

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

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-1	Field notes are destroyed at the instruction of the state's attorney when the compliance officer completes the violation form and worksheet. Except for fatality case files, many of the case files reviewed did not contain witness or management statements.	All field notes, diagrams, photos, the company's injury and illness experiences and any other documentation obtained or produced during inspections should be maintained with the case file until its destruction, in accordance with existing records management guidelines.	Field notes are crucial to the effective prosecution of contested cases. OSHA believes that all field notes should be retained with the case file, in order to assure effective prosecution and to establish and support employer history for future violations. This issue will continue to be evaluated during monitoring activities in FY 2011.	The state's position is that all pertinent information including photos to substantiate violations is transferred from field notes to the 1B. Field notes will be included if the TN OSHA Attorney determines it is in the best interest to include them. The TOSHA attorney has instructed all field personnel to either destroy or include all field notes in the case file per the TOSHA FOM. This has never been challenged.	OPEN
09-2	Most case files did not contain a case file diary sheet or log to document significant actions associated with that particular file.	Tennessee's case file should include a diary to document significant actions, communication between management and the CSHO, communication between TOSHA and the employer.	Develop and implement the use of a diary sheet for case files.	The state is using a standard diary sheet in all case files to memorialize case related actions and support dates and times of actions such as correspondence, case modifications, meetings, etc. This will assist with reviews, internal audits, and tracking of actions. Case file reviews will be conducted during FY 2011 to verify that the diary sheets are being used to document activities related to the case.	COMPLETED
09-3	Current employees are encouraged to formalize their complaints and TOSHA conducts inspections for all formalized complaints regardless of the nature of the hazard. 30% of the 31 complaint inspection case files reviewed were in-compliance inspections.	Management should evaluate complaints including formal complaints to determine when an investigation would be more appropriate to allow a more effective use of their resources.		TOSHA previously interpreted the FOM to require inspections of valid formal complaints. The state's concern is that if they did not conduct an inspection on all formalized complaints it would become an issue during	COMPLETED

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				a CASPA or audit by federal OSHA. This recommendation has allowed for management discretion when evaluating the severity of alleged hazards and making a decision to investigate some valid formal complaints by the phone/fax procedure. TOSHA has instructed all supervisors to thoroughly evaluate all complaints to efficiently utilize the resources that they have.	
09-4	Letters are sent to the next of kin at the beginning of fatality investigations informing them of the investigation and that “the results will be made available upon their request without charge.” However, TOSHA does not contact the next of kin after the inspection is complete unless it is initiated by the next of kin.	At the conclusion of a fatality investigation the state should send the next of kin a letter and a copy of any citation issued, or a letter advising them that no violations were found. The next of kin should be informed of informal conferences and hearings, as well as any changes in the citations as a result of a settlement or hearing. A copy of the letter should be maintained in the file.		TOSHA adopted the letters recommended by OSHA to inform the next of kin of the results of the investigation as well as the results of informal conferences and any changes that are made to the citations as the result of a settlement. The letters that are being used were provided. Case file reviews of fatality investigations will be conducted during FY 2011 to ensure that next of kin are being fully informed during the course of the investigation and post citation process.	COMPLETED
09-5	A number of the case files reviewed did not include injury or illness data from the OSHA 300 logs or an explanation for the lack of the data.	Tennessee should assure that each case file includes documentation of the company’s injury and illness experiences and that the data is entered into IMIS.		The 300 logs are maintained in all case files and the data is being entered into the IMIS system as required. Case file reviews will be conducted during FY 2011 to verify that injury and illness (300 logs) data is included in the case files.	COMPLETED

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09-6	Although, TOSHA follows the same procedures as Federal OSHA for determining the classification of violations, the State classifies a lower percentage as serious. In addition, the Regions review of case files indicated that Federal OSHA may have classified some of the State's non-serious violations as serious and some of the low or medium severity as high severity.	Tennessee should assure that each violation is documented accurately for severity and probability and reviewed for proper classification.		Tennessee OSHA has placed an emphasis on classification and continues to evaluate and ensure that all violations are properly classified and documented according to the guidelines contained in the Field Operations Manual. All violations are being reviewed by three levels of management for proper classification. TOSHA managers and supervisors discuss proper classification and documentation in staff meetings	COMPLETED
09-7	Many case files did not establish adequate knowledge, noting only reasonable diligence and/or plain view. The Region notes that this may contribute to the relatively low number of willful violations.	Tennessee should require compliance officers to establish and document specific knowledge to support violations.		Supervisors has trained and continues to instruct the compliance staff regarding the importance of documenting actual knowledge and constructive knowledge with sufficient support to show how they should have known. Supervisors continue to review files and ensure that knowledge is sufficiently documented. The number of willful violations increased from five in 2009 to six in 2010. Case files will be reviewed during FY 2011 to verify that actual and constructive knowledge is adequately documented for all violations in accordance with the FOM.	COMPLETED

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09-8	TOSHA's VPP performance is demonstrated by reductions in TCIR and DART rates of its participating worksites, but the State has not established a system to continually monitor the program's overall performance.	TOSHA should develop and effectively implement an internal self-evaluation program to assess overall performance of the VPP Program and ensure that proper controls are in place.		TOSHA believes the current oversight of the program is adequate. However, the TOSHA Administrator indicated that a review of the Tennessee Volunteer Star Program was incorporated into the state's self-internal evaluation program. Documentation was provided verifying that it is included in the Audit Program for the Central and Area Offices (ADM-TN-03-00-011). A review of the audit (self-evaluation) will be conducted during FY 2011 to verify that the Volunteer Star Program is included.	COMPLETED
09-9	TOSHA does not have an internal evaluation program as required by the State Plan Policies and Procedures Manual.	Tennessee should develop and implement a formal internal self-evaluation program. The procedure should assure that internal evaluations possess integrity and independence. Resulting report from these evaluations should be made available to federal OSHA.		TOSHA developed a detailed internal evaluation/audit Directive ADM-TN 03-00-011 - Audit Program for the Central and Area Offices that is similar to the Federal Audit Program that was implemented during FY 2011. A copy of the program was provided for review however an audit schedule was not provided. The program is broken down into thirteen areas of focus for the enforcement program and two additional areas including whistleblower protection program and VPP programs. The program allows for other programs, policies, and practices to be audited as	COMPLETED

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				necessary. A review of the audit (self-evaluation) will be conducted during FY 2011.	