



HON. MIGUEL ROMERO
SECRETARY



October 28, 2010

Mr. Robert D. Kulick
Regional Administrator, Region II
Occupational Safety and Health Administration
Department of Labor
201 Varick Street
New York, NY 10014

Dear Mr. Kulick:

This is the formal response with corrective action plan for addressing findings and recommendations to the FY 2009 Baseline Special Evaluation Report (Enhanced Federal Annual Monitoring and Evaluation Report – EFAME, October 1, 2008 September 30, 2009) for the Puerto Rico Occupational Safety and Health State Plan.

The Puerto Rico Occupational Safety and Health Administration (PR OSHA) adjoined to the Puerto Rico Department of Labor and Human Resources, began operations in 1978, have complied with all responsibilities and obligations of the program towards the protection of Puerto Rico's workforce. Nevertheless, PR OSHA has the commitment to continuously improve ourselves. This was demonstrated in this evaluation, as soon the draft of the findings was provided, PR OSHA began to correct them.

Even though, in the executive summary of the report you barely credit the mayor program strengths achieved by PR OSHA. "The PR OSHA program has been effective in reducing injuries, illnesses, and fatalities in the industries targeted in the strategic plan." "PR OSHA total violations per inspection and current average penalty per serious violations compared favorably to the federal program." We appreciate this acknowledgement.

Regarding the evaluation, PR OSHA will review and follow the valid recommendations of the Report - EFAME to address the findings. Also, all pertinent personnel shall be provided with refresher training on the policies and procedures established in the new FOM. Our dedication to



PUERTO RICO OCCUPATIONAL SAFETY
AND HEALTH ADMINISTRATION

Mr. Robert D. Kulick
October 28, 2010
Page 2

the program improvement is authentic and it is demonstrated through the immediate action taken by PR OSHA prior to receiving the E-FAME report. We immediately proceeded to make arrangement with the OSHA Training Institute to provide the Course 1230-Accident Investigation to forty of our enforcement CSHO, Consultant, Technical Support and Evaluation Division employees, from November 16th to the 24th, 2010.

Puerto Rico OSHA reaffirms our obligation to administer a program that provides the highest level of workplace safety and health protection for all Puerto Rican workers which guarantees the program's loyalty to our mission.

Cordially,

/signed/

Gladys Cruz-Mercado
Assistant Secretary

cc: Barbara Bryan
Steven Witt
Richard Mendelson
Kris Hoffman
Robert Garvey

PR OSHA Response and Action Plan to the Findings and Recommendations (October 28, 2010)

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

	Special Study Findings – State Activity Mandated Measures (SAMM)	Recommendations	PR OSHA Response
1	<p>PROSHA has a significant number of open cases with unsatisfied overdue abatement. (p.4)</p> <p>There was a lack of case file documentation in situations where CSHOs observed the abatement of cited hazard(s) during the inspection. (p.4)</p> <p>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)</p>	<p>Ensure abatement is assured in a timely manner by implementing improvements in management oversight including periodic review of management reports; provide training to compliance officers to better recognize serious hazards; improve case lapse time through expedited case file reviews and periodic review of management reports; provide training for compliance officers and 29(a) investigators to better recognize and document serious hazards.</p>	<p>Each Area Director was instructed to run weekly the standard reports and take the appropriate action.</p> <p>Area Directors will be retrained in case file review, including the abatement of cited hazards during inspections and to request the necessary information that will allow them to grant a Petition for Modification of Abatement Date (PMA). This training will be conducted from November 29 to December 3, 2010.</p> <p>PR OSHA will audit adherence with this process by the end of the third quarterly of 2011.</p>
	Special Study Findings – Mandated Activities Report for Consultation (MARC)	Recommendations	PR OSHA Response
2	<p>Forty-one of the 760 serious hazards issued, or 5.39%, were not verified corrected in a timely manner. (p.28)</p>	<p>Private Sector Consultation: Ensure timely hazard abatement by improvements in management oversight including periodic review of appropriate management reports. (Rec-2 move to place in order)</p>	<p>The Director and consultants of the Voluntary Programs Division were instructed to review the appropriate management reports to ensure the timely hazard abatement for each consultation visit, in both private and public sectors. PR OSHA will audit adherence with this process by the end of the third quarterly of 2011.</p>
3	<p>PROSHA conducted a total of 23 public-sector consultation visits in FY 2009. Three “initial” visits, or 13.04%, were coded as high hazards establishments. Goal was not met. Reference point is 100%. (p.28)</p>	<p>Public Sector Consultation: Improve inspection targeting mechanisms to ensure that high hazard worksites are inspected. Ensure timely hazard abatement by improvements</p>	<p>As established in the OSHA Instruction STP 2.22A CH-1, June 20, 1986, the following will not be considered for public sector: percent of initial consultation visits in high hazard establishments; and percent of</p>

		in management oversight including periodic review of appropriate management reports. (Rec-3 move to place in order)	initial consultation visits in smaller businesses. The reason being most government agencies and their services are not classified as high hazard and because Puerto Rico government is a large employer. Nevertheless, the Voluntary Programs Division Director was instructed to improve marketing targeting mechanisms for consultation visits in high hazard in the public sector. During the month of December, 2010 we will deliver letters to government with secondary high hazards NAICS promoting our consultation service.
	Special Study Findings – Complaint Investigation	Recommendations	PR OSHA Response
4	<i>Complaint tracking (non formal complaints: This report is used to determine if complaints need to be closed that are still open.</i> 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.66)	Implement internal controls such as supervisory review and final approval before complaint investigation (non-formal complaints) and complaint inspections are closed.	Area Directors were instructed to use the ACE and Standard reports to track all complaint investigations. Each AD will be retrained in the compliance policies and procedures as established in the new FOM from November 29 to December 3, 2010. This will be audited by the end of the third quarterly 2011.
5		In cases in which complaint inspections are not opened in a timely manner - make a notation in the file explaining the delay.	Area Directors were instructed to make the pertinent notations in the daily case diary. On October 6, 2010 the Assistant Secretary in a meeting with the Area Director and the sub director of the BI, gave clear instructions to comply with this recommendation. This will be audited by the end of the third quarterly 2011.
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.	Each Area Director will be retrained in the complaints policies and procedures as established in the new FOM from November 29 to December 3, 2010.

	Special Study Findings – Fatality Investigation	Recommendations	PR OSHA Response
7	<p>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)</p>	<p>Provide training to CSHOs and managers to reiterate the policies relating to fatality investigations including the proper procedures pertaining to making the appropriate communication to the family of victims (i.e. next of kin letters).</p>	<p>CSHOs and Area Directors were trained on the policies and procedures relating to fatality investigations, including making the appropriate communications to the family of victims. This will be audited by the third quarterly 2010.</p> <p>Course 1230-Accident Investigation to be conducted in Puerto Rico from November 16th to the 24th, 2010 by OSHA Training Institute.</p>
8	<p>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)</p>	<p>Provide training to all field staff, including supervisory staff, to ensure the application of PR OSHA’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.</p>	<p>Each Area Director will be retrained in the compliance policies and procedures relating to documenting willful violations as established in the new FOM from November 29 to December 3, 2010. This will be added to the regular audit process.</p> <p>The Area Directors will retrain CSHOs on this matter by January 31, 2011.</p> <p>Course 1230-Accident Investigation to be conducted in Puerto Rico from November 16th to the 24th, 2010 by OSHA Training Institute.</p>
9	<p>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)</p>	<p>Ensure that the PR OSHA policy of notifying the Bureau of Inspections before granting penalty reductions in excess of 50% is followed.</p>	<p>Each Area Director will be retrained in the compliance policies and procedures, relating to penalty reductions as established in the new FOM from November 29 to December 3, 2010.</p> <p>Course 1230-Accident Investigation to be conducted in Puerto Rico from November 16th to the 24th, 2010 by OSHA Training Institute.</p>

10	<p><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.36)</p>	<p>It also is recommended that training be provided to all field staff, including supervisory staff, to ensure proper violation classification.</p>	<p>Each Area Director will be retrained in the compliance policies and procedures as established in the new FOM from November 29 to December 3, 2010. The Area Directors will retrain CSHOs on this matter by January 31, 2011.</p> <p>This training will also address proper classification and gravity of the violations.</p> <p>Course 1230-Accident Investigation to be conducted in Puerto Rico from November 16th to the 24th, 2010 by OSHA Training Institute.</p>
	<p>Special Study Findings – Employee & Union Involvement</p>	<p>Recommendations</p>	<p>PR OSHA Response</p>
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.49)</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>	<p>All field staff and Area Directors were trained and required to comply with the policy of union/employee representative involvement during and after inspections and to document properly each case file.</p> <p>Also, each Area Director will be retrained in the compliance policies and procedures as established in the new FOM from November 29 to December 3, 2010.</p> <p>This will be added to the audit process.</p> <p>The Area Directors will retrain CSHOs in the compliance policies and procedures as established in the new FOM by January 31, 2011</p>

	Special Study Findings – Citations & Penalties	Recommendations	PR OSHA Response
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.50)</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 PR OSHA’s FOM (OSHO Instruction CPL 2.45C, April 2000; Chapter IV).</p>	<p>Each Area Director will be retrained in the compliance policies and procedures relating to proper documentation and violation classification as established in the new FOM from November 29 to December 3, 2010. The Area Directors will retrain CSHOs on this matter by January 31, 2011.</p> <p>This will be audited by the end of the fourth quarterly 2011 or on the first quarterly 2012.</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>	<p>Each Area Director will be retrained in the compliance policies and procedures as established in the new FOM from November 29 to December 3, 2010. Area Directors are required to ensure these policies are followed.</p> <p>This will be added to the audit process.</p>
14		<p>See Recommendations 9 and 10</p>	<p>See answer to recommendations 9 and 10 above.</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.55)</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>	<p>Each Area Director will be retrained in the compliance policies and procedures as established in the new FOM, including when it is appropriated to expand inspections, from November 29 to December 3, 2010.</p> <p>Also the CSHOs will be retrained by January 31, 2011 by the Area Directors.</p> <p>This will be added to the audit process.</p>

	Special Study Findings – Abatement	Recommendations	PR OSHA Response
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.55)	Provide additional training to all field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established policy including: <ul style="list-style-type: none"> □ 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. 	Each Area Director will be retrained in all abatement issues identified and handled in accordance with established policy as established in the new FOM from November 29 to December 3, 2010. Also, the CSHOs will be retrained in this matter by the Area Directors, by January 31, 2011. This will be audited by the end of the fourth quarterly 2011 or on the first quarterly 2012.
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.57)	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.	Area Directors will be retrained in case file review, including the abatement of cited hazards during inspections and to request the necessary information that will allow them to grant a Petition for Modification of Abatement Date (PMA). This training will be conducted from November 29 to December 3, 2010.
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.	Area Directors will be retrained in case file review, including the abatement of cited hazards during inspections and to request the necessary information that will allow them to grant a Petition for Modification of Abatement Date (PMA). This training will be conducted from November 29 to December 3, 2010.
19	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	PR OSHA must conduct a thorough study of their cases with abatements due and develop and implement a plan to obtain abatement –	Area Directors were instructed to use the Violation Abatement Report , verify each case file and using 1903 Regulation as well as the FOM, determine the action to

	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 which have unabated violations prior to October 1, 2008. (p.55)	especially for past due abatements.	be follow: 1. employer out of business – closed the case 2. cases in Legal Division – verify the cases status and follow Legal recommendations 3. cases under 6 month period – conduct a follow up inspection 4. cases over 6 month period – conduct an inspection. The subdirector of BI will audit the Violation Abatement Report, to follow up on the Area Director’s actions. PR OSHA will audit this by the end of the fourth quarterly 2011 or on the first quarterly 2012.
20	Page 57 outlines some instances where Failure to Abate (FTA) violations may have been issued.	Ensure that Failure To Abate notices are issued where appropriate.	Each Area Director will be retrained in the compliance policies and procedures as established in the new FOM, relating to Failure to Abate (FTA) from November 29 to December 3, 2010. The Area Director will retrain all CSHO on this matter by January 31, 2011. This will be audited by the end of the fourth quarterly 2011 or on the first quarterly 2012.
	Special Study Findings – Contested Cases	Recommendations	PR OSHA Response
21	There were 11 health cases reviewed with informal conferences (IFC). In two cases there were no notes of the IFC. In 10 cases there was no evidence that either union or employee representatives were notified and afforded an opportunity to participate in the informal conference. (p.60)	Relating to informal conferences, PR OSHA 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.	Area Director will be retrained in the compliance policies and procedures as established in the new FOM, including PR OSHA Instruction ADM 1.13B of April 16, 2010, Procedures to Prepare and Process Informal Settlement Agreements from November 29 to December 3, 2010. Area Directors were instructed to follow these instructions in April, 2010. This will be audited by the end of the fourth quarterly 2011 or on the first quarterly 2012

	Special Study Findings – Debt Collection	Recommendations	PR OSHA Response
22	<p>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. PR OSHA’s FOM allows that formal settlements can occur at the area office level. (p.61)</p>	<p>PR OSHA Area Offices should be allowed to attempt to settle cases, including those which would result in formal settlement agreements, before sending contested cases to PR OSHA’s in house Counsel for settlement.</p>	<p>As established in the new FOM, Area Directors are authorized to conduct informal conference and to attempt and make all effort to settle cases before sending them to PR OSHA’s Legal Division. Area Directors are not allowed to conduct post contest settlement agreements. Also, each Area Director will be retrained in the compliance policies and procedures as established in the new FOM from November 29 to December 3, 2010.</p>
23	<p>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 PR OSHA’s debt collection report, there are currently 107 cases at PR OSHA offices that are overdue for debt collection action. (p.62)</p>	<p>PR OSHA must review its debt collection process procedures and institute changes necessary to ensure timely resolution of debt collection cases and to ensure timely processing of such cases at the Area Office level.</p>	<p>The Government of Puerto Rico is going through one of the biggest economic crisis in its history. There have been massive layoffs from all across the board, from the public and private sectors. Almost 100,000 jobs were lost during the period of 2009 through 2010, and still counting. The majority of all our 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. The Secretary of Education position was filled just one week ago and the fiscal autonomy of the agency is under syndication which makes matters worst. The Department of Education is under a lot of scrutiny from the Federal Government because of questionable mismanagement of federal funds. PR OSHA’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 brass (legal representatives) of the agency, and up to appearing before a judge. But up to this day there</p>

			<p>hasn't been any progress whatsoever. PR OSHA'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 payments due. But there is no local law or federal law that will allow to accomplish that goal. Nevertheless, PR OSHA is open to any suggestions from Federal OSHA on this matter.</p> <p>Also, each Area Director will be retrained to ensure the timely processing of debt collection at the Area Offices as established in the new FOM from November 29 to December 3, 2010.</p>
	Special Study Findings – Information Management (IMIS)	Recommendations	PR OSHA Response
24	<i>Pages 63 through 66 detail specific data management issues that should be addressed.</i>	PR OSHA 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.	<p>Three IMIS Clerk positions were filled (Arecibo and Mayaguez Area Offices, and one for Voluntary Programs Division). The person recruited for the Ponce Area Office declined. A training orientation for IMIS Clerk was conducted on September 23, 2010. Area Directors and IMIS Clerk will be required to use IMIS reports as a tool to manage both the program and the staff performance.</p> <p>This will be audited by the end of the fourth quarterly 2011 or on the first quarterly 2012.</p>
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.63)	Area Offices must correct rejected forms promptly and if they experience problems and cannot correct the form they should contact OMDS	Area Directors were instructed to correct rejected forms promptly or to contact OMDS for assistance. Bureau of Inspections Sub director is responsible to run the

		for assistance.	appropriate reports and follow up on Area Directors. This report will be run weekly, beginning on October 29, 2010 and will be added to the Area Director regular audit process. Bureau of Inspections Sub director is responsible to follow up on Area Directors.
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.64)	Area Offices must review and update draft forms on a periodic basis.	Area Directors were instructed to review and update draft forms weekly, beginning on October 29, 2010 and will be added to the Area Director regular audit process. The Bureau of Inspections Sub director is responsible to run the appropriate reports, monthly, and follow up on Area Directors.
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 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.64)	Area Offices must track and ensure OSHA 31 Forms are being completed in a timely manner.	Area Directors were instructed on October 6, 2010 to track and ensure OSHA 31 forms are being completed weekly. Beginning on October 29, 2010 the Area Director will require CSHOs submit 31 forms, signed, by the morning of each Friday to ensure they are completed in a timely manner. The Bureau of Inspections Sub director is responsible to run the appropriate reports every two weeks and follow up on Area Directors.
28	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.65)	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.	Area Directors were instructed by October 6, 2010 to run case audit reports every two weeks and to take the appropriate action. Bureau of Inspections Sub director is responsible to run the appropriate reports monthly and follow up on Area Directors.

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. 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 Division to ascertain whether or not the older of the contested cases have become final orders, and if they have, these cases also should be closed.</p>	<p>Area Directors were instructed to comply with this recommendation by October 6, 2010. Bureau Inspections Subdirector will verify Area Directors follow this instruction. The Area Directors were notified on the 28 of October, 2010, to contact the Legal Division at least every 6 months.</p>
Special Study Findings – Consultation Program		Recommendations	PR OSHA Response
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.71)</p>	<p>PR OSHA must meet the requirements of CSP 0200-002 when granting extensions of correction due dates and ensure that employers provide the required information and implement appropriate interim protective measures.</p>	<p>The personnel of the Voluntary Programs Division was instructed in June 2010 to follow the requirements established in the Consultation Policies and Procedures Manual for granting extensions of correction due dates. Refresher training was given on October 4, 5, 7 and the last one will be on October 29, 2010.</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.72)</p>	<p>Efforts should be made to increase the number of employees interviewed during Consultation visits and to ensure that employee representatives are offered the option to participate during the on-site visit.</p>	<p>Consultants were instructed in June 2010 to increase the number of employees interviewed in each area of the site during consultation visits. Also, the consultants were reminded to provide the employee representatives the opportunity to participate during the consultation visit. Refresher training was given on October 4, 5, 7 and the last one will be on October 29, 2010.</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</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</p>	<p>The Director of the Voluntary Programs Division and each health consultant were instructed in June 2010 about the importance of evaluating health hazards in the workplace and the compliance with the pre and post calibration of</p>

	in audit sample where sampling was done, pre/post calibration of audio-dosimeters and the sound level meter was not accomplished. (p.72)	health visits have the required competencies, meeting the intent of Appendix K of CSP 02-00-002.	the equipment, including the required documentation in the casefile. Refresher training was given on October 4, 5, 7 and the last one will be on October 29, 2010.
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.72)	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.	The Director of Voluntary Programs Division was instructed in June 2010 to make a full revision of each casefile and to require each consultant to include the proper and necessary documentation. A tracking form was developed and its use was required by all the consultants in the Division. Refresher training was given on October 4, 5, 7 and the last one will be on October 29, 2010.
34	The appropriate documentation was not found for follow-up visits and this absence was verified by the Director of Voluntary Programs. (p.73)	PR OSHA must document ALL visits in writing as required by the CSP 02-00-002.	The Director of Voluntary Programs Division was instructed in June 2010 to make a full revision of each casefile and to require each consultant to include the proper and necessary documentation. A tracking form was developed by June 2010 and its use was required by all the consultants in the Division. Refresher training was given on October 4, 5, 7 and the last one will be on October 29, 2010.
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.73)	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.	The consultants and the Director of the Voluntary Programs Division were instructed in June 2010 to follow this recommendation. Refresher training on the requirements relating to SHARP was given on October 4, 5, 7 and the last one will be on October 29, 2010.
36		Form 33 refresher training should be provided for existing staff and full Form 33 training provided for new staff members.	PR OSHA will take the steps necessary to comply with this recommendation. Form 33 refresher training was given on October 4, 5, 7 and the last one will be on October 29, 2010.

	Special Study Findings – Discrimination Program	Recommendations	PR OSHA Response
37	<i>Pages 75 through 76 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.	All discrimination investigators were instructed in September, 2010 to implement the case organization standards outlined in the Discrimination Manual. A retraining was provided on October 15, 2010, which included the case file organization. The Subdirector of BI will audit this when the cases are received in the Central Office.
38	Interviews of investigators and supervisors revealed a lack of understanding and confusion and the appeals process, and the procedures for merit cases. (p.76)	PR OSHA 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.	All discrimination investigators were retrained by the Legal Division on October 15, 2010, so that they fully understand the appeals process related to discrimination cases and the complainant rights. By January 2011, PR OSHA will amend the appeal process in the Discrimination Manual, DIS 0-0.9.
39	The reviewers found numerous formats, styles, and organization of the Final Investigative Reports. (p.76)	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.	All discrimination investigators were instructed in September 2010 to use tabs in the case file organization. A retraining was given on October 15, 2010, which included the case file organization.

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.76)	Investigators should be granted access to Whistleblower IMIS so that they may better track their cases.	All investigators have full access to Whistleblower IMIS on August 2010. On August 18, 2010 investigators were trained to 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.76)	It is suggested that PROSHA assign a team leader or contact who investigators may ask legal, procedural, or substantive questions.	At this moment, the Bureau of Inspections Sub director will answer legal, procedural or substantive investigators questions or referred them to our Legal Division. The paralegal position, which is the one dealing with these functions, is not currently filled. We hope that we are given permission from the Management and Budget Office to fill the position once again.
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.76)	It is suggested that PR OSHA managers look in to the plausibility of having two (2) full-time 29(a) investigators, instead of spreading the works among CSHOs. This would allow for efficiency, timeliness, depth of understanding, and morale among CSHOs.	That would be the best scenario. However, there is not enough caseload that would justify having two full-time 29(a) investigators.
43	Of the reviewed files, only two case files contained a Complainant Questionnaire (p.76)	It is suggested that PR OSHA 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.	By January 2011, PR OSHA will amend the Discrimination Manual; DIS 0-0.9 to include a revised Complaint Questionnaire. The Complainant Questionnaire was revised on September 2010. Investigators were retrained by October 15, 2010 and required to use and include it in the case file for the FY 2011.
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.76)	It is suggested that all investigators adopt the screening checklist used by some investigators to help identify all elements, timeliness, and jurisdiction.	By January 2011, PR OSHA will amend the Discrimination Manual, DIS 0-0.9 to include a revised screening checklist. Investigators were trained by October 15, 2010 and required to use it. Also, they were trained on the new complaint intake process on the web IMIS that started on October 18, 2010.

45	The reviewers found numerous formats, styles, and organization of the Final Investigative Reports. (p.76)	PROSHA should follow the Federal Manual's template for Final Investigative Reports.	The Federal Manual's template for Final Investigative Reports is already adopted. Investigators were instructed and required to use it by October 15, 2010.
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.76)	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.	The Federal Manual's template for Secretary's Findings is already adopted. Investigators were instructed and required to use it by October 15, 2010.
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.76)	The supervisor should sign off on all OSHA-87 forms.	The Bureau of Inspections Sub director was instructed to sign all OSHA 87 forms on October 1, 2010. This will be added to the audit process.
Special Study Findings – VPP		Recommendations	PR OSHA Response
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.79)	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.	PR OSHA instructed the consultants and the Voluntary Programs Director on June 2010 to comply with this requirement as established in the new VPP Regulation approved in July 2009 and the new VPP Policies and Procedures Manual approved in March 2010.
49	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.80)	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.	PR OSHA personnel, CSHOs and consultants, were instructed on June 2010 to follow the Regulation Number 15, Part 1913 – Rules of Agency Practice and Procedures Concerning OSO Access to Employee Medical Records and PR OSHA Instruction CPL 02-02-072, Rules of agency practice and procedure concerning OSHA access to employee medical records, in their inspections and consultation visits. Beginning October 1, 2010 the VPP evaluation team are required to make a detailed and thorough recordkeeping records evaluation to all VPP applicants and

		<p>Additionally, it is strongly recommended that Puerto Rico modify TED 8.1 to require a detailed and thorough evaluation of VPP employers' recordkeeping records to ensure that VPP eligibility requirements are met.</p>	<p>participants using the Medical Access Order. Refresher training was given on October 4, 5, 7 and the last one will be on October 29, 2010.</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. 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.80)</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>	<p>Since October 22, 2010 the Voluntary Program Division implemented a database with due dates for VPP participants, first and subsequent re-evaluations to comply with established time frames for each level of participation as outlined in Instruction TED 8.1. On October 22, 2010 instructions were given to the Voluntary Program Director to use it. The Bureau of Technical Assistance will verify and follow up with the VPD.</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.81)</p>	<p>PROSHA should create a system that includes written acknowledgements and ensures that VPP on-sites are scheduled within six (6) months of application acceptance.</p>	<p>The Director of the Voluntary Programs Division was instructed on June 2010 about the procedures to send a written acknowledgement to the employer. However all VPP applications were delivered in person by representatives of each company. A copy of the company's introduction letter are dated and sealed by our office and given to the employer representative as an acknowledgement of receipt. PR OSHA uses the VPP Log to track all activities for each applicant or participant.</p>

	Special Study Findings – CSHO Training	Recommendations	PR OSHA Response
52	<p>This study has identified the gap between existing training status and the requirements of the TED. (p.82)</p>	<p>Develop and implement a comprehensive training plan to provide mandatory training for CSHOs to bring them up to the minimum training standards established in OSHA Instruction TED-01-00-018 “Initial Training Program for OSHA Compliance Personnel”.</p>	<p>OSHA Instruction TED-01-00-018, 10/21/2008, is followed with all new hired CSHOs (3 safety officers that began working between February and June 2008; 2 health officers - one who began in June 2008 and the other one who had been working as a safety officer since April 2002, but was changed to IHs in February 2009 to replace one vacancy left by end early retirement). These five CSHOs are the ones that must be evaluated at the end of the three-year period that ends on 2011 and for which PR OSHA must provide the minimum eight-course requirement.</p> <p>The other CSHOS, who have been working for years with PR OSHA, most of them were trained by federal OSHA personnel at our facilities.</p> <p>In order to comply with this new training requirement, PR OSHA will continue to train our personnel at OTI pursuant to the recommended training paths for compliance personnel, and any other applicable recommendations.</p>