

**FEDERAL ANNUAL MONITORING
EVALUATION (FAME) 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:

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REPORT PREPARED BY:

U.S. DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

REGION IV, ATLANTA

**Tennessee Department of Labor and Workforce Development
Division of Occupational Safety and Health
FY 2011 FAME Report**

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**Tennessee Department of Labor and Workforce Development
Division of Occupational Safety and Health
FY 2011 FAME Report**

I. Executive Summary

A. Summary of the Report

The fiscal year (FY) 2011 Tennessee FAME resulted in a comprehensive FAME report that focused on the State's overall performance in their enforcement and cooperative programs, compliance assistance activities, as well as the state's progress in achieving the recommendations resulting from the earlier Enhanced FAME (EFAME) reports. This report is also based on the results of quarterly onsite monitoring visits, the State Office Annual Report (SOAR) for FY 2011, the State Activity Mandated Measures (SAMM) Report, as well as the State Indicator Report (SIR) ending September 30, 2011.

Additionally, during this process stakeholder interviews were conducted with representatives from industry groups, labor unions and professional organizations. During the FY 2009 EFAME process stakeholder interviews were conducted with several members of the State's occupational safety and health advisory board; however, since that time legislative action has been taken to eliminate advisory boards in the State. Overall the stakeholders voiced confidence in TOSHA's ability to perform its occupational safety and health mandated activities.

This report contains four findings for the Tennessee Occupational Safety and Health Program, one of which remains from the previous EFAME evaluation, where no agreement could be reached. A detailed account of the findings and recommendations are discussed in the report.

B. State Plan Introduction

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 a total of 84.55 positions were funded under the 23(g) grant. There were a total of two safety and two health vacancies. In addition, the Administrator position was also vacant. The approved benchmark for TOSHA is 36 compliance officers (CSHO), of which 22 are safety and 14 are health, who are assigned to field offices throughout the state. TOSHA's primary objective is to improve occupational safety and health in workplaces throughout the state. The worker population in Tennessee consists of approximately 3,109,000 people. There are approximately 140,800 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 six 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 TOSHA to employers, especially smaller employers, to assist in achieving safe and healthful workplaces for their employees. The Safety and Health Achievement and Recognition Program (SHARP) is administered through the Consultative Services Section.

C. Data & 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, 2010 through September 30, 2011. TOSHA administers the state's OSHA program under the direction of Karla Davis, Commissioner; Alisa Malone, Deputy Commissioner and Interim Acting

TOSHA Administrator; and Steve Hawkins, Assistant 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. It was compiled using information gained from Tennessee's SOAR for FY 2011, interviews with the Tennessee staff, interviews of stakeholders, Integrated Management Information System (IMIS) reports, and the SAMM and SIR reports for FY 2011. On site monitoring for this evaluation included case file reviews, formal interviews with TOSHA staff, and interviews with stakeholders. Information obtained during routine monitoring of the Tennessee program by federal OSHA's Regional and Nashville Area Offices was also used as a basis for this evaluation.

For this evaluation, a total of 98 inspection case files and an additional 15 complaint investigation files were reviewed. Of the 98 inspection case files reviewed, 19 were fatality investigation files for FY 2011 and the remainder were a random selection of files selected from the following categories: programmed general industry safety; programmed general industry health; programmed construction safety; programmed construction health; referrals; and complaint inspections. This was a small percentage of the 1,859 inspections conducted in FY 2011, but is believed to provide an accurate picture of the enforcement program throughout the state, when coupled with interviews and a review of procedures and data. Data associated with the case files reviewed was representative of data for all inspections. A comparison of IMIS data for FY 2008 through FY 2011 did not indicate any notable variations.

D. Findings and Recommendations

The FY 2010 Enhanced FAME (EFAME) follow-up report did not contain any new findings and recommendations. Region IV and TOSHA reached agreement on corrective action for all of the recommendations from the FY 2009 EFAME. During this evaluation period three new recommendations were established. The specific recommendations are as follows:

Finding 11-01: The required IMMLANG coding on the TOSHA-1 was missing on approximately two-thirds of the files reviewed. It is noted that, with the exception of an isolated instance, the IMMLANG Questionnaire was completed with a copy maintained in the file.

Recommendation 11-01: TOSHA should ensure, by tracking and retraining, that all TOSHA-1 forms related to fatalities and catastrophes be coded with the required IMMLANG coding.

Finding 11-02: The TOSHA program did not fully follow the proper Petition for Modification of Abatement (PMA) procedures as outlined in Rule 0800-01-04-.15(7). TOSHA is not utilizing the Informal Settlement Agreement (ISA) as a tool to modify abatement periods.

Recommendation 11-02: TOSHA should ensure that the requirements outlined in Rule

0800-01-04-.15(7) – Petition for Modification of Abatement (PMA) be reviewed and properly implemented, and when possible utilize the ISA as a means to modify abatement periods during informal conferences.

Finding 11-03: Of the case files reviewed, a large amount of the public sector consultation case files did not contain evidence of hazard tracking or documentation of abatement.

Recommendation 11-03: TOSHA should establish procedures to ensure that public sector employers implement interim control measures to safeguard workers and provide documentation to verify abatement.

II. Major New Issues

The State has experienced significant losses during this fiscal year from several retirements. The retirement of the TOSHA Administrator has left a void in the program management and leadership. Although the position has not been filled, the Deputy Commissioner has been acting in this position. The Assistant Administrator has also been performing many of the duties of this position ensuring that the impact of this loss is minimal. The retirement of the Manager of Health Compliance has been filled by a former supervisor. The impact of this loss has been minimal however the loss of experience has an impact. There were several other retirements of managers that were filled during FY 2011 which ensures the impact of these losses is minimal.

III. State Response to FY 2010 FAME Recommendations

The FY 2010 FAME follow-up report contained no new findings and recommendations, which remain unresolved. However there is still one that remains open from the FY 2009 EFAME.

During the EFAME it was found that Field notes are destroyed at the instruction of the State's Attorney when the compliance officer completes the violation form and worksheet. With the exception of fatality case files, many of the case files reviewed did not contain witness or management statements. It was recommended that 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.

TOSHA has indicated that all pertinent information including photos to substantiate violations is transferred from field notes to the 1B. Field notes will be included if the TOSHA Attorney determines that it is in the best interest to include them. All field personnel have been instructed to either destroy or include all field notes in the case file per the TOSHA FOM. This practice has never been challenged.

TOSHA maintains their position regarding this recommendation. During the current review it was determined that even though all field notes, diagrams, photos and any other

documentation obtained or produced during inspections should be maintained with the case file until its destruction, the State's current practice has not resulted in a negative impact in their ability to support violations. This recommendation should be considered closed. However, this will remain a focus during future monitoring activities.

IV. Assessment of State Performance

A. Enforcement Program

As previously stated, a total of 98 inspection case files and an additional 15 complaint investigation files were reviewed. This was a small percentage of the 1,859 inspections conducted in FY 2011, but is believed to provide an accurate picture of the enforcement program throughout the state, when coupled with interviews and a review of procedures and data.

Overall, case files that were reviewed contained sufficient documentation. According to interviews of management, supervisors and CSHOs, field notes are destroyed at the instruction of the State's Attorney when the CSHO completes the violation form (1B) and worksheet. It remains the State's contention that information contained in the field notes are transferred to the violation form (1B) and worksheet and the notes are no longer necessary at that point. In addition, the State's Attorney feels certain information contained in field notes could potentially have a negative impact in litigation and they can better defend the case if the field notes are not included in the file. This position was previously expressed in the State's response to Recommendation 09-01 from the FY 2009 EFAME. Although there is no indication that the lack of field notes are impacting the state's ability to maintain and litigate violations, it should be noted that field notes are an integral and valuable part of an inspection or investigation file and should be maintained. They are considered extemporaneous notes and hold weight in litigation. In addition, field notes are critical to the case file review and audit process.

Except for the fatality files, many of the case files reviewed did not contain witness or management statements. Interviews and photographs were referenced in the file, but federal reviewers were not able to see the documentation including field notes that had been in the file during the course of the inspection and while it was open. In response to Recommendation 09-02 from the FY 2009 EFAME, case files now contain a case file diary sheet to document significant actions associated with that particular file such as calls or correspondence between TOSHA and the employer.

1. Complaints and Referrals

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'S Field Operations Manual (FOM), Chapter 9: Complaint and Referral Processing. Inspection data indicates that TOSHA handled 633 complaints in FY 2011, and conducted 260 complaint inspections. According to the SAMM report, TOSHA responds timely to complaints. Complaint investigations were

initiated within an average of 3.41 days with a goal of 5 days, and complaint inspections were initiated within an average of 7.31 days with a goal of 15 days.

TOSHA has an established complaint intake procedure, with complaints transferred to an available Safety or Health Manager or Supervisor depending on the nature of the complaint. The State places a great deal of emphasis on customer service and assuring that each complaint is given attention consistent with the complaint directive. Current employees are always provided the opportunity and encouraged to formalize their complaint.

This evaluation included reviews of 15 complaint investigation files (those complaints handled by letter, or TOSHA's phone, fax and fix procedure) and 15 complaint inspection files. Several standard IMIS reports of complaint activity were reviewed. A review of the IMIS reports showed that approximately 81 of the 260 (31.2%) complaint inspections conducted by TOSHA were in-compliance. TOSHA previously interpreted the FOM to require inspections of all valid formal complaints. In response to Recommendation 09-03 from the FY 2009 EFAME, TOSHA instructed all managers and supervisors to thoroughly evaluate all complaints to determine the appropriate course of action based upon the seriousness of the hazard, as well as information provided in the complaint. This has allowed them to investigate some formal complaints by phone and fax, which has enabled them to efficiently utilize the limited resources. Of the complaint inspection and inquiry files, there were no instances of complaints that were investigated, that should have been inspected, nor were there any that were inspected where an investigation would have been more appropriate.

A review of the complaint inspection files revealed that each allegation was thoroughly investigated, and response letters provided clear and thorough information to the complainants regarding each alleged hazard. Written responses to the complainant were provided timely and procedures for updating the IMIS with complaint activity were being followed. Established procedures for tracking the status of complaints were being followed consistently.

2. Fatalities

In FY 2011, TOSHA investigated 32 accidents compared to 45 in FY 2010 of which 29 were workplace fatalities compared to 31 in FY 2010. In addition, one catastrophe at a general industry worksite was investigated by the state. The nine construction and 17 general industry deaths remained the same from FY 2010 to FY 2011. However, the three fatalities in the public sector were two less than in FY 2010. TOSHA'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. During this evaluation 15 or approximately 50% of the FY 2011 fatality investigation files, as well as four fatalities coded as "no inspection" were reviewed. TOSHA has implemented procedures to assure the quality of fatality investigations. A supervisor works closely with the CSHO when the case file is being

prepared to assure that the case documentation is legally sufficient. Fatality investigations are reviewed by at least four levels of management including the Supervisor, Compliance Manager, Assistant Administrator, and Administrator. Depending on the circumstances, an additional review may be conducted by the staff attorney. The determination must be signed by the TOSHA Administrator. The TOSHA Administrator signs all citations including fatality related citations. Informal settlement agreements related to fatality cases also receive a higher level of review and approval.

No major problems were noted in the fatality investigation files reviewed. Files included statements and other documentation that supported the violations cited, and the cause of the accident was clearly explained. All of the fatality files contained very detailed narratives explaining the accident, the investigation, and the findings. TOSHA has a longstanding procedure for communication with family members of deceased workers. According to the state's procedures, the investigating CSHO prepares the correspondence at the beginning and end of the investigation and sends it to the TOSHA Administrator for signature. In response to Recommendation 09-04 from the FY 2009 EFAME, at the conclusion of the investigation, the TOSHA Administrator sends the (next-of-kin) NOK a letter informing them of the results of the investigation and a copy of any citation(s) issued, if any are issued. Additionally, the NOK is informed of informal conferences and hearings, as well as any changes in the citations as a result a settlement or hearing. Copies of the NOK letters are maintained in the file.

One deficiency involving coding was identified during the case file review. The required IMMLANG coding on the TOSHA-1 was missing on approximately two-thirds of the files reviewed. It is noted that, with the exception of an isolated instance, the required IMMLANG-Y Questionnaire was completed with a copy maintained in the file. As a result of this finding, TOSHA immediately evaluated all of the fatalities from FY 2011 as well as the current fiscal year and entered the coding on the inspection reports that were not coded. CSHOs and supervisors were instructed to enter the coding on all fatality investigation files. This recommendation was corrected during the evaluation.

Findings and Recommendations

Finding 11-01: The required IMMLANG coding on the TOSHA-1 was missing on approximately two-thirds of the files reviewed. It is noted that, with the exception of an isolated instance, the IMMLANG Questionnaire was completed with a copy maintained in the file.

Recommendation 11-01: TOSHA should ensure, by tracking and retraining, that all TOSHA-1 forms related to fatalities and catastrophes be coded with the required IMMLANG coding.

3. Targeting and Program Inspections

According to inspection statistics run for this report, TOSHA conducted 1,859 inspections in FY 2011, 1,401 of which were programmed. This figure includes 494 programmed inspections conducted in the construction sector. According to the SIR, 70.3% of programmed safety inspections and 84.2% of programmed health inspections had violations. Additional data indicates that an average of 1.79 violations were cited per inspection, and that 58.96% of safety violations and 63.81% of health violations were classified as serious, repeat, and willful.

TOSHA has a variety of special emphasis programs (SEP), some of which are associated with their strategic goals, and some of which are National Emphasis Programs (NEP). The state also has safety and health general industry targeting procedures, and has adopted the Federal Site-Specific Targeting (SST) procedures. In addition, to supplement the SST they create a General Schedule Inspection list that is made up of the top 200 high hazard SIC codes. These SIC codes are run through Workers' Compensation to create the list of sites for inspection. The state has an additional targeting system to address amputation hazards that uses workers' compensation data to identify employers who have experienced accidents involving amputations. These inspections have lower priority than SST inspections.

Of the 556 construction inspections conducted, 494 were programmed inspections, primarily under their SEPs for fall hazards and trenching and excavation, as well as the Dodge system. These are associated with their strategic goal to reduce construction fatalities caused by falls each year and to reduce the Days Away Restricted and/or Transferred (DART) rate in the construction industry each year. Many programmed construction inspections are partial in scope due to the local emphasis programs (LEP) for construction activities. In FY 2011, TOSHA identified 811 fall hazards in construction, impacting 411 companies.

4. Citations and Penalties

In FY 2011, the 1,859 inspections conducted resulted in an average of 3.6 violations per inspection, with 47% (73% - Federal OSHA) of the violations classified as serious including 45.8% (76.7 - Federal OSHA) of safety violations and 33.6% (64.4 - Federal OSHA) of health violations classified as serious. The average initial penalty per serious violation for private sector inspections was \$1,597, compared to an average of \$1,680 for national data. TOSHA routinely places an emphasis on keeping citation lapse times low. In 2011, the average lapse time from opening conference to citation issuance is identified below:

Average Lapse Time	TOSHA	National
Safety	44.5 days	34.4 days
Health	59.2 days	77.3 days
Total Average	51.8 days	55.9 days

In 2011, TOSHA’s penalty calculation procedures continue to differ in several aspects from Federal OSHA. Both Federal OSHA and TOSHA consider severity first, then probability for determining the gravity-based penalty. To promote consistency in determining probability and severity, the State implemented procedures that include a probability and severity quotient (formula). Probability is determined by averaging the number of employees exposed (1-10), the frequency of exposure (1-10), the duration (1-10 depending on how long), and stress and other environmental factors (1-10). All of the factors are defined to determine the appropriate value. Severity is determined by the severity of the potential injury. These two factors are averaged together to determine probability/severity quotient. The penalty associated with this value is applied to the violation in accordance with the table provided in the directive. Another difference from federal penalty procedures is that TOSHA’s penalty chart begins at \$7,000, whereas Federal OSHA’s began at \$5,000 for the time period covered.

The adjustment factors that reduce the gravity-based penalty also differ from federal OSHA as follows:

Penalty Reductions	TOSHA	Federal
Size (number of employees)	< 25 = 60% 26-100 = 40 % 101-250 = 20% >250 = 0%	< 25 = 60% 26-100 = 40% 101-250 = 20% >250 = None
Good Faith	10%, 20%, or 30%	10%, 15%, or 25%
History	10% = no S, W, R violations in past 5 years	10% = no S, W, R violations in past 5 years

In no case is the penalty permitted to be reduced by more than 90%. The state did not adopt Federal OSHA’s “quick fix” penalty reduction for some violations corrected during the inspection. The average penalties do not differ significantly from those of Federal OSHA. Interviews with all of the staff indicated that the directive is being strictly and consistently followed. They all referenced FOM procedures and appeared to be very familiar with the state’s policies and procedures in this area. In addition, the state maintains a high percentage, approximately 82.4%, of the penalty that is issued providing minimal penalty reductions during informal conferences.

5. Abatement

Case file reviews, available procedures, and inspection data indicate that TOSHA obtains adequate and timely abatement information and has processes in place to track employers who are late in providing abatement information. Managers, supervisors, and CSHOs are responsible for following up on the abatement of violations for their inspections. Employers are contacted, dunning letters are sent to

employers, and follow-up inspections are conducted when needed. Managers and supervisors review local database and IMIS reports weekly to track the status of abatement.

The TOSHA program did not fully follow the proper Petition for Modification of Abatement (PMA) procedures as outlined in Rule 0800-01-04-.15(7). TOSHA was not utilizing the Informal Settlement Agreement (ISA) as a tool to modify abatement periods. They required employers to file a separate PMA in writing to adjust the abatement periods. The TOSHA program was typically granting or approving the PMA on the same day that the request was filed and did not wait the required number of days (20 days) after the PMA was posted to review and approve it, nor did they utilize any of the interim letters. For example, the State did not use any letters notifying the requestor that their request was not adequate, nor did they utilize the letter indicating that the request was under review and when the request would be potentially approved. The letter used by TOSHA did however; state that the approval was contingent on employees not challenging the request. A copy of the PMA Access Database utilized by several federal offices in Region IV was provided to the state to assist with tracking and processing PMAs. During this review, management acknowledged the deficiency and immediately initiated corrective action. However, it was not completely corrected prior to completion of this review.

Findings and Recommendations

Finding 11-02: The TOSHA program did not follow the proper Petition for Modification of Abatement (PMA) procedures as outlined in Rule 0800-01-04-.15(7). TOSHA is not utilizing the Informal Settlement Agreement (ISA) as a tool to modify abatement periods.

Recommendation 11-02: TOSHA should ensure that the requirements outlined in Rule 0800-01-04-.15(7) – Petition for Modification of Abatement (PMA) be reviewed and properly implemented, and when possible utilize the ISA as a means to modify abatement periods during informal conferences.

6. Employee and Union Involvement

Tennessee's procedures for employee and union involvement are identical to those of federal OSHA. Case files reviewed disclosed that unions are included during inspections as well as post inspection activities such as informal conferences. Unions are provided with correspondence regarding complaints and fatalities, and copies of citations. Reviews also revealed that employees were included during fatality investigations and other inspections.

B. Review Procedures

1. Informal Conferences

Tennessee has procedures in place for conducting informal conferences and

proposing informal settlement agreements, and these procedures appear to be followed consistently by all managers and supervisors. According to the State Indicator Report, 1.3% of violations were vacated and .6% of violations were reclassified as a result of informal settlement agreements. The penalty retention rate was 82.4%. Case file reviews verified that very few violations are vacated or reclassified, and most cases were resolved with minimal or no penalty reduction. Where there were vacated or reclassified violations, or a larger penalty reduction, the files normally included the rationale for the changes. Supervisors are required to prepare an informal conference memo explaining the informal conference and justifying any penalty reduction that is provided following an informal conference. The memo is submitted to the compliance manager. Supervisors are allowed to provide a 25% penalty reduction for the settlement of cases. The Compliance Manager is required to get any changes, modifications, or deletions to citations approved by the Administrator. Additionally, supervisors are required to get employer to agree to concessions in exchange for penalty reductions.

2. Formal Conferences

In FY 2011, 3.6% of inspections were contested. The Tennessee Occupational Safety and Health Review Commission holds hearings and issues decisions on contested citations. The three members of the Review Commission are appointed to the part-time positions by the Governor and generally serve a three-year term. The Tennessee Department of Labor and Workforce Development has taken steps to reduce the lapse time between receipt of contest and first level decision. A staff attorney and paralegal assigned to the office provides legal representation for TOSHA. Both work within the office and are readily available. It is common for an attorney to work closely with the compliance staff during the preparation of fatalities and other high profile inspections. CSHOs and supervisors stated that they have a very good working relationship with the attorneys assigned to them, and they are very knowledgeable of OSHA requirements and what is needed for a case to be legally sufficient. SIR data indicates that, for violations that were contested, 1.3% was vacated, and 0.6% were reclassified. 82.4% of penalties were retained. No negative trends or problems with citation documentation have been noted.

C. Standards and Federal Program Changes Adoption

In accordance with 29 CFR 1902, States are required to adopt standards and federal program changes within a 6-month time frame. States that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. States also have the option to promulgate standards covering hazards not addressed by federal standards. During the period addressed by this evaluation report, the table below identifies the OSHA initiated standards and federal directives, which required action by the State. TOSHA adopted all of the required directives and standards in a timely manner. The standards and directives not adopted by the State related to the maritime industry, which is outside the jurisdiction Tennessee. Additionally, during this period the Tennessee legislature enacted a law prohibiting employers from permitting

employees to work within ten feet of high-voltage overhead lines. TOSHA is currently working with the legislature to have this provision relocated to section 50, of the Tennessee Code Annotated (T.C.A.), from section 68.

1. Federal Standards Adoption

Standards Requiring Action	Federal Register Date	Adopted Identical	Date Promulgated
Standards Improvement Project, Phase III	06/08/2011	Yes	12/08/2011
Working Conditions in Shipyards - Final Rule	05/02/2011	No	N/A

2. Federal Program / State Initiated Changes

Federal Program Changes Requiring Action and Federal Directive Number	Date of Directive	Adopted Identical	Date Adoption Date
Recordkeeping NEP - September 2010 Changes, CPL-02(10-06) 2011 401	09/28/2010	Yes	01/01/2011
PPE in Shipyard Employment, CPL-02-01-049 2011	11/04/2010	No	N/A
Compliance Guidance for Residential Construction, STD - 03-11-002 2011 403	12/16/2010	Yes	06/16/2011
NEP Microwave Popcorn Processing Plants, CPL-03 (11-01) 2011 423	01/18/2011	Yes	03/18/2011
PPE in General Industry, CPL-02-01-050 2011 422	04/11/2011	Yes	04/10/2011
Revisions to Field Operations Manual - April 2011, CPL-02-00-150 2011 442	06/23/2011	Yes	07/02/2011
NEP Primary Metals, CPL - 03-00-013 2011 444	07/25/2011	Yes	10/01/2011
Confined Spaces in Shipyards, CPL-02-01-051 2011	07/20/2011	No	N/A
Commercial Diving Operations, CPL-02-00-051 2011	07/20/2011	Yes	10/01/2011

D. Variances

Tennessee currently has two permanent variances and there are currently no temporary variances. Both permanent variances were granted in fiscal year 1992 and they are

identified as VAR 92-01, which applies to the agricultural industry and VAR 92-02, which concerns the transportation of a compressed gas cylinder on a service truck. In both cases, action was taken to afford alternate protection to workers. Neither variance is a multi-state agreement, which requires approval from Federal OSHA. Additionally, 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 variance requests from employers in fiscal year 2011.

E. Public Employee Program

In the early 70's, public sector employers in Tennessee were given the option of complying with the State's Public Sector Program or submitting to traditional enforcement. The majority of the State public-sector operations selected the Public Sector Program option, which is very similar to Federal OSHA's handling of federal agencies. However, a few public sector employers in Bedford County expressed a preference for traditional enforcement, which is similar to federal OSHA's handling of the United States Postal Service (USPS). The Tennessee Public Sector Program requires that each agency and department head designate a staff member to administrator the organization's safety and health program. The designated safety and health official is responsible for assisting the chief executive officer of the state agency or local government in carrying out all facets of the program. Additionally, by state law, all public sector entities are required to be inspected at least every two years. This is accomplished by dividing the state into four territories, with a CSHO assigned to each. According to the SAMM report, 30.88 percent of inspections were conducted in the public sector in FY 2011.

F. Discrimination Program (Follow-up Special Study)

The Tennessee Department of Labor and Workforce Development – Tennessee Occupational Safety and Health Administration (TOSHA) is responsible for enforcing the 11(c) discrimination provisions under the State 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 11(c) of the OSHA Act. The Tennessee Department of Labor and Workforce Development – Tennessee Occupational Safety and Health Administration (TOSHA) is responsible for enforcing the 11(c) discrimination provisions under the State 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 11(c) of the OSHA Act.

This evaluation included only a follow-up review of Tennessee's discrimination program since a comprehensive review was conducted in FY 2009 with no findings or recommendations. There is no record of any audit of TOSHA's 11(c) program prior to the FY 2009 EFAME. 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 six investigators, including one compliance manager and two compliance supervisors. Discrimination cases found to be meritorious are prosecuted by the State Attorney General. The program is managed by the Assistant Administrator.

According to the SAMM report, which uses cases closed during the fiscal year:

Meritorious Complaints		Merit Cases Settled	
FY 2011	38.89 %	FY 2011	100 %
FY 2010	25.93 %	FY 2010	57.7 %
FY 2009	38.6 %	FY 2009	100 %

During FY 2011 TOSHA received 85 discrimination complaints. All allegations are closed with the exception of the two currently being prosecuted by the Attorney General's office. The status of these cases and the percentages of total cases they represent are presented below:

Status	Number of Cases	Percentage
Dismissed Non-Merit	37	43.5%
Dismissed – Lack of Cooperation	22	25.9%
Settlement	9	10.6%
Withdrawal	7	8.2%
Untimely Filed	5	5.9%
Screened & Closed	3	3.5%
Prosecution by Attorney General	2	2.4%

Approximately 55 % of 11(c) whistleblower cases were completed within 90 days in FY 2011. TOSHA has continued to work on improving their completion rate of 11(c) investigations; however the State should continue to find ways to improve case management to ensure completion of all cases in a timely manner. For those cases over 90 days the State should require an explanation be documented in the case file and/or case file diary sheet.

The State does screen cases as they are received but does not attempt to dissuade complainants from filing an allegation and does not attempt to determine the merits of the allegation prior to accepting the allegation. After completing a screening, determining coverage and sending a questionnaire to each Complainant and a notification to each Respondent, the Assistant Administrator normally assigns the case to one of the three investigators. If he believes he can resolve the complaint through a settlement, he will hold the case assignment until he determines the case cannot be resolved. At that point, he would assign the case to be investigated.

Tennessee's procedures for handling safety and health discrimination cases are very similar to those of Federal OSHA. They use Federal OSHA's manual as their guide and

plan to adopt the revised whistleblower manual. The only major difference is that the screening process utilizes a questionnaire that each complainant is required to complete and mail back to TOSHA. If a Complainant does not return the questionnaire to TOSHA and does not respond to further requests to submit it, the complaint is dismissed for lack of cooperation.

The three investigators conduct personal interviews and perform onsite investigations in almost every case. All complaints appeared to have been investigated at least as thoroughly as Federal OSHA would have investigated. Tennessee’s program is also found to be very effective because investigators properly evaluated the elements of discrimination complaints and the appeal process functioned similarly as that of Federal OSHA. Complainants who disagree with the dismissal of their complaint may appeal the decision with the Commissioner of Labor and Workforce Development. Currently, complainants are notified of their right to appeal to the Commissioner however TOSHA does not inform them of their right to file a CASPA if he or she is dissatisfied with the conduct or outcome of the State’s investigation. Issues related to state plan discrimination complaints and the rights of complainants to appeal to federal OSHA or file a CASPA are under review by federal OSHA.

TOSHA’s administration of the 11(c) program is found to be very effective. TOSHA conducts thorough investigations and if a Complainant appeals the dismissal to the Commissioner under TOSHA’s appeals process, proper action is taken by the Commissioner to evaluate the case.

G. Complaint About State Plan Administration (CASPA)

During this period there was one CASPA filed with the OSHA Area Office in Nashville, Tennessee. CASPA 2011-TN-15 alleged that the State did not adequately investigate a retaliation/discrimination complaint against the employer; however, our investigation of the actions taken by TOSHA indicated that the State followed their procedures. TOSHA properly determined that the separation from employment was not retaliation.

Tennessee CASPAs in FY 2011

Complaint About State Plan Administration (CASPA) Number	Final Notification to Complainant	Initial Letter to State	State Response Letter	Final Report to State & Letter to Complainant
2011-TN-15	Yes	6/30/2011	07/27/2011	3/14/2012

H. Voluntary Compliance Programs

TOSHA did not adopt the federal OSHA Strategic Partnership Program or the OSHA Alliance Program. However, TOSHA implemented the Tennessee Volunteer Star

Program in 1997 and the program currently features 35 participating worksites. The program is similar to the federal Voluntary Protection Programs (VPP). However, TOSHA limits participation to the Star level, while the OSHA VPP also includes Merit and Demonstration levels participants. Since its inception the program has grown by approximately 2.5 worksites per year. TOSHA has effectively managed the growth of its program by primarily limiting participation to employers in the manufacturing Standard Industry Classification (SIC) codes, with exceptional safety and health management systems. As previously mentioned, TOSHA has adopted the updated OSHA VPP directive CSP 03-01-003, which effectively addresses enforcement activities at VPP sites, such as fatalities investigations. The state's program is also operated in a manner consistent with the VPP Policy Improvement Memorandums issued by Federal OSHA. In fact, VPP participants are required to provide a written description of any incentive programs in their annual self-evaluation report and incentive programs that negatively impact recordkeeping are prohibited. None of the state's VPP sites experienced fatal accidents during this period and the program's success is effectively demonstrated by the Total Case Incident Rates (TCIR) and Day Away, Restricted Time (DART) rates of its participants. Additionally, since the FY 2009 monitoring visit TOSHA has established a comprehensive auditing system, which includes Tennessee Volunteer Star Program VPP.

I. Public Sector On-site Consultation Program

In Tennessee an employer in the public sector can avail themselves of consultation resources provided by the Public Sector Division. A projection for consultation request was not provided in the FY 2011 23(g) Grant Application; however, in the FY 2012 Grant Application the state projected ten public sector consultation visits. During this period, the state actually conducted seven consultation visits in the public sector. Recommendations were made regarding the abatement and correction of potentially hazardous situations in five of the seven case files. One of these case files contained documented abatement action and another contained a letter requesting a response within 30-days. However, the majority of the public sector consultation case files did not contain evidence of hazard tracking or documented abatement.

Findings and Recommendations

Finding 11-03: Of the case files reviewed, a large amount of the public sector consultation case files did not contain evidence of hazard tracking or documentation of abatement.

Recommendation 11-03: TOSHA should establish procedures to ensure that public sector employers implement interim control measures to safeguard workers and provide documentation to verify abatement.

J. Program Administration

During the onsite monitoring visit, interviews were conducted with the TOSHA Program Administrator, the Assistant Administrator and several staff members, regarding the administration and management of TOSHA. Issues addressed during these interviews included State funding, the compliance staffing benchmarks, employee training, as well as other fiscal concerns. These interviews did not reveal any areas needing further evaluation at this time.

Training

TOSHA adopted the federal directive TED 01-00-018, "Training Program for OSHA Compliance Personnel," with minimal differences. These differences include the fact that the State does not offer a construction specialist career path and TOSHA utilizes its own form to document the completion of on-the-job training (OJT).

Newly-hired TOSHA CSHOs are immediately registered in Learning-Link for participation in the initial training courses conducted at the OSHA Training Institute (OTI). Additional courses are scheduled as dictated in the instruction. The State tracks employee training using a chart, which is referred to as the OTI Training Plan. The OTI Training Plan's purpose is to document all formal training completed by compliance personnel. In addition to the OTI Training Plan, the State also maintains an OTI Course Calendar, which tracks the date and location of all scheduled training. Both documents are maintained on a shared-drive utilized by the Tennessee Department of Labor and Workforce Development. Even after employees complete the OTI training courses they are provided OJT and administered an in-house test, which evaluates their knowledge of the standards and TOSHA procedures. The training needs of all TOSHA compliance personnel are evaluated annually by the supervisors in each area office in conjunction with the section managers. Requests for individual OTI courses are submitted to the training and education office which schedules the approved courses. Compliance officers may be scheduled to attend two additional OTI courses each year based on the need of the CSHO or the local area office, more if a special need exists. Additional training courses have been provided as needed in response to new issues as they arise (i.e. crane standard, PSM, combustible dust).

TOSHA employees interested in obtaining their professional certifications are provided access to training materials. The State does not finance the employee's enrollment in preparation courses or the actual certification examination. However, if an employee successfully completes the certification examination they are provided with a four and one half percent increase in their salary, which is equivalent to one-step on the State pay scale.

Funding

Financial visits are done every two years. 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. There are 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.

Staffing

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 CSHOs. 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 September 30, 2011, there were two Industrial Hygiene and two Safety Specialist CSHO vacancies. Several years ago Tennessee increased the size of its enforcement staff to prevent the program from de-obligating funds (filling vacancies is a lengthy process in the State). Therefore, the four enforcement vacancies are actually above the benchmark level for the program. Additionally, the TOSHA Administrator position and the Industrial Hygiene Manager position are vacant. 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 2012.

Information Management

Tennessee uses available IMIS reports and other data for effective program management. Each supervisor, compliance manager, the Assistant Administrator, and Administrator is familiar with standard IMIS reports and uses them on a frequent and regular basis (weekly) for tracking and understanding the status of enforcement activity. Each supervisor reviews IMIS reports for compliance officers who currently report to them. A review of current IMIS reports revealed that Tennessee is using the reports effectively. There were no instances of old cases that should be closed. All rejects are corrected daily and all forms that are in draft are current forms that are being worked on. The open inspection reports contained a large number of open inspections that are currently in debt collection, but did not indicate a serious problem with the state’s management of their

program. The analysis of standard IMIS tracking reports and interviews indicated that supervisors are reviewing these reports frequently.

Senior management staff uses a variety of tracking mechanisms and reports so that all staff can readily determine the current status of program goals and other enforcement activities. Monthly reports are produced to track and communicate progress. This report is shared with the federal monitoring office in Nashville. The TOSHA Administrator is required by the Commissioner to report on progress of the TOSHA program on a monthly basis. The report addresses specific measures gives a green (Meeting Goal), yellow (Not Meeting Goal), or red (Not Meeting Goal Corrective Action Required) score. Areas addressed in this report include fatalities investigated, penalties paid timely, lapse time, hazard identification training and program activity, and awards and recognition. In addition, the Administrator is required to give a briefing to the Commissioner for all fatalities.

State Internal Evaluation

TOSHA developed and implemented a formal Internal Evaluation Program following the FY 2009 EFAME Evaluation. The program covers all areas of the State program including enforcement and compliance, consultation, training and education, as well as administrative activities. The program established audit teams consisting of supervisors and managers with a goal of auditing two field officers per fiscal year with each field office being audited every three years. Following the audit a written report is developed and a copy provided to the manager in the area office. The manager is responsible for tracking each issue identified by the audit team and reporting corrective action to the TOSHA Administrator. Currently TOSHA has completed the audit of one area office and two audits are planned for FY 2012. Therefore, this recommendation has been successfully implemented by the State.

V. Assessment of State Progress in Achieving Annual Performance Goals

During FY 2011 Tennessee operated under a One-Year Strategic Performance Plans, rather than a Five-Year Plan. Once again, Tennessee 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. In general, these goals address the effective elimination and control of hazards in several industries, such as construction, health care, metal working and others. During this period, TOSHA achieved all of its established goals for the One-Year Strategic Plan.

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 the state continued to effectively eliminate over 7,000 serious workplace hazards.

	Compliance	Consultation	Total
Inspections/Visits	1,868	392	2,260
Serious Violations/Hazards	5,279	2,368	7,647
Non-Serious Violations/Hazards	3,793	312	4,105
Repeated Violations	211	N/A	106
Willful Violations	35	N/A	35
Regulatory Hazards	N/A	283	283
Total Violations/Hazards	9,318	2,963	12,281

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 CSHOs are cross-trained to identify sources and potential exposures to CO so they can make good referrals. CSHOs are required to address CO on every inspection. Activity related to this program is tracked and communicated with the field on a monthly basis. In FY 2011, the Compliance and Consultation sections documented the elimination of 670 hazards impacting 228 employers resulting in reducing the exposure of 2,535 employees.

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

The Tennessee SOAR for FY 2011 indicates that noise levels have been reduced through engineering and hearing protection in 21 workplaces, affecting over 608 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 FY 2011, the Compliance and Consultation sections documented the 279 hearing conservation hazards in 79 workplaces and reduced hazardous noise exposure of 976 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 Sharps Injury Logs for years 2005 through 2010 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 65 workplaces in FY 2011. A total of 521 hazards were identified during these inspections. Comparisons of the 2005 through 2010 needle-stick logs were made. The results indicate a reduction of 7.8 % in one year.

Goal 1.5: Reduce the number of fatalities due to falls by 1.7 percent.

During this period the State experienced five fatalities due to falls. This number represents a continuing downward trend from a high of 11 in FY 2008, 10 in FY 2009, and 7 in FY 2010. However, during this same period the number of overall fatal accidents in the state rose from 31 in FY 2010, to 33 in FY 2011. 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 411 workplaces where fall hazards were identified.

Goal 1.6: Reduce amputations injuries in the workplace by 1 percent.

This goal was previously identified as Goal 1.7 in the State's Performance Plan. Tennessee continues to follow its Special Emphasis Program for Amputations (CPL-TN-03-00-003 – Effective Date 10/27/06), which is identical to the NEP for Amputations. In addition, TOSHA uses the State Workers’ 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 281 worksites and identified 690 hazards related to amputations during FY 2011. During this period amputations decreased from 291 in FY 2010, to 140 in FY 2011.

Goal 2.1: Train 9,000 people in occupational safety and health.

TOSHA personnel performed 712 training sessions during this period, which reached over 13,000 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 |
| 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 850 occupational safety and health programs.

TOSHA consultation performed 370 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 4,187 occasions during 1,103 inspections. These program violations included: emergency action plans; noise; emergency response; personal protective equipment (PPE) assessment; respirators; confined space; lockout/tagout; fire prevention; bloodborne pathogens; hazard communication; excavations; process safety management (PSM); 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 five 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 five new companies for SHARP.

Appendix A
 FY 2011 Tennessee State Plan FAME Report
 Findings and Recommendations

Rec #	Findings	Recommendations	FY 10 #
11-01	The required IMMLANG coding on the TOSHA-1 was missing on approximately two-thirds of the files reviewed. It is noted that, with the exception of an isolated instance, the IMMLANG Questionnaire was completed with a copy maintained in the file.	TOSHA should ensure, by tracking and retraining, that all TOSHA-1 forms related to fatalities and catastrophes be coded with the required IMMLANG coding.	New
11-02	The TOSHA program did not fully follow the proper Petition for Modification of Abatement (PMA) procedures as outlined in Rule 0800-01-04-.15(7). TOSHA is not utilizing the Informal Settlement Agreement (ISA) as a tool to modify abatement periods.	TOSHA should ensure that the requirements outlined in Rule 0800-01-04-.15(7) – Petition for Modification of Abatement (PMA) be reviewed and properly implemented, and when possible utilize the ISA as a means to modify abatement periods during informal conferences.	New
11-03	Of the case files reviewed, a large amount of the public sector consultation case files did not contain evidence of hazard tracking or documentation of abatement.	TOSHA should establish procedures to ensure that public sector employers implement interim control measures to safeguard workers and provide documentation to verify abatement.	New

Appendix B
 FY 2011 Tennessee State Plan FAME Report
 Status of FY 2010 Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-01	Field notes are destroyed at the instruction of the State's Attorney when the compliance officer completes the violation form (1B) 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 has been resolved with a commitment from the state that their field note destruction practice has not/will not prevent them from supporting violations and this will remain a focus of future monitoring efforts.	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.	CLOSED

**Appendix C
Tennessee State Plan
FY 2011 Enforcement Activity**

	TN	State Plan Total	Federal OSHA
Total Inspections	1,859	52,056	36,109
Safety	1,420	40,681	29,671
% Safety	76%	78%	82%
Health	439	11,375	6,438
% Health	24%	22%	18%
Construction	556	20,674	20,111
% Construction	30%	40%	56%
Public Sector	574	7,682	N/A
% Public Sector	31%	15%	N/A
Programmed	1,401	29,985	20,908
% Programmed	75%	58%	58%
Complaint	260	8,876	7,523
% Complaint	14%	17%	21%
Accident	31	2,932	762
Insp w/ Viols Cited	1,442	31,181	25,796
% Insp w/ Viols Cited (NIC)	78%	60%	71%
% NIC w/ Serious Violations	68.9%	63.7%	85.9%
Total Violations	5,479	113,579	82,098
Serious	2,583	50,036	59,856
% Serious	47%	44%	73%
Willful	6	295	585
Repeat	158	2,014	3,061
Serious/Willful/Repeat	2,747	52,345	63,502
% S/W/R	50%	46%	77%
Failure to Abate	1	333	268
Other than Serious	2,731	60,896	18,326
% Other	50%	54%	22%
Avg # Violations/ Initial Inspection	3.6	3.4	2.9
Total Penalties	\$ 3,263,674	\$ 75,271,600	\$ 181,829,999
Avg Current Penalty / Serious Violation *	\$ 880.60	\$ 963.40	\$ 2,132.60
% Penalty Reduced	28.9%	46.6%	43.6%
% Insp w/ Contested Viols	3.6%	14.8%	10.7%
Avg Case Hrs/Insp- Safety	18.2	17.1	19.8
Avg Case Hrs/Insp- Health	38.2	26.8	33.1
Lapse Days Insp to Citation Issued- Safety	32.7	35.6	43.2
Lapse Days Insp to Citation Issued- Health	43.2	43.6	54.8
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	31	1,387	2,436

Note: Federal OSHA does not include OIS data.

The total number of inspections for Federal OSHA is 40,684.

Source: DOL-OSHA. State Plan & Federal INSP & ENFC Reports, 11.8.2011.

*Please note, this number reflects the average current penalty per serious violation for public and private sector combined. In contrast, the corresponding SAMM measure reflects the average initial penalty per serious violation for private sector only.

Appendix D

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

NOV 09, 2011
PAGE 1 OF 2

State: TENNESSEE

RID: 0454700

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	1829 7.31 250	142 7.47 19	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	1274 3.41 373	73 2.80 26	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	235 94.38 249	21 100.00 21	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	3 100.00 3	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 1415	0 .00 1415	100%
Public	0 .00 984	0 .00 984	100%
7. Average number of calendar days from Opening Conference to Citation Issue	54685	5130	2631708

Safety	44.45	34.42	51.9	National Data (1 year)
	1230	149	50662	
Health	19709	2165	767959	National Data (1 year)
	59.18	77.32	64.8	
	333	28	11844	

*TN FY11

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

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

NOV 09, 2011
 PAGE 2 OF 2

State: TENNESSEE

RID: 0454700

MEASURE	From: 10/01/2010		CURRENT		REFERENCE/STANDARD
	To: 09/30/2011		FY-TO-DATE		
8. Percent of Programmed Inspections with S/W/R Violations					
Safety	734	98	90405		
	58.96	64.05	58.5	National Data (3 years)	
	1245	153	154606		
Health	134	10	10916		
	63.81	52.63	51.7	National Data (3 years)	
	210	19	21098		
9. Average Violations per Inspection with Vioations					
S/W/R	2810	307	419386		
	1.79	1.70	2.1	National Data (3 years)	
	1562	180	198933		
Other	2738	227	236745		
	1.75	1.26	1.2	National Data (3 years)	
	1562	180	198933		
10. Average Initial Penalty per Serious Violation (Private Sector Only)	2601850	250500	611105829		
	1594.27	1491.07	1679.6	National Data (3 years)	
	1632	168	363838		

11. Percent of Total Inspections in Public Sector	574 30.88 1859	39 25.00 156	1736 27.8 6248	Data for this State (3 years)
12. Average lapse time from receipt of Contest to first level decision	8019 381.85 21	559 559.00 1	3533348 199.7 17693	National Data (3 years)
13. Percent of 11c Investigations Completed within 90 days	10 55.56 18	1 100.00 1	100%	
14. Percent of 11c Complaints that are Meritorious	7 38.89 18	0 .00 1	1517 23.0 6591	National Data (3 years)
15. Percent of Meritorious 11c Complaints that are Settled	7 100.00 7	0 0 0	1327 87.5 1517	National Data (3 years)

*TN FY11

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E

SIR Q4SIR47 SIR47 111011 111849 PROBLEMS - CALL H 202 693-1734

1111011

U. S. D E P A R T M E N T O F L A B O R

PAGE 1

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

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 (%)								
A. SAFETY	3694 61.3 6026	190 80.5 236	8169 61.4 13312	381 79.4 480	18137 62.5 29042	661 75.5 875	40070 63.7 62876	1420 78.1 1818
B. HEALTH	480 39.7 1208	43 49.4 87	1020 36.4 2806	91 48.4 188	2126 34.6 6150	186 46.7 398	4357 34.7 12569	413 47.2 875
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	3378 73.7 4583	171 65.8 260	7266 72.4 10036	323 67.6 478	14959 70.1 21330	630 70.3 896	32614 69.1 47196	1296 72.3 1792
B. HEALTH	456 57.0 800	41 80.4 51	890 57.2 1555	81 81.0 100	1723 56.2 3068	170 84.2 202	3487 55.3 6309	378 83.3 454
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	11703 79.6 14698	320 43.4 737	23768 77.4 30703	655 44.7 1464	48704 76.7 63528	1242 45.8 2711	109064 78.4 139117	2339 45.8 5103
B. HEALTH	2634 66.6 3957	72 30.6 235	5290 64.7 8180	147 31.9 461	10266 64.4 15930	336 33.6 1000	21598 66.7 32380	708 35.8 1979

4. ABATEMENT PERIOD FOR VIOLS

	2394	52	4978	158	10776	289	23693	557
A. SAFETY PERCENT >30 DAYS	16.6	12.5	16.8	18.1	17.9	18.0	17.9	18.2
	14465	416	29573	873	60243	1604	132414	3066
	259	32	711	90	1451	205	3159	482
B. HEALTH PERCENT >60 DAYS	6.5	10.3	8.6	13.7	9.4	14.4	10.0	15.8
	4006	312	8234	655	15507	1427	31619	3059

1111011

U. S. D E P A R T M E N T O F L A B O R

PAGE 2

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = TENNESSEE

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	505479	41550	1258835	91950	2803637	165650	5086228	306800
OTHER-THAN-SERIOUS	1181.0	269.8	1195.5	285.6	1126.9	274.7	1055.2	258.9
	428	154	1053	322	2488	603	4820	1185
B. HEALTH								
	219203	20650	441915	47800	853346	166225	1667151	326125
OTHER-THAN-SERIOUS	1184.9	279.1	1077.8	277.9	980.9	417.7	958.7	457.4
	185	74	410	172	870	398	1739	713
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	6874	449	15417	940	33850	1648	73070	3298
	6.0	5.9	5.6	6.4	5.5	5.7	5.4	6.1
	1138	76	2730	147	6145	291	13476	543
B. HEALTH								
	1458	95	3330	210	7311	458	14958	991
	2.4	1.9	2.2	2.2	2.2	2.5	2.0	2.6
	615	51	1501	95	3390	182	7404	381

7. VIOLATIONS VACATED %	1270	12	3026	19	6577	73	12352	180
	5.6	.8	6.6	.7	7.0	1.3	6.2	1.6
	22608	1509	46128	2865	93448	5531	200310	10976
8. VIOLATIONS RECLASSIFIED %	737	6	1997	11	4456	32	9147	91
	3.3	.4	4.3	.4	4.8	.6	4.6	.8
	22608	1509	46128	2865	93448	5531	200310	10976
9. PENALTY RETENTION %	19478404	464578	40012395	897602	77322520	1789926	134938244	3673860
	61.0	83.7	61.6	83.8	62.8	82.4	62.8	81.9
	31918969	554875	65001782	1070600	123124542	2172320	214845679	4483870

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT

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	190	132	381	291	661	522	1420	1068
	80.5	95.7	79.4	96.7	75.5	96.8	78.1	96.8
	236	138	480	301	875	539	1818	1103
B. HEALTH	43	2	91	6	186	23	413	51
	49.4	50.0	48.4	66.7	46.7	71.9	47.2	78.5
	87	4	188	9	398	32	875	65
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	320	260	655	527	1242	891	2339	1764
	43.4	69.5	44.7	68.0	45.8	56.9	45.8	58.6
	737	374	1464	775	2711	1565	5103	3009

	72	36	147	73	336	115	708	264
B. HEALTH	30.6	92.3	31.9	73.0	33.6	58.1	35.8	64.1
	235	39	461	100	1000	198	1979	412

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

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 %	579	13	1131	13	2220	35	4270	40
	22.8	12.4	23.4	11.3	23.5	17.0	23.0	11.1
	2542	105	4834	115	9442	206	18586	359
2. VIOLATIONS RECLASSIFIED %	328	8	620	8	1259	17	2360	22
	12.9	7.6	12.8	7.0	13.3	8.3	12.7	6.1
	2542	105	4834	115	9442	206	18586	359
3. PENALTY RETENTION %	3616720	77300	9500018	85700	16062961	136025	28079915	192160
	56.1	46.7	62.4	47.7	62.3	57.1	60.6	62.0
	6443756	165675	15212620	179825	25766759	238375	46371522	309700

APPENDIX F

FY 2011 State OSHA Annual Report (SOAR) (Available Separately)