

**ENHANCED FEDERAL ANNUAL MONITORING
EVALUATION (FAME) FOLLOW-UP REPORT
FOR THE
TENNESSEE
OCCUPATIONAL SAFETY AND HEALTH PROGRAM**

DESIGNATED STATE AGENCY:

**TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT,
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

PERIOD COVERED BY THIS REPORT:

October 1, 2009 - September 30, 2010

TENNESSEE STATE PLAN APPROVED: July 5, 1973

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REPORT PREPARED BY:

**U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
REGION IV, ATLANTA**

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Tennessee

FY 2010 EFAME Follow-up Report – a Follow-up to the FY 2009 EFAME

1. Executive Summary

This report assessed the Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health's progress towards achieving the performance goals established in their Federal Fiscal (FY) Year 2010 Annual Performance Plan and the recommendations given in the FY 2009 Enhanced FAME during the period of October 1, 2009 to September 30, 2010.

A. Introduction

The Tennessee Occupational Safety and Health Administration (TOSHA) was created by legislation in 1972 and became operational on July 5, 1973. The program operated as a dual-designee with the health functions housed in the Tennessee Department of Health and the safety functions in the Department of Labor until July 1977. At that time the General Assembly enacted legislation to transfer the health functions to the Department of Labor. The Tennessee Occupational Safety and Health Administration program was certified in May 1978 and received final 18(e) approval in July 22, 1985. The Tennessee program covers all private and public-sector employees within the state, with the exception of railroad employees, federal employees, maritime employees (longshoring, shipbuilding/shipbreaking, and marine terminal operations), private contractors working at Government-owned/contractor-operated (GOCO) facilities, Tennessee Valley Authority (TVA) employees and contractors operating on TVA sites, as well as U.S. Postal Service employees.

The General Assembly enacted legislation giving TOSHA the mission of ensuring that employers furnish a safe and healthful place of employment which is free of recognized hazards. TOSHA is comprised of three sections, the Compliance Section, the Consultative Section, and the Training and Education Section. The Compliance Section is responsible for enforcement of the Tennessee Occupational Safety and Health Act of 1972, with emphasis on employee exposures to chemical and physical hazards. The Consultative Services Section offers a free consulting program to smaller employers who seek safe and healthful working conditions for their employees. The Training and Education Section assists employers, employees, and their representatives in reducing safety and health hazards in their workplaces and in complying with the requirements of TOSHA standards and regulations. At the time of the onsite monitoring visit, there were a total of 83 positions funded under the 23(g) grant. The approved benchmark for TOSHA is 22 safety compliance officers and 14 health compliance officers assigned to field offices throughout the state. At the time of this review TOSHA was meeting the benchmark for health and were two safety compliance officers short, however they were in the process of hiring six safety and two health compliance officers. During this period the TOSHA program did not have any 100% state funded positions.

TOSHA's primary objective is to improve occupational safety and health in workplaces throughout the state. The worker population in Tennessee consists of approximately 3,080,000 people. There are approximately 140,000 employers in the state with a

comparatively high percentage of construction work sites. The program services are administered through a central office in Nashville and six field offices located strategically throughout the state in Knoxville, Memphis, Chattanooga, Kingsport, Jackson and Nashville.

Employee protection from discrimination related to occupational safety and health [11(c)] is administered by TOSHA through the central office in Nashville. There are a total of three investigators, including one compliance manager and two compliance supervisors. Discrimination cases found to be meritorious are prosecuted by the state Attorney General.

The Tennessee OSH Review Commission is a quasi-judicial body empowered to hear and rule on appeals regarding citations issued by the State Program. The OSH Review Commission may affirm, modify or revoke a citation, as well as any monetary penalty. The Commission consists of three members appointed by the governor to serve on the body for three-year terms.

Private sector consultative services are provided through a 21(d) Grant with the Tennessee Department of Labor and Workforce Development to employers, especially smaller employers, to assist them in achieving safe and healthful workplaces for their employees. The Safety and Health Achievement and Recognition Program (SHARP) is administered through consultative services.

b. Summary of the Report

The FY 2010 EFAME report is not a comprehensive FAME report. This report is focused on the State's progress in achieving their Corrective Action Plan (CAP) in response to the FY 2009 EFAME report. In addition, this report is also based on the results of quarterly onsite monitoring visit, the TOSHA State Office Annual Report (SOAR) for FY 2010, as well as the State Activity Mandated Measures (SAMM) Report and State Indicator Report (SIR) reports ending September 30, 2010. FY 2010 was a 1-year plan. This report represents an evaluation of the state's performance during the year as well as the overall performance. This report indicates that TOSHA achieved or exceeded all of the established goals with the exception of the goal to reduce amputations and additions to Volunteer Star. There are no repeat or new findings or recommendations as a result of monitoring activities conducted during FY 2010.

The FY 2009 Enhanced FAME report contained nine findings and recommendations. Region IV and the Tennessee State Plan (TOSHA) have reached agreement on corrective action for eight of the recommendations. One item was considered unresolved by the Region and remains open, pending additional monitoring by federal OSHA. Documentation has been provided to support the effective implementation for a majority of the recommendations however it has not been verified through case file and/or documentation reviews. Verification reviews will be conducted during FY 2011 to assure the actions documented in the Corrective Action Plans (CAPs) were effectively implemented. There is one repeated recommendations for fiscal year 2010.

A review of the SAMM and SIR for FY 2010 indicated Tennessee OSHA generally met or

exceeded federal activity results. The reports show that hazards were identified during 74.3% of programmed safety inspections (Federal data 69.1%) and during 83.2% of programmed health inspections (Federal data 55.4%); Safety Compliance performed approximately 6.3 inspections per 100 hours (Federal data 5.5) and Health Compliance performed approximately 2.6 inspections per 100 hours (Federal data 1.9). Tennessee OSHA only vacated 1.8% of violations (Federal data 4.7) and reclassified 1.0 % (Federal data 4.0). Penalties were retained on 81.7% of violations issued (Federal data 63.0).

The only area of concern is the serious classification of safety violations 46.0% (Federal data 81.0) and of health violations 37.9% (Federal data 70.2). Proper classification will continue to be an area of focus in FY 2011.

The state continues to exceed the established Compliance Staffing Benchmarks. A review of State funding and other fiscal issues did not reveal any problems. A review of the State's Progress in Achieving Annual Performance Goals did not indicate any concerns. The program's effectiveness has largely been measured by evaluating their ability to achieve the goals contained in the plans. TOSHA has and continues to demonstrate a high degree of success accomplishing its targeted goals.

c. Monitoring Methodology

This report was prepared under the direction of Cindy A. Coe, Regional Administrator, Region IV, Atlanta, Georgia, and covers the period of October 1, 2009 through September 30, 2010. The Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health (TOSHA) administers the state's OSHA program under the direction of James G. Neeley, Commissioner, and John Winkler, TOSHA Administrator. This is OSHA's report on the operation and performance of the Tennessee Department of Labor and Workforce Development's Occupational Safety and Health Program.

2. Major New Issues

The state did not experience any significant new issues during this fiscal year.

3. Assessment of State Actions and Performance Improvements in Response to Recommendations from the FY 2009 EFAME

Finding 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.

Recommendation 09-1: 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.

This is the one and only recommendation that is unresolved. 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.

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 item is a carry-over recommendation and will be examined in greater detail in the FY2011 EFAME report.

Finding 09-2: Most case files did not contain a case file diary sheet or log to document significant actions associated with that particular file.

Recommendation 09-2: Tennessee's case file should include a diary to document significant actions, communication between management and the CSHO, communication between TOSHA and the employer.

This recommendation was fully implemented. A standard case file diary was developed and implemented to document actions related to that particular file.

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.

Finding 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.

Recommendation 09-3: 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.

This recommendation was fully implemented. 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 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.

The state was appreciative of this recommendation because it reassured them in the use of discretion when reviewing and determining which complaints would be handled by phone and fax rather than inspection. All complaints are being evaluated to determine the seriousness of the hazard(s) and the most appropriate action to ensure the most efficient use of resources. This has had an impact on the number of in-compliance complaint inspections freeing-up resources for programmed-related activities where employees are at greatest risk. In FY 2010 the percent of complaints that were in-compliance decreased from 30% in FY 2009 to 27%. IMIS and case file reviews will be conducted during FY 2011 to verify that complaints are being evaluated and handled appropriately.

Finding 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.

Recommendation 09-4: 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.

This recommendation was fully implemented. 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.

Finding 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.

Recommendation 09-5: 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.

This recommendation was fully implemented. 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.

Finding 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.

Recommendation 09-6: Tennessee should assure that each violation is documented accurately for severity and probability and reviewed for proper classification.

This recommendation was fully implemented. 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. In FY 2010 the percentage of violations classified as serious increased to 46.0% from 40.7% in 2009 however the percentage of health violations decreased to 37.9% from 40.9% in 2009. IMIS reports and case files will be reviewed during FY 2011 to verify that violations are properly classified and documented in accordance with the FOM.

Finding 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.

Recommendation 09-7: Tennessee should require compliance officers to establish and document specific knowledge to support violations.

This recommendation was fully implemented. Supervisors trained and continue 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.

Finding 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.

Recommendation 09-8: 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.

This recommendation was fully implemented. 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 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.

Finding 09-9: TOSHA does not have an internal evaluation program as required by the

State Plan Policies and Procedures Manual.

Recommendation 09-9: 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 necessary. A review of the audit (self-evaluation) will be conducted during FY 2011.

4. FY 2010 State Enforcement

During FY 2010, 1,995 (2,375 – 2009) inspections were conducted. A comparison of IMIS data for fiscal years 2007 through 2010 did not indicate any notable variations.

a. Complaints

Tennessee's procedures for handling complaints alleging unsafe or unhealthful working conditions are very similar to those of Federal OSHA. These procedures are covered in TOSHA Instruction CPL-TN 02-00-140 (2006, December) – Complaint Policies and Procedures. Inspection data indicates that Tennessee handled 459 complaints in 2010 compared to 559 in 2009, and conducted 234 complaint inspections compared to 303 in 2009. According to the State Activity Mandated Measures (SAMM) report, Tennessee responds timely to complaints. Complaint investigations were initiated within an average of 2.18 days with a goal of 5 days in 2010 compared to 4.3 days in 2009, and complaint inspections were initiated within an average of 8.24 days with a goal of 15 days in 2010 compared to 9.37 in 2009. Both were within the goal of 15 days for inspections and 5 days for investigations. A review of the IMIS reports showed that during 2010 approximately 124 of 459 or 27% of their complaint inspections were in-compliance compared to 92 of 303 or 30.4% in 2009. Tennessee handled 100 less complaints than in 2009 and conducted 31 less inspections. This may have had an impact on the reduction in the percent of complaint inspections without violations. The state cut their response time for complaint inquiries by more than 50% and for complaint inspections by more than 1 day.

b. Fatalities

In fiscal year 2010, Tennessee investigated 45 accidents compared to 40 in FY2009 of which 31 were workplace fatalities compared to 33 in FY 2009. In addition, two catastrophes were investigated by the state. The number of construction deaths declined from 14 in 2009 to 9 in 2010, while the number of fatalities in general industry increased from 13 in 2009 to 17 in

2010. One accident involved two deaths. In addition, the fatalities in the public sector more than doubled from 2 to 5 in fiscal year 2010. Tennessee's procedures for investigation of occupational fatalities are essentially the same as those of Federal OSHA. Investigations are normally initiated within one day of notification of the fatality.

c. Targeting Inspections

According to inspection statistics run for this report, Tennessee conducted 1,995 inspections in fiscal year 2010, 1,560 of which were programmed compared to 1,829 in FY 2009. This includes many of the 646 inspections conducted in the construction sector. In FY 2009 837 inspections were conducted in the construction sector. According to the State Indicator Report, 84% of programmed safety inspections and 91% of programmed health inspections had violations compared to 74.1% of programmed safety and 76.5% of programmed health inspections in 2009. In addition, 12% of the programmed construction inspections and 17.0% of the programmed general industry inspections were in-compliance compared to 56.3% of the programmed construction inspections and 44.1% of the programmed construction inspections in FY 2009. Additional data indicates that an average of 3.1 violations were cited per inspection, the same as 2009, and that 52.0% (safety) and 47.0% (health) of the violations were classified as Serious compared to 62.0% (safety) and 46.4% (health). In FY 2010, 1.9% (94 repeat violations) were classified as Repeat violations and there were no willful violations issued as a result of a programmed planned inspections compared to .25% Repeat, and .12% Willful (5 grouped willful violations were a result of a programmed planned health inspection) in 2009.

Tennessee also has a public sector inspection procedure. By state law, all public sector entities are required to be inspected at least every two years. According to the SAMM report, 29.8 percent of inspections were conducted in the public sector in 2010 which is an increase from 2009 (23.9 percent).

d. Citations and Penalties

In FY 2010, the 1,995 inspections conducted (2,375 in 2009) resulted in an average of 3.2 violations per inspection (2.9 in 2009), with 46.0% (40.7% in 2009) of safety violations and 37.9% (40.9% in 2009) of health violations classified as Serious. The average initial penalty per serious violation for private sector inspections was \$1401 (\$1322 in 2009), compared to an average of \$1069 for national data. In addition, penalties were reduced by an average of 27.8% which is much lower than the national average of 40.9%. Tennessee routinely places an emphasis on keeping citation lapse times low. In 2010, the average lapse time from opening conference to citation issuance was 31.7 days for safety compared to 38.2 days in FY 2009 and 43.7 days for health compared to 49.3 days in FY 2009. Safety and health lapse times are below the national average of 37.9 days for safety and 50.9 days for health.

Although the state's procedures for determining the classification of violations are essentially the same as those of Federal OSHA, Tennessee classifies a lower percentage of violations as Serious. Serious violations are categorized in three categories based on

seriousness for penalty calculation purposes. The State Indicator Report (SIR) shows that 46.0% (40.7% in 2009) of the safety violations and 37.9% (40.9% in 2009) of the health violations were classified as Serious, significantly lower than the national average of 81% for safety and 70.2% for health. The SIR also shows that the state reclassified 1.0% (1.0% in 2009) of their violations which is lower than the national average of 4.0%. Due to the significant difference in the classification of serious violations between the State and Federal OSHA this issue will be subjected to increased examination during the development of the FY2011 EFAME report, including the review of inspection case files.

e. Review Procedures

All inspection reports and citations are reviewed by the industrial hygiene or safety area supervisor and the section manager. All citations are reviewed, issued, and signed by the TOSHA Administrator, or in his absence, the Assistant Administrator. The three levels of review are to ensure that citation classifications and penalties are appropriate and that all hazards are being addressed.

Tennessee has procedures in place for conducting informal conferences and proposing informal settlement agreements. Informal conferences are held by the area supervisor and reviewed by the section manager. All changes to the penalty or citation are reviewed and issued by the TOSHA Administrator or Asst. Administrator. According to the State Indicator Report, 1.8% (1.9% in 2009) of violations was vacated and 1.0% (1.0% in 2009) of violations was reclassified as a result of informal settlement agreements compared to (1.9% in 2009) of violations was vacated and 1.0% (1.0% in 2009) of violations was reclassified in FY 2009. The penalty retention rate was 81.7% compared to 88.5% in FY 2009. In fiscal year 2010, 1.7% of inspections was contested which is unchanged from FY 2009. SIR data indicates that, for violations that were contested, 3.3% were vacated, and 3.3 % were reclassified compared to 5.7% vacated and 9.4% reclassified in FY 2009. In FY 2010, 78.7% of the penalties were retained compared to 84.5% in FY 2009.

f. BLS Rates

Bureau of Labor Statistics (BLS) injury and illness rates for Tennessee have shown a steady decline. The 2009 total case rate for the private sector was 3.6, a 14.3% reduction over the 2008 rate and a 20% reduction from the 2007 rate. The national total case rate in 2008 was 3.9. The 2009 Days Away Restricted and Transferred (DART) rate was 1.9, a 9.5% reduction over the 2008 rate and a 13.6 reduction from 2007. The national DART rate for 2008 was 1.8. Tennessee uses injury and illness rates and fatality rates in their strategic planning process to decide where their resources should be focused. Where possible, reductions in rates are used to measure outcome results.

5. Other

a. Discrimination Program

The Tennessee Department of Labor and Workforce Development – Tennessee Occupational Safety and Health Administration (TOSHA) is responsible for enforcing the 11(c) discrimination regulations under the Act. The act prohibits discrimination against employees who engage in protected activities as defined by the Tennessee Occupational Safety and Health Act of 1972 (T.C.A. 50-3-409). This is comparable to Federal OSHA protection from discrimination under Section 11c of the OSHA Act.

During fiscal year 2010 TOSHA docketed 53 discrimination complaints, 10 more than was filed in FY 2009. The status of these cases and the percentages of total cases they represent are presented below. Of the total cases not included below, 4 were not covered by the statute and 1 was untimely filed.

According to the State Activity Mandated Measures (SAMM) report, which uses cases closed during the fiscal year, 25.93% of complaints were meritorious compared to 38.6% in FY 2009 and 57.1% (100% - 2009) of the merit cases were settled compared to 100% in FY 2009.

b. Standard Adoption and Federal Program Changes

In accordance with 29 CFR 1902, States are required to adopt standards and federal program changes within 6-months. States must set job safety and health standards that are "at least as effective as" comparable federal standards. (Most States adopt standards identical to federal ones.) States have the option to promulgate standards covering hazards not addressed by federal standards. During the evaluation period OSHA initiated the following standards and federal directives, which required action by the State:

Federal Standards

Standards Requiring Action	Federal Register Date	Adopted Identical	Date Promulgated
Updated OSHA Standards Based on National Consensus Standard, Personal Protection Equipment	September 21, 2009	Yes	01/29/2010
Acetylene – Direct Final Rule	November 9, 2009	Yes	01/29/2010
Hexavalent Chromium - Direct Final Rule	May 14, 2010	Yes	07/29/2010
Safety Standards for Steel Erection – Technical Amendment	May 17, 2010	Yes	07/29/2010
Cranes and Derricks in Construction – Direct Final Rule	August 9, 2010	Yes	01/01/2011

Federal Program Changes (excluding Standards)

Federal Program Changes Requiring Action	Federal Directive	Date of Directive	Adopted Identical	Date Adopted
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	Number			
Field Operations Manual	CPL 02-00-148 2009 332	03/26/2009	Yes	09/25/2009
Site-Specific Targeting 2009 (SST-09)	CPL 02 (08-07) Update	07/20/2009	Yes	07/20/2009
NEP -- PSM Covered Chemical Facilities	TED 01-00-018	07/27/2009	No	N/A

During this period TOSHA also indicated that it would adopt an identical version of the Site-Specific Targeting 2009 (SST-09). However, the State did not adopt the emphasis program for Process Safety Management (PSM) Covered Chemical Facilities (This program is specific to Regions I, VII, and X). State action regarding the new Field Operations Manual (FOM) was also required during this period and TOSHA adopted a Field Operations Manual (FOM) which mirrors the federal policies, with only a few minor differences.

c. Variances

Tennessee currently has two permanent variances. Neither of them are multi-state variances approved by Federal OSHA. There are currently no temporary variances. The state shares variance requests with federal monitors and requests input prior to approval. The Manager of Standards and Procedures maintains a log of variances to track the status of each variance. TOSHA received no additional variance request in fiscal year 2010.

d. Complaint About State Plan Administration (CASPA)

During this period there were two CASPA's filed with the OSHA Area Office in Nashville, Tennessee. CASPA #88-FY10 involved an appeal of a workplace safety and health complaint. This CASPA remains under investigation by the area office due to the complex nature of the complaint. CASPA #89-FY10 involved an appeal of a workplace safety and health complaint, as well as an allegation that the State neglected to initiate a discrimination investigation on behalf of the complainant. This CASPA has been resolved with three recommendations, including the initiation of a discrimination investigation on behalf of the complainant.

Complaint About State Plan Administration (CASPA) Number	Final Notification to Complainant	Recommendation(s)	State Response Letter
CASPA 88- FY10	N/A	N/A	N/A
CASPA 89- FY10	December 20, 2010	Yes	Yes

e. Cooperative Programs

Tennessee did not adopt the federal OSHA Strategic Partnership Program or the OSHA Alliance Program.

Voluntary Protection Program (VPP) and Safety and Health Awards Programs

TOSHA implemented the Tennessee Volunteer Star Program in 1997 with two participants. The program is similar to the Federal Voluntary Protections Program (VPP). The TOSHA Volunteer STAR VPP Program is administered according to the TOSHA VPP Policy and Procedures Manual. Tennessee OSHA recognizes only the STAR level of achievement.

Tennessee OSHA currently has 33 sites participating in the Volunteer STAR program. During FY 2010, two new facilities obtained Volunteer STAR status.

The Tennessee Department of Labor and Workforce Development Safety Award Program is designed to stimulate interest in accident prevention and to promote safety and health programs. These awards recognize manufacturing and construction employers across the state that, together with their employees, achieve and maintain safe and healthful work sites based on worker-hours worked without a lost-time or without a lost or restricted duty incident.

During FY 2010, TOSHA presented 13 Governor's Awards and 12 Commissioner's Awards. No exemption or other benefit, with the exception of recognition, is granted to the recipients.

Training and Education Outreach Program

A spring and fall schedule of training seminars is offered to the general public each year. The seminars focus on new regulations, basic requirements related to occupational safety and health, and current topics of interest. TOSHA works with many co-sponsors to offer seminars, including the University of Tennessee, The Tennessee Chamber of Commerce & Industry, and several state community colleges. The seminars are offered at various locations across the state.

TOSHA trainers also conduct short training programs and speeches for special events, meetings, and conferences upon request. The TOSHA training staff is currently comprised of 21 industrial hygienists and occupational safety specialists who are approved as trainers in addition to their compliance or consultative duties. In FY 2010, TOSHA trainers conducted 335 training sessions for 8,442 attendees. Of the responses the training program received from participants, 95% indicated the seminars help employers and employees provide a safe and healthful workplace.

Tennessee OSHA publishes a free quarterly newsletter, "Together with TOSHA," mailed to approximately 18,000 persons/businesses and also distributed through TOSHA's Web site. The newsletter offers information, interpretations, best practices, and compliance recommendations on occupational safety & health topics.

Additionally, during this period TOSHA trained one occupational medicine resident this year and worked with Meharry Medical College to develop a standardized training plan for the Meharry Medical College/TOSHA Occupational Medicine Residency Program. As the only

occupational medicine residency program in the state of Tennessee, Meharry Medical College has played an important role in ensuring an adequate supply of qualified professional occupational health practitioners in the state. This cooperative relationship enables students to gain an understanding of public health policy development and enforcement and appreciate TOSHA's roles in occupational safety and health, including enforcement, standards, guidance, compliance assistance and jurisdictional oversight.

f. Program Administration

Ability to Meet Compliance Staffing Benchmarks

Under the terms of the 1978 Court Order in *AFL-CIO v. Marshall* compliance staffing levels (benchmarks) necessary for “fully effective” enforcement program were required to be established for each State operating an approved State plan. In September 1984 Tennessee, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 22 safety and 14 health compliance officers. After opportunity for public comments and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on July 22, 1985. As of November 2010, the compliance staffing of the Tennessee OSHA Program currently exceeds the Federal Benchmark of 22 Occupational Safety Specialists and 14 Industrial Hygienists positions.

Impact of State funding and other fiscal issues

In accordance with U.S. Department of Labor (USDOL), Occupational Safety and Health Administration (OSHA) Directive FIN 02-00-003 – Financial and Administrative Monitoring of OSHA Grants and Cooperative Agreements, the USDOL/OSHA has conducted an on-site monitoring visit. The monitoring visit encompassed the financial and administrative aspects of the Fiscal Year (FY) 2009 23(g) grant with the Tennessee Department of Labor and Workforce Development. Contained herein are the results of the on-site monitoring visit.

During Fiscal Year 2009, the total authorized award equaled \$6,803,124 (Federal funds equaled \$3,278,900 and non-federal funds equaled \$3,524,224). For the quarter ending September 30, 2009, actual federal expenditures reported in the Health and Human Services Payment Management System (HHSPMS) were \$3,278,900 and recorded on the final Financial Status Report were \$3,278,900. Review of the 23(g) Grant revealed the grantee expended 100% of authorized funds for the period ending September 30, 2009. No issues to report.

Per the U.S. Department of Labor, Occupational Safety and Health Administration Directive FIN 02-00-003 – Financial and Administrative Monitoring of OSHA Grants and Cooperative Agreement, Appendix B “Financial Monitoring Guidelines – Grants and Cooperative Agreements,” we have reviewed the above award and have no issues to report at this time.

Furloughs, Office Closures or Other Changes in Services

TOSHA does not anticipate any changes in the level of services provided by the State or its current operations. During this period, Tennessee has not furloughed employees or closed/consolidated offices due to the State’s fiscal hardship. In addition, TOSHA does not anticipate any issues for FY 2011.

6. Assessment of State Progress in Achieving Annual Performance Goals

Over the past 10-years TOSHA has implemented two Five-Year Strategic Performance Plans. The program’s effectiveness has largely been measured by evaluating their ability to achieve the goals contained in the plans. In the past TOSHA has demonstrated a high degree of success accomplishing its targeted goals. In general, these goals address the effective elimination and control of hazards in several industries, such as construction, health care, metal working and others.

Goal 1.1: Eliminate 7,000 serious violations/hazards in workplaces where interventions take place.

The table below illustrates the State’s performance in this area. Through a combination of compliance inspections and consultation visits they eliminated over 7,000 workplace hazards.

	Compliance	Consultation	Total
Inspections/Visits	2,014	494	2,508
Serious Violations/Hazards	4,248	2,931	7,179
Non-Serious Violations/Hazards	3,002	423	3,425
Repeated Violations	106	N/A	106
Willful Violations	17	N/A	17
Regulatory Hazards	N/A	378	378
Total Violations/Hazards	7,373	3,732	11,105

Goal 1.2: Reduce carbon monoxide exposures for 300 employees each year.

Carbon Monoxide (CO) levels have been documented and reduced through elimination and engineering controls. TOSHA has a Special Emphasis Program (CPL-TN-04-00-001 – Effective Date 09/16/1999) for Employee Exposure to Carbon Monoxide (CO). Safety compliance officers are cross-trained to identify sources and potential exposures to carbon monoxide so they can make good referrals. Compliance officers are required to address carbon monoxide on every inspection. Activity related to this program is tracked and communicated with the field on a monthly basis. In fiscal year 2010, Compliance and Consultation documented the elimination of 674 hazards impacting 237 employers resulting in reducing the exposure of 6,015 employees.

Goal 1.3: Reduce noise exposures for 300 employees each year.

The State OSHA Annual Report (SOAR) indicates that noise levels have been reduced through engineering and hearing protection in 19 workplaces, affecting over 932 employees. TOSHA has a Special Emphasis Program for Employee Exposure to Noise (CPL-TN-04-00-001 – Effective Date 09/16/1999). In addition, hazardous noise is addressed during each

outreach and training event conducted by the state. During fiscal year 2010, Compliance and Consultation documented the 319 hearing conservation hazards in 82 workplaces and reduced hazardous noise exposure of 1,486 employees.

Goal 1.4: Reduce the number of needle-sticks in hospitals and Ambulatory Surgical Centers by 1 percent.

TOSHA has a Targeting Initiative using the Bloodborne Pathogens standard to address needle-stick injuries in hospitals and ambulatory surgical centers. As part of this initiative, Tennessee obtained 2005, 2006, 2007, 2008 and 2009 Sharps Injury Logs from Tennessee hospitals and ambulatory surgical centers. TOSHA trainers performed training sessions for these facilities in six areas of Tennessee. Targeted inspections were conducted at 79 workplaces in fiscal year 2010. A total of 586 hazards were identified during these inspections. A comparison of the 2005, 2006, 2007, 2008 and 2009 needle-stick logs were made. The results indicate a reduction of 14.7 % in five years.

Goal 1.5: Reduce the number of fatalities due to falls by 5 percent.

During this period the State experienced 7 fatalities due to falls. This represents a reduction from the previous year, when the State experienced 10 fatalities due to falls. During this period TOSHA informed employers and employees about the State's Fall Hazard Special Emphasis Program (CPL-TN-04-00-004 – Effective Date 09/24/1999) during each inspection and consultation visit. TOSHA conducted inspections and consultation visits at a total of 418 workplaces where fall hazards were identified.

Goal 1.6: Reduce the DART in Construction by 5 percent.

Tennessee continued to place emphasis on construction hazards by conducting 628 inspections documenting 1,687 hazards. Program inspections are conducted from the University of Tennessee's Dodge Construction Scheduling System and from Special Emphasis Programs including Fall Protection, Trenching, and Carbon Monoxide.

Goal 1.7: Reduce amputations injuries in the workplace by 5 percent.

Tennessee has a Special Emphasis Program for Amputations (CPL-TN-03-00-003 – Effective Date 10/27/06) which is identical to the National Emphasis Program for Amputations. In addition, TOSHA uses the state Worker Compensation data to identify accidents involving amputations. The data is reviewed monthly to identify and conduct investigations of these accidents. TOSHA has achieved this goal. TOSHA conducted inspections at 284 worksites and identified 547 hazards related to amputations during fiscal year 2010. During this period amputations increased by a total of 159. This represents a reversal in the five-year down trend previously experienced by the State in this area.

Goal 2.1: Train 27,000 people in occupational safety and health.

TOSHA personnel performed near 800 training sessions during this period, which reached

over 10,000 workers. These safety and health training seminars addressed a wide range of topics, including the following:

Accident Investigations	Basic Safety
Bloodborne Pathogens	10-hour Construction Course
Combustible Dust	10 & 30-hour General Industry Course
Electrical Safety	Fall Protection
Fire Protection & Life Safety	Powered Industrial Trucks
Hazard Communication	Maintenance Related Standards
Noise	Laboratory Safety and Health
Lockout/Tagout	Machine Guarding
Respirator Requirements	Office Safety
Public Sector Update	Safer Needle Devices
TOSHA Overviews	Train the Trainer
Trenching	Walking and Working Surfaces

Goal 2.2: Intervene and assist in the improvement of 2,550 occupational safety and health programs.

TOSHA consultation performed 493 visits with program assistance. These program assistance visits provide the company with evaluation of their safety and health program and provide recommendations on how those companies can improve their programs. Additionally, safety and health program violations were cited on 4,658 occasions during 1,201 inspections. These program violations included: emergency action plans, noise, emergency response, personal protective equipment assessment, respirators, confined space, lockout/tagout, fire prevention, bloodborne pathogens, hazard communication, excavations, process safety management and construction training.

Goal 2.3: Provide the Volunteer Star Award to 3 employers with exceptional safety and health programs.

During this period, TOSHA approved two new companies for participation in the Volunteer Star Program.

Goal 2.4: Provide the SHARP Award to 2 employers with exceptional safety and health programs.

During this period, the Tennessee OSHA Consultation Services approved two new companies for SHARP.

Appendix A
Tennessee State Plan
FY 2010 Enhanced FAME Follow-up Report Prepared by Region IV
Summary of New and Continuing Findings and Recommendations

Rec #	Findings	Recommendations	Related FY 09 Rec #
10-1	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.	09-1

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		Related FY 09 Rec #
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 a CASPA or audit by federal	COMPLETED

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		Related FY 09 Rec #
				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

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		Related FY 09 Rec #
09-6	<p>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.</p>	<p>Tennessee should assure that each violation is documented accurately for severity and probability and reviewed for proper classification.</p>		<p>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</p>	COMPLETED
09-7	<p>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.</p>	<p>Tennessee should require compliance officers to establish and document specific knowledge to support violations.</p>		<p>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.</p>	COMPLETED

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		Related FY 09 Rec #
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

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		Related FY 09 Rec #
				necessary. A review of the audit (self-evaluation) will be conducted during FY 2011.	

Appendix C
Tennessee State Plan
FY 2010 Enforcement Activity

	TN	State Plan Total	Federal OSHA
Total Inspections	1,995	57,124	40,993
Safety	1,489	45,023	34,337
<i>% Safety</i>	75%	79%	84%
Health	506	12,101	6,656
<i>% Health</i>	25%	21%	16%
Construction	646	22,993	24,430
<i>% Construction</i>	32%	40%	60%
Public Sector	595	8,031	N/A
<i>% Public Sector</i>	30%	14%	N/A
Programmed	1,547	35,085	24,759
<i>% Programmed</i>	78%	61%	60%
Complaint	234	8,986	8,027
<i>% Complaint</i>	12%	16%	20%
Accident	36	2,967	830
Insp w/ Viols Cited	1,503	34,109	29,136
<i>% Insp w/ Viols Cited (NIC)</i>	75%	60%	71%
<i>% NIC w/ Serious Violations</i>	66.7%	62.3%	88.2%
Total Violations	5,054	120,417	96,742
Serious	2,499	52,593	74,885
<i>% Serious</i>	49%	44%	77%
Willful	6	278	1,519
Repeat	94	2,054	2,758
Serious/Willful/Repeat	2,599	54,925	79,162
<i>% S/W/R</i>	53%	46%	82%
Failure to Abate	10	460	334
Other than Serious	2,445	65,031	17,244
<i>% Other</i>	48%	54%	18%
Avg # Violations/ Initial Inspection	3.2	3.4	3.2
Total Penalties	\$ 2,653,592	\$72,233,480	\$183,594,060
Avg Current Penalty / Serious Violation	\$ 827.80	\$ 870.90	\$ 1,052.80
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 1,400.70	\$ 1,018.80	\$ 1,068.70
% Penalty Reduced	27.8%	47.7%	40.9%
% Insp w/ Contested Viols	2.2%	14.4%	8.0%
Avg Case Hrs/Insp- Safety	15.4	16.2	18.6
Avg Case Hrs/Insp- Health	38.3	26.1	33
Lapse Days Insp to Citation Issued- Safety	31.7	33.6	37.9
Lapse Days Insp to Citation Issued- Health	43.7	42.6	50.9
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	30	1,715	2,510

Source: DOL-OSHA. State Plan & Federal INSP & ENFC Reports, 11.9.2010.

Appendix D
Tennessee State Plan
FY 2010 State Activity Mandated Measures (SAMMs)

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)
 State: TENNESSEE

NOV 12, 2010
 PAGE 1 OF 2

RID: 0454700

MEASURE	From: 10/01/2009 To: 09/30/2010	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	1913 8.24 232	29 3.22 9	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	713 2.18 327	55 2.03 27	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	232 99.57 233	11 100.00 11	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	5 100.00 5	0 0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	0 .00 1376	0 .00 1376	100%
Public	0 .00 1157	0 .00 1157	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	52746 43.73 1206	4690 39.41 119	2624646 47.3 55472 National Data (1 year)
Health	22123 58.37 379	2086 63.21 33	750805 61.9 12129 National Data (1 year)

*TN 11.12

**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)
 State: TENNESSEE

NOV 12, 2010
 PAGE 2 OF 2

RID: 0454700

MEASURE	From: 10/01/2009 To: 09/30/2010	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	724	58	93201
Safety	57.23	42.65	58.4
	1265	136	159705
	178	15	10916
Health	66.67	83.33	50.9
	267	18	21459
9. Average Violations per Inspection with Vioations			
	2666	182	428293
S/W/R	1.67	1.19	2.1
	1591	152	201768
	2441	282	240266
Other	1.53	1.85	1.2
	1591	152	201768
10. Average Initial Penalty per Serious Violation (Private Sector Only)	2423325	192300	509912690
	1576.65	1344.75	1360.4
	1537	143	374823
11. Percent of Total Inspections in Public Sector	595	32	1817
	29.82	26.02	26.2
	1995	123	6940
12. Average lapse time from receipt of Contest to first level decision	3996	713	3826802
	444.00	356.50	217.8
	9	2	17571
13. Percent of 11c Investigations Completed within 90 days	5	0	100%
	18.52		
	27	0	
14. Percent of 11c Complaints that are Meritorious	7	0	1461
	25.93		21.2
	27	0	6902
15. Percent of Meritorious 11c Complaints that are Settled	4	0	1256
	57.14		86.0
	7	0	1461

TN 11.12

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E
Tennessee State Plan
FY 2010 State Indicator Report (SIR)

Q4 SIR 47 101007 093309 PROBLEMS - CALL Yvonne Goodhall 202 693-1734

1101007

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 INTERIM STATE INDICATOR REPORT (SIR)

PAGE 1

CURRENT MONTH = SEPTEMBER 2010

STATE = TENNESSEE

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
	5298	167	11403	348	21912	714	43788	1710
A. SAFETY	62.4	82.3	63.8	82.5	65.1	80.7	65.9	80.3
	8493	203	17860	422	33647	885	66434	2129
	488	46	1094	99	2232	223	4202	512
B. HEALTH	30.6	46.9	33.7	44.8	35.0	48.2	35.1	49.9
	1597	98	3249	221	6378	463	11960	1027
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
	4663	161	9421	339	17649	663	34350	1539
A. SAFETY	72.7	80.9	71.2	83.7	69.1	74.3	67.1	74.1
	6413	199	13232	405	25525	892	51214	2077
	451	43	880	101	1756	208	3238	454
B. HEALTH	57.8	93.5	53.9	92.7	55.4	83.2	53.4	79.4
	780	46	1632	109	3168	250	6066	572
3. SERIOUS VIOLATIONS (%)								
	17341	284	33678	569	62211	1093	117447	2142
A. SAFETY	81.6	52.1	81.5	47.7	81.0	46.0	80.1	43.1
	21261	545	41304	1193	76839	2378	146593	4971
	3233	83	6183	188	11743	372	21554	825
B. HEALTH	69.6	39.5	70.5	39.1	70.2	37.9	69.6	39.5
	4645	210	8776	481	16725	981	30947	2088
4. ABATEMENT PERIOD FOR VIOLS								
	3054	62	6515	128	12732	254	25040	588
A. SAFETY PERCENT >30 DAYS	15.0	17.9	16.3	18.0	17.2	17.5	17.7	17.7
	20398	346	39855	712	74010	1452	141219	3326
	255	16	633	106	1406	236	2977	539
B. HEALTH PERCENT >60 DAYS	5.6	3.7	7.3	12.4	8.5	14.4	9.6	16.1
	4548	429	8681	854	16580	1637	30862	3356

U. S. D E P A R T M E N T O F L A B O R
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
INTERIM STATE INDICATOR REPORT (SIR)

CURRENT MONTH = SEPTEMBER 2010

STATE = TENNESSEE

PERFORMANCE MEASURE C. ENFORCEMENT (PRIVATE SECTOR)	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
5. AVERAGE PENALTY								
A. SAFETY								
OTHER-THAN-SERIOUS	587112	42250	1106734	87750	2038916	141000	3500911	267850
	837.5	297.5	803.1	285.8	894.3	242.3	967.6	221.2
	701	142	1378	307	2280	582	3618	1211
B. HEALTH								
OTHER-THAN-SERIOUS	249175	40275	434447	105175	732953	162300	1039303	255400
	817.0	537.0	801.6	669.9	835.8	513.6	842.2	464.4
	305	75	542	157	877	316	1234	550
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	9778	330	20529	708	38849	1553	76136	3505
	5.8	5.0	5.7	5.6	5.5	6.3	5.5	6.4
	1679	66	3593	127	7112	248	13925	544
B. HEALTH								
	1864	100	3844	230	7547	517	14276	1168
	2.1	2.0	2.0	2.3	1.9	2.6	1.8	2.9
	908	51	1940	99	3898	198	8070	400
7. VIOLATIONS VACATED %								
	1123	27	2474	60	5103	99	10425	221
	3.7	2.1	4.3	2.2	4.7	1.8	5.0	1.8
	29962	1264	57441	2772	108213	5457	207527	12045
8. VIOLATIONS RECLASSIFIED %								
	844	13	1978	34	4276	52	9196	119
	2.8	1.0	3.4	1.2	4.0	1.0	4.4	1.0
	29962	1264	57441	2772	108213	5457	207527	12045
9. PENALTY RETENTION %								
	15767907	484853	30073309	1036653	57457651	1797576	111052615	3710656
	64.5	79.2	63.9	81.6	63.0	81.7	62.8	85.1
	24439885	611850	47032897	1270300	91194322	2198900	176868726	4360000

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 INTERIM STATE INDICATOR REPORT

PAGE 3

CURRENT MONTH = SEPTEMBER 2010

STATE = TENNESSEE

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
A. SAFETY	167 82.3 203	106 98.1 108	348 82.5 422	242 96.0 252	714 80.7 885	509 96.8 526	1710 80.3 2129	1017 96.8 1051
B. HEALTH	46 46.9 98	0 .0 1	99 44.8 221	5 83.3 6	223 48.2 463	28 87.5 32	512 49.9 1027	63 87.5 72
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	284 52.1 545	135 41.0 329	569 47.7 1193	318 43.9 725	1093 46.0 2378	873 60.5 1444	2142 43.1 4971	2132 76.4 2790
B. HEALTH	83 39.5 210	17 45.9 37	188 39.1 481	49 56.3 87	372 37.9 981	149 69.6 214	825 39.5 2088	323 72.9 443

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = TENNESSEE

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	610 22.5 2709	4 13.3 30	1134 23.2 4888	4 8.2 49	2052 21.9 9366	5 3.3 153	3827 23.0 16668	11 4.2 259
2. VIOLATIONS RECLASSIFIED %	306 11.3 2709	2 6.7 30	585 12.0 4888	2 4.1 49	1100 11.7 9366	5 3.3 153	2217 13.3 16668	15 5.8 259
3. PENALTY RETENTION %	4940512 65.3 7563023	12465 75.9 16425	7526155 62.3 12074308	22415 81.9 27375	12856359 58.1 22143463	56135 78.7 71325	23378285 58.4 40052611	120460 81.7 147450

Appendix F
Tennessee State Plan
FY 2010 State OSHA Annual Report (SOAR)

SOAR Available Separately