probability (M/L) when it was used on a daily basis. Also, Hazard Communication-related citations were issued but there was no documentation in the file to support the severity and probability rating. In addition, citations were issued without employee exposure documentation for citations such as a swing cutoff saw guard (adjustment), swing cutoff saw automatic return device, and nonkickback fingers for radial saw all were cited "Other than Serious" when the presumed hazard would be amputation. In addition, an Other Than Serious MSDS citation was issued without employee exposure information.

A case in which a Serious citation was issued for not providing helmets to workers but information could not be found for the basis of the citation and its Medium severity / Lesser probability classification.

A case in which an Other than serious (Negligible injury / Lesser probability) citation was issued for an employee alleged exposure to a 24 ft fall.

A case in which Other than serious citations were issued for not having an OSHA 300 and for lack of emergency action plan; neither of which had information on employees' exposure.

A case in which a fall of 17 ft was classified as Medium severity / Lesser probability.

A case in which the lack of a Lockout/Tagout was cited as an Other than serious violation in a metal doors fabrication establishment.

A case in which a Serious citation was issued for lack of Personal Protective Equipment with a Medium severity / Greater gravity classification but the Personal Protective Equipment assessment was cited separately as a Low severity / Lesser probability gravity.

A case in which a grouped citation was issued for an untrained person operating a Powered Industrial Truck was classified as Other than serious when it should have been classified as serious.

With regards to penalty calculations, it was common to find inconsistencies in the application of the penalty adjustments (10 case files).

There were two case files in which Repeat violations were issued. In one case file citations issued included four Repeat violations including two Serious and two Other than serious. Documentation of abatement for the previously cited items (5 months earlier) was not in the file therefore, it is possible that the employer actually failed to abate the hazards which would have required a Failure-To-Abate notice rather than a Repeat.

In another case file (a fatality), a Repeat violation was issued against the general contractor for failing to provide fall protection around unprotected sides/edges. The employer had been cited for the same condition at the same site previously. Information could not be found on any attempt by CSHO to document Willful violation for fall protection deficiencies.

Health:

A total of 42 health case files were subject to a comprehensive review. 13 (31%) lacked documentation sufficient to represent vulnerabilities in the case. 3 (7%) of the cases files lacked photographic evidence of the hazardous conditions cited. Five (12%) of the case files reviewed lacked employee interviews documenting employee exposure to hazards cited. 5 (12%) of the case files lacked CSHO field notes. Field notes are the foundation that the case is built on as they prove that the CSHO documented site conditions, interviews, etc. as the information was gathered.

General duty clause violations [Section 6(a)(1)] were the most frequently cited regulations by the PROSHA program in 2009. The 13 cases with 6(a)(1) citations were reviewed. PROSHA used Section 6(a)(1) to cite violations of Puerto Rico's Domestic Violence Prevention and Intervention Act.

6(a)(1) citations are also typically used to cited hazardous conditions that are recognized by an industry, or other group, but are not specifically addressed by a safety and health standard (ergonomics hazards are a example).

In 2 of the cases reviewed the general duty clause was cited inappropriately; once for blocked egress (covered by 29 CFR 1910.37(a)(3) and once for a failure of the employer to provide safety shoes (covered by 29 CFR 1910.136).

None of the general duty clause violations reviewed contained the required evaluation and documentation required to support the issuance of the general duty clause violation as required by PROSHA's FOM (OSHO Instruction CPL 2.45C, April 2000; Chapter IV) as follows:

1. The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed.

2. The hazard was recognized.
3. The hazard was causing or was likely to cause death or serious physical harm
4. There was a feasible and useful method to correct the hazard.

It should be noted that unlike Federal OSHA's policy, PROSHA's FOM allows general duty clause violations to be issued as other-than-serious violations.

PROSHA frequently issues citations of more than one standard that are based on the same set of facts (citing the same violative condition twice – colloquially know as “double dipping”). PROSHA's FOM (OSHO Instruction CPL 2.45C, April 2000; Chapter V; B.2.c.) allows this. Specifically PROSHA' FOM states that in rare cases, the same factual situation may present a possible violation of more than one standard.

Review of health case showed that the alternative standard is used when there was a specific standard addressing the condition along a general duty clause 6(a)(1) violation; and in one case a combination of two different regulations.

One case had a housekeeping condition and was cited twice under 1910.22(a)(1) and 1910.1030(d)(4)(1). The 1920.22 item had a penalty and the 1910.1030 violation had no penalty. This practice of citing “in the alternative” has the effect of falsely driving up the statistics related to the numbers and percentages of serious violations issued. In addition employers may be made vulnerable to repeat violations where they are not warranted.

Other issues are highlighted below:

In 6 health cases reviewed, there were inconsistencies in the penalty adjustment factors documented on the OSHA-1, 1A, and 1B forms, resulting in the incorrect penalties being issued.

4 cases had a 10% adjustment factor entered in the OSHA-1 for good faith which did not follow PROSHA's FOM policy, which allows for only 15% or 25% reductions for good faith.

In one case, 1910.141(5) was cited twice, one time Serious and another Other-Than-Serious.

Recommendations:

Recommendation 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 violations as described in PROSHA's FOM (OSHO Instruction CPL 2.45C, April 2000; Chapter IV).

Recommendation 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.

Apparent Missed Violations

Safety

A total of 40 safety case files received a comprehensive review. Eight (20%) of the cases the CHSO apparently missed opportunities to cite hazardous conditions. These hazardous conditions involved employees walking under loads, block/locked exit doors, exit routes not being marked, unguarded fans, and electrical hazards.

Details follow:

- A citation was not issued for working/walking under a load (appeared to be a container). Notes indicated that the employer had instructed the employees not to go under the load and that the CSHO did not observe employees under the load. However - Photos in the case file showed evidence that employees had been under the load - the evidence is not addressed in the file.
- In the same case the CSHO observed a distribution panel with exposed live parts but indicated that "at the time of inspection" there were no employees exposed. The panel was used to provide temporary electrical power to the site and there is no indication in the file that the CSHO attempted to establish exposure.
- CSHO did not issue citation for lack of emergency exit signs because "employer knew where the exits and exit route were located." The CSHO did not attempt to document from employees' interviews if the exposure to the hazard existed. The complaint alleges that the exit had been blocked due to accumulation of materials and that "struck-by" hazards existed due to material stacking, and that the site lacked the proper materials handling equipment such as a forklift.

These conditions exacerbated the blocked exit issue. In the event of an emergency, such as a fire, the lack of signage combined with the blocked exits creates a potentially deadly violation, in that delays in exiting the facility could result in the exposed employees' deaths due to smoke inhalation or burns.

- In three cases, there were missed opportunities for citing General Duty Clause violations. Two cases there was evidence that the employers had not conducted "domestic violence" training and 1 case there was evidence that the employer had not developed a domestic violence protocol.
- In one case, photos in the file show a fan on the floor without a guard and an electrical cord without a strain relief in place, both of which are potential serious hazards. Neither of these apparent violations was cited.
- Another missed violation in a separate case involved a flexible electrical cord being run through holes in the ceiling being used as permanent wiring without a violation.
- In another case, from a photo in the file, there appeared to be employees potentially exposed to a load suspended from a crane, without an associated violation.

Health

A total of 42 health cases received a comprehensive review. Six cases (14%) had apparently missed violations. Missed violations included bloodborne pathogens and hazard communication hazards. In five of these cases, there was evidence that the employer lacked a hazard communication program and the only citations issued were for lack of hazard communication training. There were no citations issued for other missing elements of the hazard communication program, such as the program itself, lack of MSDS, labeling, etc. 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.

Recommendations:

Recommendation 14: See Recommendations 9 & 10 above.

Recommendation 15: On a case-by-case basis; CSHOs and supervisors should evaluate whether to expand un-programmed partial inspections to a comprehensive scope.

Abatement

Overdue Abatement/Abatement Information Not Complete

PROSHA's FOM Abatement Verification (Ch. III (E)(4)) states the following: The Area Director is responsible for determining if abatement has been accomplished. When abatement is not accomplished during the inspection or the employer does not certify the abatement and provide any required documentation to the Area Director within 10 calendar days after the abatement date, telephone the employer and remind him/her of the requirement to submit the documents, and tell the employer that a citation may be issued.

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.

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 (204 public sector and 140 private sector) which have unabated violations prior to October 1, 2008. PROSHA management was interviewed regarding this issue and they stated that the majority of these cases are public sector agencies that have neither abated nor paid the penalties assessed to them (see Debt Collection section of this report for more information) as they do not have the funds to do so.

Safety:

A total of 40 safety case files received a comprehensive review. There was a lack of documentation required by 1 OSH 1903 certifying abatement in 11 (28%) of the case file.

When employer's requested additional time to complete the abatement, PROSHA accepted PMAs that were incomplete and untimely. The PMAs did not contain the necessary information that is required by PROSHA's FOM Chapter III (E)(9)(b).

Examples:

- Abatement which had violations that were CDI (Corrected During Inspection). The file did not contain the required documentation indicating the method of abatement and/or a statement stating that abatement was observed by CSHO.
- A file was closed without abatement documentation with the two issued citations coded "A – not completed/AD Discretion", but it offered no explanation as to the reason to not pursue abatement.
- In another case file, photos or documentation of abatement could not be found. It appears that abatement was considered completed based on a letter by employer.
- In 2 case files, abatement documentation (to be submitted by the employer) was not found in the file even though there were notes in the file indicating abatement had been completed.
- In one case, abatement verification was not found for the Non-CDI violations contained in file – abatement was overdue and no action was taken by PROSHA, such as scheduling a follow up inspection, to obtain abatement information.

Health:

A total of 42 health cases received a comprehensive review. All case files evaluated had abatement periods which were less than 30 days.

There were 3 (7%) cases that had corrected during inspection (CDI) citations which lacked documentation on the method of abatement and a statement indicating that CSHO observed the abatement.

There were 7 (17%) cases which had incomplete abatement and 1 (2%) case where abatement was obtained during a Formal Settlement conference by a Hearing Examiner, but documentation of abatement was not found in case file.

Petition To Modify Abatement Dates (PMA)

PROSHA's FOM Petitions for Modification of Abatement Date (PMA) Chapter III(E)(9)(b) states the following:

If a letter is received from an employer requesting a modification of an abatement date, the Area Director shall ensure that all of the following five requirements listed in 1 OSH 1903.15 are set

forth in sufficient detail in the employer's petition:

- (1) All steps taken by the employer and the dates of such action in an effort to achieve compliance during the prescribed abatement period.
- (2) The specific additional abatement time estimated to achieve compliance.
- (3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.
- (4) Interim steps being taken to safeguard the employees against the cited hazard during the abatement period.
- (5) Written certification, including a copy of the posted and served petition and the date upon which such posting and service was made, that a copy of the petition addressing, as appropriate, each of the requirements set forth in (1) through (4) of this subsection:

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. In 1 case, a PMA was requested after the abatement date, the case file had since been referred to debt collection and no additional information was found on abatement.

There were three Health cases reviewed with PMA requests letters. All were incomplete and untimely and the PMAs were granted by PROSHA.

Follow Up Inspections

Safety

Three follow-up case files were evaluated; two cases were In-Compliance. In one of those case files, the follow-up inspection was conducted 11 months after the original inspection; in another, six months after the original inspection. The other case file, a second follow up, was conducted 11 months after the previous follow-up inspections which, according to the case file documentation, had been found In Compliance.

Health

A total of five health follow up case files were evaluated, one case had a repeat issued instead of the applicable Failure To Abate (FTA).

Follow up inspections to verify abatement were conducted in time periods ranging from two to nine months after the abatement due dates.

The case with the incorrectly cited Repeat violations – FTA was appropriate - the original citations (OSHA-2B's) were not found in case file, and the calculations found in the file were not the same as the final amount entered in the IMIS.

Recommendations:

Recommendation 16: Provide additional training to all field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established policy including:

- Ensure appropriate abatement periods are assigned for unabated violations.
- Ensure that all abatement information accepted satisfies the order to comply prior to closing the case.
- For cases with CDI, ensure that the file documents the method of abatement and that the CSHO observed the abatement.

Recommendation 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.

Recommendation 18: 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.

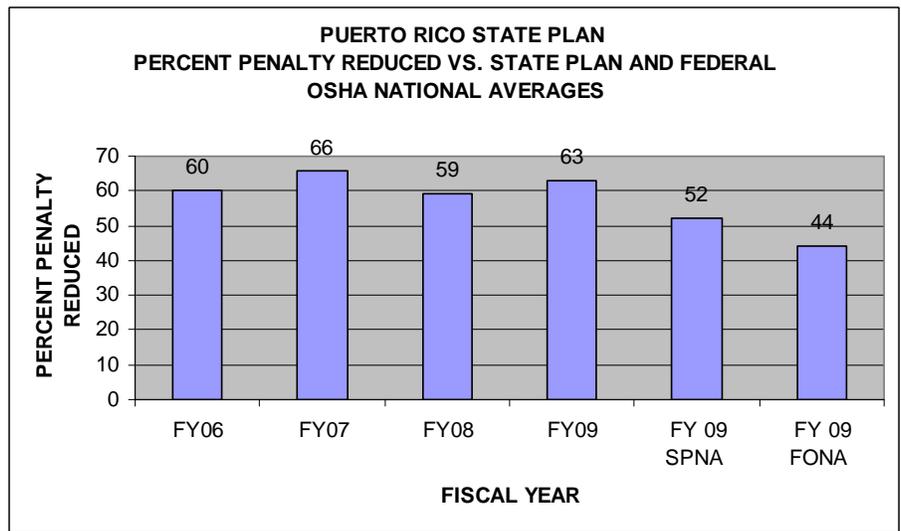
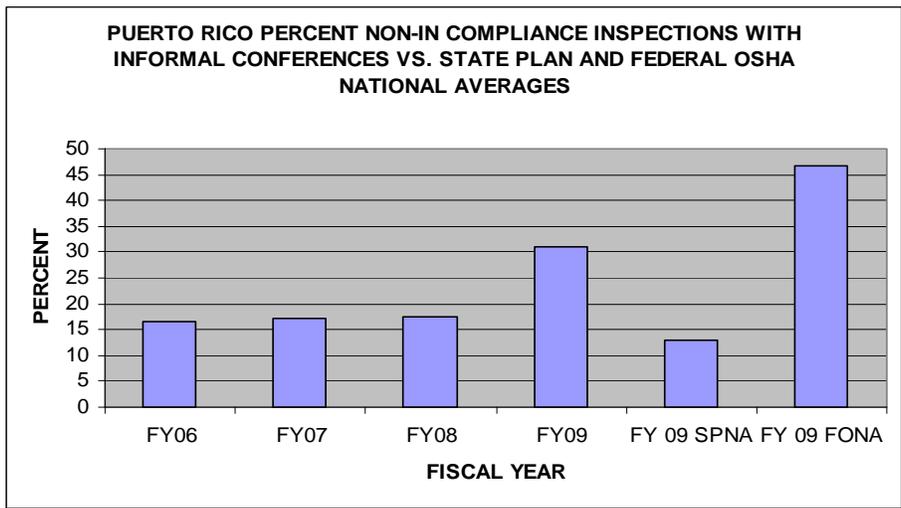
Recommendation 19: PROSHA should train all appropriate personnel on the FOM requirements for PMAs and should implement internal controls, such as supervisory review and approval to ensure that PMA requirements are met before granting PMAs.

Recommendation 20: Ensure that Failure To Abate notices are issued where appropriate.

Review Procedures

Per PROSHA FOM Chapter 5, Section H.2.a: “If a settlement is reached during the informal conference, an Informal Settlement Agreement shall be prepared and the employer representative shall be invited to sign it. [See PROSHA Instruction ADM 1.13.] The Informal Settlement Agreement shall be effective upon signature by both the Area Director and the employer representative so long as the contest period has not expired. Both shall date the document as of the day of actual signature.

Informal Review of Citations (Informal Conferences and Settlements)



Safety:

13 safety case files reviewed had informal conferences. All had notes from the AD documenting what had transpired during the informal settlement conference meetings.

Per FOM Chapter 5, Section H.1.c.3.: "Any penalty reduction amounting to more than 50% of the total for all penalties initially proposed (after any deletions or any reclassification) shall be approved by the Bureau of Inspections Director." Penalty reduction of greater than 50% was granted in 9 of the 13 case files with informal conferences. There was no evidence that the settlements had been approved by the Bureau of Inspections Director's in 8 of the 9 cases at issue.

Of the 13 case files where an informal conference was held, two involved union sites, both from the public sector. There was no indication that union or employee representatives were notified and afforded an opportunity to participate in the informal conference.

All 13 case files received penalty reductions which ranged from 42.5% to 100%; the average penalty reduction was 60%.

There were five case files in which violations were reclassified, all from Serious to Other-Than-Serious.

In two cases reviewed, the cost of abatement by the employers was noted as the basis to reduce the penalty amount to \$0 and violations were reclassified from "Serious" to "Other than Serious". Using the cost to come in to compliance as justification to reduce penalties is inappropriate, as the employer is required to be in compliance regardless of PROSHA's enforcement action. By using cost of compliance as a factor in reducing penalties PROSHA may be reducing the deterrent effect of their penalties.

PROSHA's Legal Division provided some insight into the settlement process as follows: The PROSHA Legal Division takes into account the economic crisis that is affecting the Government of Puerto Rico. The cost of abatement is only used as a strategic method to stimulate compliance from the public employers. The government cases that are contested are getting quicker results when it comes to abatement. There has not been any indication nor evidence that supports that by using cost of compliance as a factor in reducing penalties PROSHA may be reducing the deterrent effect of their penalties. They further assert that on the contrary, there has been more impetus for the public employers to resolve their cases as fast as possible in order to demonstrate goodwill towards their employees in these tough economic times. At present, many public employees are showing more appreciation for PROSHA's participation and intervention in public safety.

When it comes to the private employers, only small or medium businesses are taken into account. At present, many companies are closing down or reducing their workforce in order to survive. PROSHA has stated that forcing them to pay penalties of thousands of dollars has caused some businesses to shut down permanently forcing its employees out of the job, and consequently interfering and damaging the livelihood of many Puerto Rican employees. On the other hand, contested cases that contain citations and penalties from accidents or fatalities are not taken into account for cost of abatement reduction.

Health:

There were 11 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.

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.

In one case, the informal conference was held timely, but the Informal Settlement Agreement was prepared more than a month after the last contest date, and not signed until 3 months after the last contest date. This case should have been contested and settled formally.

Union participation in settlement discussions was not documented and was not found or identified in the cases that had informal conference notes. There was no information on the formal settlement agreements to determine if the union had an input during the contest process.

Formal Review of Citations (Contested Cases)

The Occupational Safety and Health Examiner (OSHE), created under Section 21 of the Act, is an independent adjudicatory entity. The OSHE is entirely separate from PROSHA. It consists of one or more members and provides employees and employers an opportunity for a hearing in matters

associated with citations, proposed penalties and abatement periods. The OSHE has the authority to uphold citations as issued, amend citations penalties, and abatement dates, or vacate citations and penalties.

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 has indicated that although this is true, the past Director of the Bureau of Inspections instructed all Area Directors not to allow any formal conference at the Area Offices, and that formal settlements would only be handled by the Legal Division.

There were seven contested safety case files reviewed

These cases were decided by the OSHE:

Four noteworthy outcomes of safety cases are as follows:

- Citations were reclassified from Serious to Other with a penalty reduction of 100%.
- Penalty reduction of 76%.
- Violation was reclassified to "other than serious" with the penalty reduced by 50%.
- In the other case where two serious violations were issued for a total of \$10,000, one of the violations was deleted and the other reclassified to an Other-Than-Serious violation with an 80% penalty reduction.

Two noteworthy outcomes of health cases are as follows:

- 14 violations, 13 cited serious, \$18,000 total penalty was issued. The Formal settlement agreement stipulated that 7 items were deleted; 7 items were reclassified OTS. . The penalty was eliminated for all citations.
- 6 serious citations and 4 OTS citations, \$11,125 penalty was issued. The Formal settlement agreement stipulated that 6 items were deleted (3 serious and 3 OTS); 3 serious citations were reclassified to Other-Than-Serious. The total penalty was amended to \$200.

Recommendations:

Recommendation 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.

Recommendation 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.

Debt Collection

Debts that remain unpaid after one calendar month from the time the first demand letter is sent to an employer by a PROSHA office are referred to the Legal Division for action. Upon receipt of a case, the Legal Division verifies the amount of the outstanding debt and proceeds to send a second demand letter to the employer, notifying him/her of the overdue debt and requesting immediate payment to the Legal Division or legal actions will be initiated. If the debt remains uncollected after one calendar month from the date that the second demand letter was received by the employer, legal actions should be initiated by the Legal Division. 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. According to PROSHA management, since the amendment to the PROSHAct in December of 2002 that allowed the imposition of first instance penalties for public employers who violate the Act, the number of debt collection cases has grown significantly. Due to the precarious fiscal situation of the government in Puerto Rico, most of the penalties imposed on public agencies are not being paid, as the agencies do not have the funds to do so. As a result, there has been a significant rise in debt collection cases in Legal Division since 2002. One example of this problem that was discussed with PROSHA management is the Puerto Rico Department of Education. Between 2002 and the present, Department of Education cases have accumulated in Legal Division with a total of \$2,782,812 in penalties. Of the total cases in debt collection, 204 are public sector cases and 140 are private sector cases. Given that approximately 26% of inspections are in the public sector the number of public sector entities in this process is significant.

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.

PROSHA's Legal Division provided insight into their debt collection situation as follows:

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, and that number is still growing. The majority of all of their cases are from public agencies, especially the Puerto Rico Department of Education. This public agency has gone through a lot of turmoil since last year. At the moment there is no Secretary of Education and the fiscal autonomy of the agency is under syndication which makes matters worse. The Department of Education is under a lot of scrutiny from the Federal Government because of questionable mismanagement of federal funds.

PROSHA's Legal Division has done everything within its power to collect unpaid penalties, from sending and mailing collection letters, soliciting informal conferences with the top legal representatives of the agency, to appear before a judge. But up to this day there hasn't been any progress whatsoever. PROSHA's Legal Division is probing for a way to use its legal power to force the Department of Education to produce abatement and payment of all the unpaid penalties. The only recourse left would be to shut down and seize the Puerto Rico Department of Education, close all its facilities and sell them in a public auction in order to carry out the payment due. But there is no local law or federal law that will help to accomplish that goal. Nevertheless, PROSHA is open to any suggestions from Federal OSHA on this matter.

Recommendation 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.

Public Employee Program

(As per PROSHA's SAMM report 11/02/09)

PROSHA conducted a total of 351 inspections in the public sector, which accounts for 26% of their total enforcement inspection activity (351/133). The 3-year average for Puerto Rico is 24%.

The PROSHA program contains provisions for the issuance of monetary penalties for public employers found not to be in compliance with applicable standards.

Information Management

Integrated Management Information System (IMIS) is the computer system used by the Occupational Safety and Health Administration (OSHA). IMIS was created to satisfy the automated data processing resources requirements of OSHA in accordance with the OSH Act of 1970. This system provides OSHA with information to monitor, assess, evaluate, and track the level and effectiveness of OSHA's enforcement, consultation, discrimination programs, and operations of the State Plan States and other Federal OSHA programs and initiatives.

IMIS is an on-line data entry and information retrieval system designed to collect, process, retrieve and communicate penalty assessment, arbitration and collection information regarding OSHA's inspections.

As part of this Special Study, OSHA evaluated PROSHA's management of the IMIS system. PROSHA encompasses six (6) Area Offices that conduct inspections at private and public sector workplaces. They include Arecibo, Caguas, Carolina, Mayaguez, Ponce and San Juan. IMIS management reports were run for each Area Office on April 30th and May 3rd, 2010 and the findings are summarized below.

NCR Maintenance:

Routine Maintenance is being performed uniformly by the IMIS clerks in all offices. End-of-Day and Start-of-Day transmissions, as well as system backups are being performed according to schedule.

Rejected IMIS Forms:

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. There should only be daily rejects reflected in this report.

PROSHA management indicated that they have been working with OSHA's Office of Management Data Systems (OMDS) to correct the rejected forms noted above.

Draft IMIS Forms:

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. Caguas has 29 draft Form 91S and 92 that ranged in date from 8/7/06 through 4/15/09. San Juan has 4 draft 166Z forms ranging from 9/09 – 10/09. Mayaguez has 11 draft 166Z forms ranging from 1/21/05 to 4/24/09 and 2 form 170 from 11/2009 and 1 form 91S from 2002. They also have 11 Form 7 still opened. These should be saved in final. Ponce has 4 Form 166Z 2 from 10/04/04 and 10/06/08 and 2 from 10/2009. At the time of the writing of this report PROSHA Area Directors are currently working to finalize or delete the non-active draft forms.

OSHA 31 Processing:

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. PROSHA Area Directors are currently working on resolving these issues.

Reports Management:

Major vulnerabilities/deficiencies were found in the management of IMIS reports as follows:

- ❖ ***Unsatisfied activity report:*** *This report lists all complaint, referral, follow-up and accident/event records that have been selected for an inspection, as well as programmed planned inspections, yet no inspection has been initiated.* There were a total of 425 unsatisfied activity listings for all Area Offices. There were 116 instances of planned activity with no dates entered, thereby not knowing how long these activities are reflected in the system. Ponce Area Office has 12 listings, 7 of which have the same company name. There are 185 cases 999+ days old, 3 over 900 days, 23 over 500 days, 2 over 300 days 60 over 100 days and 36 recent (within 100 days). Although the report reflects that inspections have not yet been conducted, it is quite possible that they have been conducted but the proper entries and updates were not made into the IMIS system. The Area Offices need to link complaint, referral and follow-up assignments to the OSHA 1 and satisfy the activity upon completion. They also need to link their planned inspection assignments to the OSHA 1. When this is accomplished, the activities will no longer be reflected in this report.

PROSHA management has indicated that most of these cases are data entry mistakes and they are working on correcting them. One major cause is that the inspectors are not making the link between the inspection and its corresponding complaint form in the system, or the complaint is not marked as satisfied.

- ❖ **Open Inspections Report:** *This report lists all open inspections for each office. 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.*

PROSHA management indicated that of the total number of open inspections, 685 cases are public sector and 767 are private sector. There are 642 cases (44%) in the Legal Division for debt collection, contest process or abatement action. Each Area Office is working with the cases to close the ones that can be closed.

- ❖ **Violation Abatement Report:** *This report lists all cases with abatement past due for specific violations and is available for use by management to contact the employer and remind them of their past due abatement, or schedule a follow-up inspection because of the lack of the employer's abatement response. At the time the last IMIS audit reports were run, there were a total of 283 open cases with violations pending abatement for the time period from 10/1/2008 to 4/30/2010. Forty five percent of the total open cases had abatement dates past due. From the totals reflected above, 344 (55%) of open cases have unabated hazards going back prior to October 1, 2008. The 283 inspections noted above includes a total of 1034 cited hazards, of which, only 184 are showing as having been abated by the employer. This means 82% of the hazards cited in those open cases (dating from 10/1/2008 to 4/30/2010) have not been entered as being corrected into the IMIS system.*

PROSHA management has indicated that they are following up on these cases to ensure abatement is obtained.

- ❖ **Citations Pending Report:** *This report lists all open inspections where the citations have not been issued. This report is available for use by management to track the six-month statute of limitation for issuing citations. A total of 28 inspections are listed as being open over 90 days without citations issued. One case exceeds the 180 day statutory limitation of 6 months in order to issue a citation. Six cases are over 150 days old, three of which are approaching the deadline. Two cases are over 130 days, 10 over 100 days and 9 over 90 days. (Report was run on 5/3/2010).*

PROSHA management has indicated that the case that exceeded PROSHA's statutory limitation had no citations pending and the case was closed.

- ❖ **Debt Collection Report:** *This report lists all inspections where penalties have been assessed and have not been paid within the required time frame. 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. One case in San Juan the penalty was paid but interest remains. The interest should be waived and the case marked closed. 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. This is being corrected.

- ❖ **Employer response (non formal complaints):** *This report lists all complaint inquiries where the employer's response to OSHA's request to investigate the complaint allegations has not been received.* There was no data present on any of the reports from any of the offices. This could suggest that all Non Formal complaint investigations were satisfactorily responded to and closed, or it could indicate that the Area Office's are not entering the correct information onto the Complaint form. The Area Office must generate the investigative letter to the employer from the 7 Complaint Form entering the date the letter is being sent, the number of days we expect a response by and the response due date. The reports are generated from the information entered in the 7 form.
- ❖ **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.

PROSHA management indicated that the Area Offices are reviewing their complaints and updating the information in the IMIS.

- ❖ **Complaint auditing report:** *This report is used to determine if complainants are notified of the results of a complaint inspection.* After review of these reports, it appears that a majority of complaints that are received by the Area Offices are being handled formally, which signifies inspections are being conducted. All indications reflect that the complainants are being notified of the inspection results with a letter "H" (results letter) being sent.

PROSHA has indicated that three IMIS clerks chose to participate in the early retirement program, thus three Area Offices lack an IMIS clerk. This situation is exasperating their IMIS issues. They also indicated, however, that they will do whatever is necessary to improve their IMIS data management. They are hopeful that by the first half of 2011 they will have filled those positions. In addition, Area Directors will be given instructions as to how to use IMIS reports as a tool to effectively manage the program and the staff's work product.

Recommendations:

Recommendation 24: 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.

Recommendation 25: Area Offices must correct rejected forms promptly and if

they experience problems and cannot correct the form they should contact OMDs for assistance.

Recommendation 26: Area Offices must review and update draft forms on a periodic basis.

Recommendation 27: Area Offices must track and ensure OSHA 31 Forms are being completed in a timely manner.

Recommendation 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.

Recommendation 29: The Area Offices should contact their Legal department to ascertain whether or not the order of the contested cases have become final orders, and if they have, these cases also should be closed.

VIII. FEDERAL PROGRAM/STATE INITIATED CHANGES

Federal Program Changes

During FY 2009 a total of six Federal Program Changes (FPC) that required a notice of intent to adopt during FY 2009. PROSHA did not respond timely with their intent to adopt one of the six FPC's (see table below).

Date of Directive	Date of Intent due	Date of State Response	Directive Number	Display Title
09/30/2009	11/30/2009	11/09/2009	CPL-02-09-08 2010 355	Injury and Illness Recordkeeping National Emphasis Program
09/30/2009	11/30/2009	10/26/2009	CPL-02-01-046 2010 354	Rescission of OSHA's de minimis policies relating to floors/nets and shear connectors
08/18/2009	10/30/2009	09/01/2009	CPL-03-00-010 2009 353	NEP Petroleum Refineries - Extension of Time
07/27/2009	09/28/2009	09/11/2009	CPL-02(09-06) 2009 334	NEP-PSM Covered Chemical Facilities
07/20/2009	09/21/2009	*11/24/2009	CPL-2(09-05) 2009 333	Site-Specific Targeting 2009 (SST-09)
03/26/2009	06/01/2009	04/21/2009	CPL-02-00-148 2009 332	Field Operations Manual

* Untimely Response

Standards Adoption

Four Federal standards were issued during FY 2009. The notice of intent to adopt was timely in all of the four standards and actual adoption was timely in two of the four standards.

- Final Rule - Updating OSHA Standards based on National Consensus Standards; Personal Protective Equipment 74 FR No. 173 (46350-46361), September 9, 2009, Parts: 4 OSH 1910, 12 OSH 1915-18.

Notice of Intent Due Date: 11/20/2009

Notice of Intent received: 09/11/2009

Adoption Due Date: 03/09/2010

Adoption Completed: 01/09/2009

- Final Rule - Electrical Standard; Clarifications; Corrections; 73FR, No. 210 (64202-64205) - October 29, 2008 Part: 4 OSH 1910.

Notice of Intent Due Date: 11/20/2009
Notice of Intent Received: 12/11/2008
Adoption Due Date: 4/29/2009
Adoption Completed: 10/29/2008

- Final Rule - Longshoring and Maritime Terminals; Vertical Tandem Lifts; 73 FR, No. 238 (75246-75290), December 10, 2008 Parts 12 OSH 1915-18.

Notice of Intent Due Date: 02/17/2009
Notice of Intent Received: 01/23/2009
Adoption Due Date: 06/10/2009
Adoption Completed: 04/09/2009

- Final Rule - Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee; 73 FR, No. 240 (75568-75589), December 12, 2008 Parts 4 OSH 1910, 10 OSH 1926, 12 OSH 1915-18.

Notice of Intent due date: 02/17/2009
Notice of Intent received: 02/19/2009
Adoption due date: 06/12/2009
Adoption Completed: 01/12/2009

State Initiated Changes

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

- PROSHA Instruction 08-01 (TED 3.6) October 1, 2008; Subject: On-site Consultation in the Construction Industry.
- PROSHA Instruction CPL 2-0.0701A: Local Emphasis Program – Warehousing and Storage Industries and Related.
- PROSHA Instruction EBD 01-00-001 Elevators or Boilers Inspectors Medical Examination Policy for License Granting and Renewal.
- PROSHA Instruction CPL 04-00-01: Local Emphasis Program – Metal Doors and Windows Industries.
- PROSHA Instruction CPL 2-0.0601 CH1: Changes to the Local Emphasis Program – Printing, Publishing and Allied Industries.
- PROSHA Instruction 09-01 (CPL 2.0) – Contingency Plan for PRDOL Administrative Recesses (April 8 and 9, 2009).
- PROSHA Instruction EBD 01-00-001 CH-1 Elevators and Boilers Inspectors Medical

Variances

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

IX. CONSULTATION ACTIVITIES

Private Sector Consultation

(As per PROSHA's MARC report 11/02/09)

PROSHA conducted a total of 145 private-sector consultation visits in FY 2009 which is 96.67% of their projected goal of 150 visits.

There were a total of 88 safety visits conducted which is or 17% below their projected goal of 106 visits and 49 health visits conducted which is or 111% above their projected goal of 44 visits.

Public Sector Consultation

(As per PROSHA's MARC report 11/02/09)

PROSHA conducted a total of 23 private-sector consultation visits in FY 2009 which is 67.65% of their projected goal of 34 visits.

There were a total of 6 safety visits conducted which is or 62.5% below their projected goal of 16 visits and 17 health visits conducted which is or 6% below their projected goal of 18 visits.

Consultation Program Review

PROSHA's Consultation Program is funded under the 23(g) grant agreement and its' services are provided primarily from the PROSHA's Central Office. PROSHA's Voluntary Programs Division operates the OSHA Consultation Program in Puerto Rico and services are provided to both private and public sector employers.

This is the Program's fifth full year of offering the Safety and Health Achievement and Recognition Program (SHARP) program to small employers in accordance with 29 CFR 1908 and OSHA Directive CSP 02-00-002, "Consultation Policies and Procedures Manual" which Puerto Rico adopted in its entirety on January 18, 2008.

During FY 2002, two (2) new establishments were approved in the SHARP program and 12 worksites were approved for continued participation in the program. There are currently seventeen (17) establishments participating in Puerto Rico's Safety and Health Achievement Recognition Program.

PROSHA has a comprehensive and active outreach and training program. Numerous outreach activities, including training seminars, radio and television PSA (public service announcements) and speeches are conducted by PROSHA's consultants, compliance officers and management throughout the year. On a semiannual basis, the program has conferences all over Puerto Rico to promote both consultation services and the SHARP program. These conferences are approximately 4 hours in

duration.

In addition to other documentation provided by PROSHA, thirty one (31) of the Puerto Rico Consultation case files for visits conducted in FY 2009 were selected and reviewed for this special study evaluation. These case files represent 24 initial visits, 4 follow-up visits, and 3 training & assistance visits.

Several issues were identified during the review and include: items related to extension of correction due dates; issues related to the consultants contacting employees and organized labor during onsite visits; low levels of industrial hygiene sampling; case file documentation issues, and problems with the eligibility of employers to be in SHARP.

Extension of Correction Due Dates

PROSHA and Federal Program Requirement Ref: CSP 02-00-002, Consultation Policies and Procedures Manual (Chapter 6) states:

C. Extensions. Any extensions to the correction due date (request and response must be in writing) must be documented. The documentation must include an explanation of why correction was not completed in the established time frame and evidence that the employer is safeguarding employees against the hazard with interim protection during the correction period must be documented.

Status: 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.

Recommendation 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.

Contact with employees and organized labor during onsite visits

PROSHA and Federal Program Requirement Ref: CSP 02-00-002, Consultation Policies and Procedures Manual states that employee participation is required on all on-site visits involving hazard identification. The requirements vary depending on whether or not the site has a recognized employee representative, but in general, if the site has an employee representative of affected employees must be afforded an opportunity to participate in the opening and closing conferences and to accompany the consultant and the employer's representative during the physical inspection of the workplace. If the site has no recognized employee representative the consultant must confer with a reasonable number of employees during the course of the visit in order to identify and judge the extent of particular hazards within the scope of the employer's request and to evaluate the employer's safety and health management system. The employer must agree to permit such contact in order for the visit to proceed.

Status: 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.

Recommendation 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.

Industrial Hygiene

PROSHA and Federal Program Requirement Ref: CSP 02-00-002, Consultation Policies and Procedures Manual, Appendix K, "Consultant Function-Competency Statements", describes that consultants need to have certain hazard recognition skills, including the ability for developing an appropriate sampling plan for health hazards.

Status: 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.

Recommendation 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.

Case Files and Documentation

PROSHA and Federal Program *Requirement* Ref: CSP 02-00-002, Consultation Policies and Procedures Manual, Chapter 5, "Training Documentation" states, "Training services provided during the initial visit must be included in the written report to the employer. Training services provided after the written report has been sent to the employer must be followed-up with a letter to the employer describing the training and a copy of the letter must be placed in the case file.

Additionally, Chapter 6 requires that as a minimum, each case file must include all Consultation forms (such as OSHA Forms 20, 30, 33, 40, and 66), field notes, observations, analyses, and other written documentation (such as hazard documentation, OSHA 300 logs), gathered prior to and during the hazard survey.

Status: 1) 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. 2) Approximately 77% of the case files reviewed did not have complete OSHA 300 log records included.

Recommendation 33: 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.

Follow-Up Visits

PROSHA and Federal Program Requirement Ref: CSP 02-00-002, Consultation Policies and Procedures Manual (Chapter 6) states, "Visits other than initial visits do not require a written report, but must be concluded with a letter to the employer summarizing the activity."

Status: The appropriate documentation was not found for follow-up visits and this absence was verified by the Director of Voluntary Programs.

Recommendation 34: PROSHA must document ALL visits in writing as required by the CSP 02-00-002.

SHARP Cases

PROSHA and Federal Program Requirement Ref: CSP 02-00-002, Consultation Policies and Procedures Manual, Chapter 8 states that employers seeking SHARP approval must receive a score of at least "2" on all 50 basic attributes of the Form 33.

Additionally, all "stretch items" of the Form 33 must be scored. Additionally, each SHARP worksite must receive a full service safety and health hazard identification survey, including a comprehensive assessment of the worksite's safety and health management system.

Status: Two (2) of the four (4) 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. These worksites were recommended by the consultant after an undocumented follow-up visit and the full service visit was conducted several months earlier when it was determined that the employer had safety and health program management deficiencies. During one SHARP evaluation, only 2 of the 240 employees were interviewed. In two other cases, where there were less than 5 employees at the worksite being evaluated for SHARP participation, only one employee was interviewed during the visit.

Recommendation 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.

Review of Operational Elements

The following Operational Elements, as described in CSP 02-00-002, were evaluated as part of this Special Study of Puerto Rico.

- Progress in meeting annual training plans: PROSHA has a well conceived plan for training consultants resulting in each consultant's attendance at two (2) professional development courses per year.
- On-the-job evaluations: According to the Program Director says that this hasn't been done because of resources. However, she has gone on VPP evaluations with the staff and thus has observed all consultants in the field.

- Lapse time from request to delivery of service: Timeframes are appropriate for staffing levels
- Management reports (i.e., written reports pending, pending hazard corrections, number of requests, and visits pending): The PROSHA Consultation program uses standard NCR reports (included some detailed local reports) to effectively manage the program.
- Hiring and vacancies. Three consultant and an IMIS Clerk positions are currently vacant
- Monitoring of consultants' performance: Consultants are part of PR's Dept of Labor and Human Resources' biannual performance review process which includes an annual discussion component to review the employee's performance. There are 10 elements included in the performance review and appears to be very comprehensive. This was reviewed for two employees as part of this audit.
- Promotion of the Project's recognition and exemption program (SHARP) and Marketing initiatives: On a semiannual basis, the program has conferences all over PR to promote consultation services and the SHARP program. These conferences are approximately 4 hours in duration. The program also distributes promotional items (e.g. small tool kits, calculators, etc) that have their logo and contact information embossed on it.
- The Project's internal quality assurance program: This is done by PROSHA's Division of Evaluation on quarterly and annual basis.
- The consistent use of the Safety and Health Program Worksheet (Revised OSHA Form 33) by all consultants: In general, no comments are being entered to justify Form 33 scores and provide useful guidance to employers. Additionally there are several new consultants that have not been formally trained in the use of the Form 33.

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

X. DISCRIMINATION PROGRAM

PROSHA's discrimination program meets the § 1977.23 standards. In general, the PROSHA's discrimination program has continued its outstanding program as noted on the May 2002 Program Audit. The audit team noted the following strengths in the PROSHA discrimination program:

1. Average days to complete a case is 69.8 (well below the 90 day guideline).

2. The timeliness rate for the twenty-six (26) examined cases was 92%, with only two (2) cases being untimely.
3. All assigned investigators have attended the Basic Discrimination Investigator's Course 1420 at OTI.
4. Consistently excellent and consistent investigative process and procedures.
5. Investigators follow the Federal Whistleblower Investigations Manual (DIS 0-0.8 and its predecessor, DIS .4B).
6. Since the last audit in May 2002, an avenue has been created for investigators to settle cases, and is actively used (See Cases Numbers: 02-7506-08-20, 02-7504-09-12, 02-7504-09-10, 02-7506-09-01, and 02-7506-09-020.)

The audit team noted only a few minor weaknesses in the PROSHA discrimination program:

1. Inconsistent case organization tactics and some missing documents.
2. Lack of understanding of appeal process, and what happens to a merit case after the Final Investigative Report is submitted, by both investigators and staff.
3. Investigators do not have access to the Whistleblower IMIS.
4. Inconsistent formats for Final Investigative Reports.
5. Secretary's Findings letters contained little or no details about the investigation.
6. OSHA-87 forms were largely unsigned by the Supervisor.

Two Regional Investigators conducted a Special Study of the PROSHA Discrimination Program on site on January 12, 2010 and January 13, 2010.

The team examined twenty-six (26) cases which are recorded on the IMIS Case Listing from October 10, 2008 to September 30, 2009.

Observations:

(1) Although the majority of the cases were organized with legal papers as separators, this system made it extremely difficult to locate documents as the Exhibit number was printed high on the page, and all of the papers were the same length. Organization of administrative documents was inconsistent with some filed on the left side of the case file and others filed as exhibits on the right side of the folder. Some case files contained tabs (02-7504-09-12), (02-7504-09-11), and (02-7502-09-09), although it was inconsistent if both sides or only the right side of the case file was tabbed. Case number (02-7506-09-04) was organized except that the three case folders did not each have a table of contents, which made it extremely difficult to navigate to find needed exhibits.

The quality of the investigation and written documentation was overall very good, however, a number of the case files were incomplete, unorganized, and inconsistent. Firstly, two (2) case files were missing Statement of Positions (02-7504-08-19) and (02-7502-09-07). Case files (02-7503-08-025), (02-7504-08-19), and (02-7504-08-18) were unorganized. This is particularly important for case number (02-7504-08-18), which was a merit case, which should be organized as to aid reviewers in the merit process. Case files (02-7502-09-05) and (02-7506-09-01) contained no tabs or separators which made the case files almost impossible to navigate.

(2) Interviews of investigators and supervisors revealed a lack of understanding and confusion and the appeals process, and the procedures for merit cases. The attorney in charge of reviewing appeals stated that she files merit cases in Puerto Rico Civil Courts. Later, the Assistant Secretary of Labor

corrected that non-merit cases are never filed in court, but are reviewed by the uniform administrative appeal process in the Litigations Division of the Department of Labor and Human Resources and the order of the agency is final and enforceable by the agency itself.

(3) Review of the twenty-six (26) case files showed that hand-written investigator notes were in many different exhibits intermingling with evidence.

(4) 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. The investigators do regularly use IMIS in conjunctions with their CSHO duties.

(5) Interviews revealed that several investigators wanted a team leader or another contact who investigators may ask legal, procedural, or substantive questions.

(6) 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.

(7) Of the reviewed files, only two (2) case files contained a Complainant Questionnaire (02-7504-09-11 and 02-7506-10-02).

(8) 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.

(9) The reviewers found numerous formats, styles, and organization of the Final Investigative Reports. Case numbers (02-7506-08-02) and (02-7506-09-13) had the closest Final Investigative Report formats to the Federal manual's template. These cases were the easiest to read and the most organized. Case Number (02-7506-09-14) had the most confusing Final Investigative Report format, which was difficult for the reviewer to follow.

(1) 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.

(11) Of the reviewed twenty-six (26) cases, twenty-two (22) of the OSHA-87 forms were signed by the CSHO, one (1) was unsigned, and only three (3) were signed by the Supervisor.

(12) Investigators did not know what happens to screens, and there appeared to be no process for documenting screens.

Recommendation 37: PROSHA needs to implement the the case organization standards as outlined in the Federal Manual that PROSHA adopted in February of 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.

Recommendation 38: 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.

Recommendation 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.

Recommendation 40: Investigators should be granted access to Whistleblower IMIS so that they may better track their cases.

Recommendation 41: It is suggested that PROSHA assign a team leader or contact who investigators may ask legal, procedural, or substantive questions.

Recommendation 42: 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.

Recommendation 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.

Recommendation 44: It is suggested that all investigators adopt the screening checklist used by some investigators to help identify all elements, timeliness, and jurisdiction.

Recommendation 45: PROSHA should follow the Federal Manual's template for Final Investigative Reports.

Recommendation 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.

Recommendation 47: The supervisor should sign off on all OSHA-87 forms.

11(c) study team's conclusions:

The PROSHA program already has some highly motivated and competent Investigators, who are dedicated to OSHA's mission. Overall, the PROSHA program is excellent and meets or exceeds Federal Guidelines. Our major suggestions to further improve the program are to streamline case organization and reports and train all personnel on merit cases procedure and process. It is also believed that the adoption of the above processed and procedural recommendations will enhance the overall performance of the program. It is noted by the team that program personnel are very willing

and cooperative partners with their Federal counterparts. It is with that spirit of cooperation that these suggestions and recommendations are made.

XI. COMPLAINTS AGAINST STATE PROGRAM ADMINISTRATION (CASPA)

One Complaint About the PROSHA State Plan Administration (CASPA) was received during the first quarter of FY 2010. The anonymous complaint contained allegations relating to a number of issues. The issues relating to State Plan administration were investigated as part of the special study. The issues raised that were found to be valid related to union representatives not always being notified they may participate in informal conferences; copies of citations not always being sent to the next of kin of deceased workers; and that the required number of CSHOs were not receiving specific training (accident investigation, ICS-200). Findings relating to these issues are included in this report along with recommendations for corrective action.

XII. VOLUNTARY COMPLIANCE PROGRAMS

VPP Review

The Puerto Rico State Plan has a comprehensive Voluntary Protection Program, which mirrors federal OSHA's VPP. The highest award, the Guanín, 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 not meeting all the core elements of the Guanín and/or Cemi.

PROSHA's Voluntary Programs Division operates the Voluntary Protection Program (VPP) in Puerto Rico and evaluators are paid using 23(g) funding. The evaluators are consultants with PROSHA's On-site Consultation program and include two staff members who meet the qualifications to be Level 1 Process Safety Management reviewers. PROSHA does not use Special Government Employees (SGEs) on VPP Evaluation Teams.

OSHO Instruction TED 8.1, dated 12/1/97, outlines how the commonwealth administers the program and specifies the criteria that applicants must meet to be in the program. Applicants' rates must also be below the BLS averages for the industry.

OSHO Instruction TED 8.1 doesn't meet all of the requirements described in the Federal Register Notice of January 9, 2009 (74 FR 927). PROSHA does not have a corporate VPP program nor does it have provisions for VPP participation by mobile workforce employers. There are other items required by the 2009 Federal Register notice that are not covered in the PROSHA TED 8.1 such as the requirement in the employer's written program assurances to require the employer to provide employees and employee representatives with access to certain safety and health information.

PROSHA's Voluntary Protection Programs has seventeen (17) participants, all at the Guanín level.

There were five (5) Voluntary Protection Program (VPP) site evaluations conducted in Puerto Rico during FY 2009. Three of the five evaluations conducted were for new applicants who received the designation of Guanín. Two VPP on-sites were conducted for recertification of existing participants. Additionally, the Puerto Rico State Plan restored one site from a One Year Conditional Approval back to the Guanín level even though no on-site evaluation was conducted in conjunction with this activity.

In addition to the other documentation provided by PROSHA, three (3) of the Puerto Rico VPP case files were selected and reviewed during this special study evaluation. Several issues were identified: issues related to sites covered by OSHA's Process Safety Management (PSM) standard; issues related to the eligibility of employers to be in the VPP program; excessive time intervals between VPP onsite reapproval evaluations; and VPP application processing and tracking differences.

Process Safety Management (PSM)

PROSHA requirement: OSHO Instruction TED 8.1 (dated 12/1/97), Voluntary Protection Program Policies and Procedures Manual, does not require that pre-determined PSM questions be answered during on-site evaluations and does not require applicants to submit a detailed evaluation of their PSM program. Also, a self evaluation PSM questionnaire is not required to be submitted with the annual self evaluation that is required for current participants.

Federal OSHA Requirement: Federal OSHA Instruction CSP 03-01-003, Voluntary Protection Program (VPP) Policies and Procedures Manual, requires these employers to submit the PSM Application Supplement with the application and also requires a PSM Level 1 auditor to participate in the onsite review to answer PSM questions on list provided by OSHA's National Office. VPP participants that are covered by the OSHA PSM standard are required to submit a PSM questionnaire annually.

Status: PROSHA 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).

Recommendation 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.

Employer Eligibility

PROSHA Program Requirement. OSHO Instruction TED 8.1 (dated 12/1/97), Voluntary Protection Program Policies and Procedures Manual requires verification of the OSHA logs during the onsite visit by reviewing the company's and contractor's OSHO-101 forms or their substitutes (workers' compensation or insurance reports of injury). Also, randomly chosen, personally identifiable health records must be reviewed. Another verification source that is to be looked at is the health unit daily log or first aid station log.

Federal OSHA Requirement: 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.

Status: No Medical Access Order provision and/or other device is available for PROSHA staff to allow access to confidential employee medical records to ensure that recordkeeping is accurate.

Recommendation 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.

Excessive time intervals between VPP onsite evaluations

PROSHA Program Requirement. OSHO Instruction TED 8.1 (dated 12/1/97), Voluntary Protection Program Policies and Procedures Manual requires that, for participants at the Guanin level, that first reapproval evaluations be conducted between 30 to 42 months from the date of initial approval and subsequent reapproval evaluations be conducted within 60 months.

Federal OSHA Requirement: Federal OSHA Instruction CSP 03-01-003, Voluntary Protection Program (VPP) Policies and Procedures Manual, has the same timeframe requirements as PROSHA.

Status: There were two VPP participants that were approved in 2004 and 2005 respectively that did not have their first reapproval visits within the required 42 month period. One reapproval site visit was further delayed by an enforcement activity (where PROSHA enforcement issued citations) at the site which were related to a workplace violence related fatality that happened approximately 4.5 years since the initial approval in 2004. The latter Guanin worksite had a reapproval evaluation conducted in August 2009, 57 months after the date of its initial approval.

Additionally, there are three existing VPP sites, initially approved in 1998, where the interval between the date of their penultimate and their last VPP reapproval evaluation exceeded 60 months (i.e. 5 years, 3 months; 5 years, 6 months; and 5 years, 4 months)

Recommendation 50: Implement internal controls to assure that time intervals for reapproval evaluations, as outlined in OSHO Instruction TED 8.1, must be adhered to.

VPP Application Processing and Tracking

PROSHA Program Requirement. OSHO Instruction TED 8.1 (dated 12/1/97), Voluntary Protection Program Policies and Procedures Manual requires that the VPP Manager informs the applicant of the receipt of the application within five (5) working days provide the name and telephone number of the VPP Manager or a designee. There is no requirement that this be in writing.

Federal OSHA Requirement: The VPP Manager must notify the applicant by letter or e-mail of receipt of the application within 15 working days. The acknowledgment must also include the name and telephone number of the VPP Manager or a designee.

Status: 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.

Recommendation 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.

XIII. PROGRAM ADMINISTRATION

The PROSHA program has fifty-seven benchmark positions in accordance with their State Plan. They are allocated 23 safety specialist positions and 34 industrial hygienist positions. Currently, they are staffed with 25 safety specialists and 13 industrial hygienists. Their current staffing is 8% over benchmark for safety specialists and 62% below benchmark for industrial hygienists. PROSHA is at 33% below benchmark staffing overall. During FY 2009 the Commonwealth of Puerto Rico continued with across-the-board cost cutting measures instituted during FY 2008. These measures, which also applied to PROSHA, included early retirement legislation. PROSHA lost personnel to early retirement during this period including three Area Directors thirteen Compliance Safety and Health Officers and three Consultants. PROSHA reported that these retirements conspired to negatively impact their overall ability to reach the goals established at the beginning of the fiscal year. Although there were two administrative recesses during FY 2009 totaling four days, the recesses did not significantly negatively impact the program. PROSHA had an effective contingency plan in effect which enabled them to respond to accidents, imminent danger complaints, etc. PROSHA does not expect the Commonwealth to institute administrative recesses during FY 2010.

CSHO Training

Training is essential for the PROSHA program so they may continue to develop and improve their case file documentation. PROSHA adopted the Initial Training Program for OSHA Compliance Personnel OSHA Instruction TED-01-00-018 effective date 08/06/08 and the PROSHA document was adopted and finalized on 10/21/08.

This instruction provides guidance and direction to those entities who adopt it concerning OSHA's policies and procedures for training of Compliance Safety and Health Officers (CSHOs). It is essential that CSHOs have the requisite knowledge, skills, capability and varied professional backgrounds to accomplish OSHA's mission of protecting America's working men and women. In the instruction OSHA provided detailed guidance relating to mandatory training requirements for CSHOs. Under 29 CFR 1902.3(h) and 1956.10(g), States must have a sufficient number of adequately trained and qualified personnel for the enforcement of standards. States must have a formal training program for their compliance personnel which must be documented in their State plans and revised as necessary to reflect current practices. The training program must be at least as effective as that set out in this instruction and must be available for review.

Each newly-hired CSHO will be required to complete a minimum of eight courses offered by the OSHA Training Institute (OTI) during the first three years of his/her career as a CSHO. The order and sequence of these courses are as prescribed in this instruction.

The following findings were developed as a result of a detailed training records review.

PROSHA and OSHA Requirement

During the first year of employment, each CSHO must take the OSHA Initial Compliance Course (#1000) and at least one OSHA Standards Courses (#1050, #1250 or #2000) as described below:

- a. #1050 Introduction to Safety Standards for Safety Officers (safety career path/safety

specialists).

b. #1250 Introduction to Health Standards for Industrial Hygienists (health career path/industrial hygienists).

c. #2000 Construction Standards (construction career path/construction specialists).

B. The following courses are required to be taken after the CSHO has completed one of the Standards courses.

1. #1310 Investigative Interviewing Techniques.

2. #1410 Inspection Techniques and Legal Aspects.

3. #2450 Evaluation of Safety and Health Management Systems.

4. #1230 Accident Investigation.

C. At least one of the following courses is required to be taken during a CSHO's initial three year period to enhance multi-disciplinary competence.

1. Safety career path CSHOs will take at least one of the following:

a. #1080 Health Hazard Awareness for Safety Officers

b. #1250 Introduction to Health Standards for Industrial Hygienists

c. #2000 Construction Standards

2. Health career path CSHOs will take at least one of the following:

a. #1280 Safety Hazard Awareness for Industrial Hygienists

b. #1050 Introduction to Safety Standards for Safety Officers

c. #2000 Construction Standards

3. Construction career path CSHOs will take at least one of the following:

a. #1280 Safety Hazard Awareness for Industrial Hygienists

b. #1050 Introduction to Safety Standards for Safety Officers

c. #1080 Health Hazard Awareness for Safety Officers

d. #1250 Introduction to Health Standards for Industrial Hygienists

D. The #8200 Incident Command System I-200 courses or equivalent training (i.e., course conducted by other governmental agencies or web-based course) must be taken during the initial three years of training; however, the specific sequence is not critical.

Status

PROSHA is in the process of ensuring that its staff is being trained in accordance with TED 01-00-018 and the training that each CSHO has received is consistent with their longevity in the PROSHA program. This study has identified the gap between existing training status and the requirements of the TED. The following information is a breakdown of the training that has not been completed as per course and job classification:

Industrial Hygienists (Health CSHOs):

Initial Compliance Course #1000: 16% have not completed the course.

Introduction to Health Standards for Industrial Hygienists #1250: 37% have not completed the course.

Investigative Interviewing Techniques #1310: 100% have not completed the course.

Inspection Techniques and Legal Aspects #1410: 32% have not completed the course.

Evaluation of Safety and Health Management Systems #2450: 84% have not completed the course.

Accident Investigation #1230 or #101 or #202: 53% have not completed the course.

Safety Hazard Awareness for Industrial Hygienist #1280 or Introduction to Safety Standards for Safety Officers #1050 or Construction Standards #2000: 74% have not completed the course.

Incident Command System #8200: 95% have not completed the course.

Safety CSHOs:

Initial Compliance Course #1000 : 19% have not completed the course.

Introduction to Safety Standards for Safety Officers #1250 or Construction Standards #2000: 7% have not completed the course.

Investigative Interviewing Techniques #1310: 100% have not completed the course.

Inspection Techniques and Legal Aspects #1410: 26% have not completed the course.

Evaluation of Safety and Health Management Systems #2450: 100% have not completed the course.

Accident Investigation #1230 or #101 or #202: 56% have not completed the course.

Introduction to Safety Standards for Safety Officers #1050 or Health Hazard Awareness for Safety Officers #1080 or Introduction to Health Standards for Industrial Hygienists #1250 or Safety Hazard Awareness for Industrial Hygienist #1280 or Introduction to Safety or Construction Standards #2000: 30% have not completed the course.

Incident Command System #8200: 85% have not completed the course.

Recommendation 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".

Appendix A
FY 2009 Puerto Rico State Plan (PROSHA)
Enhanced FAME Report

Findings and Recommendations Summary Chart

FY 2009 Puerto Rico State Plan (PROSHA) Enhance FAME Report
FY 2009 Puerto Rico State Plan (PROSHA) Enhance FAME Report
Summary of Findings and Recommendations

Special Study Findings – State Activity Mandated Measures (SAMM)		Recommendations
1	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)	
Special Study Findings – Mandated Activities Report for Consultation (MARC)		Recommendations
2	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)
3	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)
Special Study Findings – Complaint Investigation		Recommendations
4	<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.
5		In cases in which complaint inspections are not opened in a timely manner - make a notation in the file explaining the delay.
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.

	Special Study Findings – Fatality Investigation	Recommendations
7	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).
8	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.
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.

	Special Study Findings – Employee & Union Involvement	Recommendations
11	<p>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)</p>	<p>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.</p>
	Special Study Findings – Citations & Penalties	Recommendations
12	<p>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)</p>	<p>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).</p>
13		<p>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>
14		<p>See Recommendations 9 and 10</p>
15	<p><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)</p>	<p>On a case-by-case basis; CSHOs and supervisors should evaluate whether to expand un-programmed partial inspections to a comprehensive scope.</p>

Special Study Findings – Abatement		Recommendations
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"> • Ensure appropriate abatement periods are assigned for unabated violations. • Ensure that all abatement information accepted satisfies the order to comply prior to closing the case. • For cases with CDI (Corrected during Inspection), ensure that the file documents the method of abatement and that the CSHO observed the abatement.
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)	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.
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.
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>	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.
20	Page 55 outlines some instances where Failure to Abate (FTA) violations may have been issued.	Ensure that Failure To Abate notices are issued where appropriate.

Special Study Findings – Contested Cases		Recommendations
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	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

	conference. (p.59)	the conclusion of the conference, all main issues and potential courses of action must be summarized and documented.
22	In the event that a case is contested PROSHA area offices forward the cases directly to the “legal division” rather than tying to settle post contest. PROSHA’s FOM allows that formal settlements can occur at the area office level. (p.60)	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.
	Special Study Findings – Debt Collection	Recommendations
23	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.
	Special Study Findings – Information Management (IMIS)	Recommendations
24	<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.
25	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.
26	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.
27	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	Area Offices must track and ensure OSHA 31 Forms are being completed in a timely manner.

	<p>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)</p>	
28	<p>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)</p>	<p>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.</p>
29	<p><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.</p> <p>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.</p>	<p>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.</p>
	<p>Special Study Findings – Consultation Program</p>	<p>Recommendations</p>
30	<p>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)</p>	<p>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.</p>
31	<p>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)</p>	<p>Efforts should be made to increase the number of employees interviewed during Consultation visits and to ensure that employee representatives are offered the option to participate during the on-site visit.</p>
32	<p>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,</p>	<p>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.</p>

	pre/post calibration of audio-dosimeters and the sound level meter was not accomplished. (p.71)	
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.
	Special Study Findings – Discrimination Program	Recommendations
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.
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.
	Special Study Findings – VPP	Recommendations
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.

49	<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>
50	<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>
51	<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>
Special Study Findings – CSHO Training		Recommendations
52	<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>

Appendix B
FY 2009 Puerto Rico State Plan (PROSHA)
Enhanced FAME Report

Enforcement Comparison Summary Chart

Puerto Rico OSHA FY 2009 Enforcement Activity

	Puerto Rico	State Plan Total	Federal OSHA
Total Inspections	1,334	61,016	39,004
Safety	1,001	48,002	33,221
<i>% Safety</i>	<i>75%</i>	<i>79%</i>	<i>85%</i>
Health	333	13,014	5,783
<i>% Health</i>	<i>25%</i>	<i>21%</i>	<i>15%</i>
Construction	508	26,103	23,935
<i>% Construction</i>	<i>38%</i>	<i>43%</i>	<i>61%</i>
Public Sector	351	7,749	N/A
<i>% Public Sector</i>	<i>26%</i>	<i>13%</i>	<i>N/A</i>
Programmed	537	39,538	24,316
<i>% Programmed</i>	<i>40%</i>	<i>65%</i>	<i>62%</i>
Complaint	414	8,573	6,661
<i>% Complaint</i>	<i>31%</i>	<i>14%</i>	<i>17%</i>
Accident	16	3,098	836
Insp w/ Viols Cited	775	37,978	27,165
<i>% Insp w/ Viols Cited (NIC)</i>	<i>58%</i>	<i>62%</i>	<i>70%</i>
<i>% NIC w/ Serious Violations</i>	<i>55%</i>	<i>62%</i>	<i>87%</i>
Total Violations	2,872	129,363	87,663
Serious	1,359	55,309	67,668
<i>% Serious</i>	<i>47%</i>	<i>43%</i>	<i>77%</i>
Willful	3	171	401
Repeat	55	2,040	2,762
Serious/Willful/Repeat	1,417	57,520	70,831
<i>% S/W/R</i>	<i>51%</i>	<i>44%</i>	<i>81%</i>
Failure to Abate	7	494	207
Other than Serious	1,448	71,336	16,615
<i>% Other</i>	<i>50%</i>	<i>55%</i>	<i>19%</i>
Avg # Violations/ Initial Inspection	3.3	3.3	3.1
Total Penalties	\$ 2,411,087	\$ 60,556,670	\$ 96,254,766
Avg Current Penalty / Serious Violation	\$ 1,118.00	\$ 800.40	\$ 970.20
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 747.40	\$ 934.70	\$ 977.50
<i>% Penalty Reduced</i>	<i>63.1%</i>	<i>51.9%</i>	<i>43.7%</i>
% Insp w/ Contested Viols	15.4%	13.0%	7.0%
Avg Case Hrs/Insp- Safety	18.9	15.7	17.7
Avg Case Hrs/Insp- Health	29.8	26.6	33.1
Lapse Days Insp to Citation Issued- Safety	52.6	31.6	34.3
Lapse Days Insp to Citation Issued- Health	65.4	40.3	46.7
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	311	2,010	2,234

Source:

DOL-OSHA. State Plan INSP & ENFC Reports, 11-19-2009. Federal INSP & ENFC Reports, 11-9-2009. Private Sector ENFC- State Plans 12.4.09 & Federal 12.14.09

Appendix C

FY 2009 Puerto Rico State Plan (PROSHA)
Enhanced FAME Report

FY 2009 State OSHA Annual Report (SOAR)
(Available Separately)

Appendix D
FY 2009 Puerto Rico State Plan (PROSHA)
Enhanced FAME Report

FY 2009 Micro-to-Host Reports

DCNOMARC
DOL-OSHA-OMDS
(RSCCOVER)

U. S. D E P A R T M E N T O F L A B O R
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N
C O N S U L T A T I O N R E P O R T

11/02/09

KEEP THIS PAGE WITH THIS REPORT.
IT CONTAINS IMPORTANT INFORMATION ABOUT
THE WAY CASES WERE SELECTED

TYPE OF REPORT: MANDATE ACTIVITIES

USER SELECTION NAME: Q4MARCP

REQUESTOR: OSH51704

***** SELECTION CRITERIA *****

FISCAL YEAR: 2009

QUARTER: 4

OWNERSHIP: PRIVATE

REGION: 02 AREA: 972 DISTRICT: 01

SAFETY/HEALTH ID: BOTH

PROJECT NAME: Puerto Rico 01 PRIVATE SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	24	145	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	20	131	
Percent	95.24	95.62	
Number of Initial Visits	21	137	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	21	137	
Visits <= 250 Employees in Estab Percent	20 95.24	133 97.08	
Visits <= 500 Employees CB by Empr Percent	18 85.71	123 89.78	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	21	137	
Percent	100.00	100.00	
Number of Initial Visits	21	137	
Follow-Up	2	6	
Number with Empe Conferences	2	6	
Percent	100.00	100.00	
Number of Follow-Up Visits	2	6	
Training & Assistance Visits with Compliance Assistance ONLY			
Number with Empe Conferences	0	0	
Percent			
Number of T&A Visits	0	0	

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

PROJECT NAME: Puerto Rico 01 PRIVATE SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
4A Thru 4D based on Closed Cases ONLY			
4A. Percent of Serious Hazards Verified Corrected in a Timely Manner (<=14 Days of Latest Correction Due Date)			100%
Number Verified Timely	73	709	
Percent	86.90	93.29	
Total Serious Hazards	84	760	
Number of Serious Hazards Verified Corrected:	73	709	
On-Site	20	132	
Within Original Time Frame	49	435	
Within Extension Time Frame	0	102	
Within 14 Days of Latest Correction Due Date	4	40	
4B. Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (> 14 days after Latest Correction Due Date)			
Number NOT Verified Timely	6	41	
Percent	7.14	5.39	
Total Serious Hazards	84	760	
4C. Percent of Serious Hazards Referred to Enforcement			
Number Referred to Enforcement	5	10	
Percent	5.95	1.32	
Total Serious Hazards	84	760	
4D. PERCENT OF SERIOUS HAZARDS VERIFIED CORRECTED (IN ORIGINAL TIME OR ONSITE)			65%
NUMBER VERIFIED	69	567	
Percent	82.14	74.61	
Total Serious Hazards	84	760	

Number of Serious Hazards Verified CORRECTED (IN ORIGINAL TIME OR ONSITE)	69	567
On-Site	20	132
Within Original Time Frame	49	435
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for last 3 Years, excluding Current Quarter)		0

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

CCNOMARC
DOL-OSHA-OMDS
(RSCCOVER)

U. S. D E P A R T M E N T O F L A B O R
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N
C O N S U L T A T I O N R E P O R T
K E E P T H I S P A G E W I T H T H I S R E P O R T .
I T C O N T A I N S I M P O R T A N T I N F O R M A T I O N A B O U T
T H E W A Y C A S E S W E R E S E L E C T E D

11/02/09

TYPE OF REPORT: MANDATE ACTIVITIES

USER SELECTION NAME: Q4MARGG

REQUESTOR: OSH51704

***** SELECTION CRITERIA *****

FISCAL YEAR: 2009

QUARTER: 4

OWNERSHIP: PUBLIC

REGION: 02 AREA: 972 DISTRICT: 01

SAFETY/HEALTH ID: BOTH

PROJECT NAME: Puerto Rico 01 PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	4	23	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	0	3	
Percent	.00	13.04	
Number of Initial Visits	4	23	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	4	23	
Visits <= 250 Employees in Estab	4	21	
Percent	100.00	91.30	
Visits <= 500 Employees CB by Empr	2	9	
Percent	50.00	39.13	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	4	23	
Percent	100.00	100.00	
Number of Initial Visits	4	23	
Follow-Up	0	0	
Number with Empe Conferences			
Percent	0	0	
Number of Follow-Up Visits			
Training & Assistance Visits with Compliance Assistance ONLY			
Number with Empe Conferences	0	0	
Percent			
Number of T&A Visits	0	0	

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

PROJECT NAME: Puerto Rico 01 PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
4A Thru 4D based on Closed Cases ONLY			
4A. Percent of Serious Hazards Verified Corrected in a Timely Manner (<=14 Days of Latest Correction Due Date)			100%
Number Verified Timely	35	95	
Percent	97.22	82.61	
Total Serious Hazards	36	115	
Number of Serious Hazards Verified Corrected:	35	95	
On-Site	0	0	
Within Original Time Frame	3	34	
Within Extension Time Frame	28	46	
Within 14 Days of Latest Correction Due Date	4	15	
4B. Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (> 14 days after Latest Correction Due Date)			
Number NOT Verified Timely	1	4	
Percent	2.78	3.48	
Total Serious Hazards	36	115	
4C. Percent of Serious Hazards Referred to Enforcement			
Number Referred to Enforcement	0	16	
Percent	.00	13.91	
Total Serious Hazards	36	115	
4D. PERCENT OF SERIOUS HAZARDS VERIFIED CORRECTED (IN ORIGINAL TIME OR ONSITE)			65%
NUMBER VERIFIED	3	34	
Percent	8.33	29.57	
Total Serious Hazards	36	115	

Number of Serious Hazards Verified CORRECTED (IN ORIGINAL TIME OR ONSITE)	3	34
On-Site	0	0
Within Original Time Frame	3	34
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for last 3 Years, excluding Current Quarter)		0

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 02, 2009
 PAGE 1 OF 2

State: PUERTO RICO

RID: 0257200

MEASURE	From: 10/01/2008		CURRENT	REFERENCE/STANDARD
	To: 09/30/2009		FY-TO-DATE	
1. Average number of days to initiate Complaint Inspections	1177		41	Negotiated fixed number for each State
	2.75		2.05	
	427		20	
2. Average number of days to initiate Complaint Investigations	17		1	Negotiated fixed number for each State
	.14		.50	
	118		2	
3. Percent of Complaints where Complainants were notified on time	407		32	100%
	98.07		100.00	
	415		32	
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	9		2	100%
	100.00		100.00	
	9		2	
5. Number of Denials where entry not obtained	0		0	0
6. Percent of S/W/R Violations verified				
	677		14	
	96.58		45.16	100%
Private	701		31	
	56		0	
	91.80		.00	100%
Public	61		2	
7. Average number of calendar days from Opening Conference to Citation Issue	44398		4843	2490441
	70.36		73.37	43.8
	631		66	56905
Safety	19855		2474	693862
	89.84		98.96	57.4
	221		25	12086
Health				

U. S. DEPARTMENT OF LABOR
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 02, 2009
 PAGE 2 OF 2

State: PUERTO RICO

RID: 0257200

MEASURE	From: 10/01/2008	CURRENT	REFERENCE/STANDARD
	To: 09/30/2009	FY-TO-DATE	
8. Percent of Programmed Inspections with S/W/R Violations			
	205	14	92325
Safety	38.25	35.00	58.6 National Data (3 years)
	536	40	157657
Health	24	0	11010 National Data (3 years)
	54.55		51.1
	44	0	21526
9. Average Violations per Inspection with Vioations			
	1740	157	420746
S/W/R	2.04	1.72	2.1 National Data (3 years)
	852	91	201271
Other	1250	130	243448 National Data (3 years)
	1.46	1.42	1.2
	852	91	201271
10. Average Initial Penalty per Serious Violation (Private Sector Only)	1229933	120533	492592867 National Data (3 years)
	1105.06	1012.88	1335.5
	1113	119	368857
11. Percent of Total Inspections in Public Sector	351	17	1039 Data for this State (3 years)
	26.29	25.37	24.0
	1335	67	4324
12. Average lapse time from receipt of Contest to first level decision	11212	980	4400163 National Data (3 years)
	175.18	196.00	245.4
	64	5	17932
13. Percent of 11c Investigations Completed within 90 days	22	0	100%
	100.00		
	22	0	
14. Percent of 11c Complaints that are Meritorious	6	0	1468 National Data (3 years)
	27.27		20.8
	22	0	7056
15. Percent of Meritorious 11c Complaints that are Settled	3	0	1263 National Data (3 years)
	50.00		86.0
	6	0	1468