

**FY 2012 Abridged Federal Annual Monitoring and Evaluation (FAME)
Report**

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



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**Prepared by:
U. S. Department of Labor
Occupational Safety and Health Administration
Region IV
Atlanta, Georgia**



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**Tennessee Department of Labor and Workforce Development
Division of Occupational Safety and Health**

FY 2012 Fame Report

I. Executive Summary

The fiscal year (FY) 2012 FAME report is an abridged FAME report. This report is focused on the State's progress in making corrections in response to the FY 2011 FAME Report recommendations. In addition, this report is also based on the results of quarterly onsite monitoring visits, the State Office Annual Report (SOAR) for FY 2012, IMIS Data, the State Activity Mandated Measures (SAMM) Report, as well as the State Indicator Report (SIR) reports ending September 30, 2012.

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. A total of 84.55 positions were funded under the 23(g) grant. There were a total of two safety and two health vacancies, a vacant health supervisor position, as well as the Assistant Administrator position. 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 2,656,000 people.

There are approximately 138,186 employers in the State. 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 five 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.

This report was prepared under the direction of Teresa A. Harrison, Acting Regional Administrator, Region IV, Atlanta, Georgia, and covers the period of October 1, 2011 through September 30, 2012. TOSHA administers the state's OSHA program under the direction of Karla Davis, Commissioner; Alisa Malone, Deputy Commissioner and Steve Hawkins, TOSHA Administrator.

A total of three findings and recommendations are documented in this evaluation report. The State has taken appropriate corrective action to effectively address all three of these items. Each of the findings, recommendations, as well as the State's response is addressed in detail below.

II. Major New Issues

During FY 2012 the state filled the vacancy left by the retirement of the former TOSHA Administrator, John Winkler by appointing the former Assistant TOSHA Administrator, Steve Hawkins as the new Administrator. Currently, the Assistant Administrator position remains vacant. Additional special accomplishments are included in the SOAR, Special Accomplishments section.

III. State Progress in Addressing FY 2011 FAME Report Recommendations

The FY 2011 FAME report contained three findings and recommendations. There are no repeat or new findings or recommendations as a result of monitoring activities conducted

during FY 2012. Details regarding the State's progress in responding to each of the recommendations from the FY 2011 FAME report are provided below:

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.

Status – Closed: TOSHA agrees with this recommendation. All 2011 files contained the document however, in several cases the data was not entered into the IMIS system. All 2011 questionnaires not previously entered have been entered into the system. Staff has been made aware of the need to enter the information and the compliance managers will monitor the entry in the future. This item was corrected during the onsite evaluation.

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.

Status – Closed: TOSHA agrees with this recommendation. All supervisors have been instructed to follow the rule and the Field Operations Manual when granting PMA requests. The citation package has been updated to clearly explain the PMA process requirements to employers. This item has been corrected by the State.

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.

Status – Closed: TOSHA agrees with this recommendation. The letter to the employer notifying them of hazards has been updated to request proof of abatement and a tracking system has been implemented to assure abatement is documented. This item has been corrected by the State.

IV. Assessment of State Performance

A. Enforcement Program

1. 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’S Field Operations Manual (FOM), Chapter 9: Complaint and Referral Processing. Inspection data indicates that TOSHA handled 616 complaints in FY 2012, and conducted 270 complaint inspections. According to the SAMM report, TOSHA responds timely to complaints. Complaint investigations were initiated within an average of 3.35 days with a goal of 5 days, and complaint inspections were initiated within an average of 7.65 days with a goal of 15 days. A review of the IMIS reports showed that during 2012 approximately 29.4% of their complaint inspections were in-compliance.

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.

2. Fatalities

In FY 2012, TOSHA investigated 34 workplace accidents of which 28 were workplace fatalities. The 17 general industry deaths and nine construction deaths was unchanged from 2011 to 2012. The other two fatalities experienced in the state were in the public sector. 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.

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.

	FY 2011	FY 2012
Total Fatalities	29	28
Construction	9	9
General Industry	17	17
Public Sector	3	2

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. 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.

3. Targeting and Program Inspections

According to inspection statistics run for this report, TOSHA conducted 1,972 inspections in FY 2012, 1,513 of which were programmed. This figure includes 608 programmed inspections conducted in the construction sector. According to the IMIS data, 87.8% of programmed safety inspections and 87.7% of programmed health inspections had violations. Additional data indicates that an average of 3.5 violations were cited per inspection, and that 58.7% of safety violations and 47.9% of health violations were classified as serious, repeat, and willful.

A review of the Bureau of Labor Statistic (BLS) data, over the last five years, reveals a downward trend in the Days Away, Restricted, Transferred (DART) and the Total Case Incident Rate (TCIR).

	<i>DART</i>		<i>TCIR</i>	
<i>Year</i>	<i>TN Private</i>	<i>US Private</i>	<i>TN Private</i>	<i>US Private</i>
2011	1.7	1.8	3.5	3.5
2010	1.9	1.9	3.8	3.8
2009	1.9	1.8	3.8	3.6
2008	2.1	2.0	4.2	3.9
2007	2.2	2.1	4.5	4.2
2006	2.4	2.3	4.8	4.4

In 2011, the most recent BLS data available, Tennessee’s TCIR of 3.7 for all industries including state and local governments is slightly lower than the national average of 3.8.

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).

Tennessee maintained the following local emphasis programs: Trenching and Excavation, Carbon Monoxide, Workplace Noise, and Fall Protection. They also participated in the following national emphasis programs: Amputations, Hexavalent Chromium, Petroleum Refinery Process Safety Management, Combustible Dust, Recordkeeping, and Lead. Additionally, medical sharps injuries in hospital and ambulatory surgical centers and amputations were targeted under a targeting initiative. 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. The following tables outline the total number of violations for programmed activity, as well as, the in compliance rate and the percentage serious, willful and repeat violations for construction and general industry:

General Industry Programmed Inspections	TOSHA
Average number of violations	4.3
In-Compliance Rate	17.8
% violations classified as Serious, Repeat, and Willful	55.7

Construction Programmed Inspections	TOSHA
Average number of violations	2.4
In-Compliance Rate	10.7
% violations classified as Serious, Repeat, and Willful	62.2

4. Citations and Penalties

In FY 2012, the 1,972 inspections conducted resulted in an average of 3.41 violations per inspection, with 53.4% of the violations (43.2% safety violations and 39.1% health) classified as serious. The average initial penalty per serious violation for private sector inspections was \$1,497, compared to an average of \$1,991 for national data. TOSHA routinely places an emphasis on keeping citation lapse times low. In 2012, the average lapse time from opening conference to citation issuance is identified below:

Average Lapse Time	TOSHA	National
Safety	25.7	44.4
Health	37.75	57.2
Total Average	30.5	46.6

Although the State's procedures for determining the classification of violations are the same as those of federal OSHA, TOSHA classifies a lower percentage of violations as serious. Serious violations are categorized as high, medium or low severity serious, for penalty calculation purposes.

Percent of Violations Cited Serious/Other Than Serious

	TOSHA	Federal OSHA
Serious	53%	73%
OTS	44%	23%

In FY 2012, the average current penalty per serious, repeat and willful violations for private sector inspections was as follows:

Classification	TOSHA	Federal OSHA
Willful	\$50,400	\$35,982
Repeat	\$3,439	\$14,326
Serious	\$1352	\$2,153

TOSHA issued one willful violation in 2012. The average penalty issued/received for the willful violations is \$50,400 compared to an average penalty of \$35,982 for willful violations issued by federal OSHA. A review of procedures and discussions with state compliance personnel found that procedures for determining willfulness are the same as those for federal OSHA. Management indicated that they are more than willing to pursue willful violations when the CSHOs and supervisors identify them. The legal department is also willing to support them.

In 2012, 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. As with the federal penalty procedures, TOSHA's penalty chart begins at \$7,000.

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 3 years	10% = no S, W, R violations in past 3 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. In addition, the state maintains a high percentage, approximately 84.9%, of the penalty that is issued providing minimal penalty reductions during informal conferences.

5. Abatement

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.

6. Employee and Union Involvement

Tennessee's procedures for employee and union involvement are identical to those of federal OSHA. Unions are provided with correspondence regarding complaints and fatalities, and copies of citations. Employees/Employee Representatives were included during fatality investigations and other inspections as well as informal conferences.

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, 1.7% of violations were vacated and 0.9% of violations were reclassified as a result of informal settlement agreements. The penalty retention rate was 84.9%. 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 the employer to agree to concessions in exchange for penalty reductions.

2. Formal Conferences

In FY 2012, 2.23% of inspections were contested. The Tennessee Occupational Safety and Health Review Commission hold 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 implemented 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. 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, 10.6% were vacated and 10.6% were reclassified. 67.4% of penalties were retained. No negative trends or problems with citation documentation have been identified.

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 this period, TOSHA adopted all of the federal directives or "as effective as" procedures and OSHA initiated standards, which required action, in a timely manner. 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.

1. Standards Adoption

Standards Requiring Action	Federal Register Date	Adopted Identical	Date Promulgated
Hazard Communication - Globally Harmonized System of Classification	03/26/2012	Yes	07/01/2012
Revising Standards Referenced in the Acetylene Standard	03/08/2012	Yes	07/01/2012

2. Federal Program/State Initiated Changes

Federal Program Changes Requiring Action and Federal Directive Number	Date of Directive	Adopted Identical	Date Adoption Date
Compliance Policy for Manufacture, Storage, Sale, Handling, Use and Display of Pyrotechnics	10/27/2011	Yes	02/01/2012
National Emphasis Program - PSM Covered Chemical Facilities	11/29/2011	Yes	03/29/2012
Nursing Home NEP	04/05/2012	No	04/30/2012
Communicating OSHA Fatality Inspection Procedures to a Victim's Family	04/17/2012	No	06/17/2012
Longshoring and Marine Terminals	09/12/2012	Yes	N/A

Tool Shed Directive			
Section 11(c) Appeals Program	09/12/2012	Yes	N/A

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 request from employers in FY2012.

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 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. TOSHA conducted 638 public sector inspections in FY 2012, which accounted for 32.53% of all inspections.

Public Sector On-site Consultation Program

The Public Sector Consultation continues to respond to public sector employers request for assistance. The number of requests is relatively small. The number of hazards abated during on-site consultation public sector visits is listed in the chart below:

Serious Hazards Confirmed Abated		Other Hazards Confirmed Abated	
Public Safety	9	Public Safety	0
Public Health	4	Public Health	0
Total Public	13	Total Public	0

The Division continued to provide services to the employers and employees in both the private and public sectors during FY 2012. For public sector visits, the State had a goal to reach 626 establishments and exceeded that goal by conducting 637.

F. Discrimination Program

Tennessee 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.

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. 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.

TOSHA's discrimination 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.

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

Meritorious Complaints		Merit Cases Settled	
FY 2012	12.9%	FY 2012	100%
FY 2011	38.9%	FY 2011	100%
FY 2010	25.9%	FY 2010	57.1%
FY 2009	38.6%	FY 2009	100%

During FY 2012, TOSHA received 65 complaints compared to 85 complaints in FY 2011. Of the complaints received, 35 were docketed. According to the SAMM report, 12 (38.71%) of the investigations were timely completed compared to 10 (55.6%) in FY 2011. The average lapse time for discrimination cases was 99.5 days. TOSHA has continued to successfully work on improving their completion rate of discrimination investigations.

TOSHA properly administers 11c program and conducts thorough investigations. 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 were no CASPA's filed with the OSHA Area Office in Nashville, Tennessee. However, CASPA 2010-13, which involves an appeal of a workplace safety and health inspection, remains under investigation by the Nashville Area Office due to the complex nature of the complaint.

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 37 participating worksites. This includes two new sites added during FY 2012. 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. TOSHA has also 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.

The Consultation Program continues to reach small employers and encourage participation in the Safety and Health Achievement Recognition Program. In FY 2012 the TOSHA recognized 2 SHARP-related worksites. There are currently 18 SHARP related worksites.

I. Program Administration

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.

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.

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.

Because of funding uncertainty, the State operated with 4.33 vacancies as of October 1, 2012. From an activity level, reduced funding has an impact on activity throughout TOSHA including number of inspections, and reaching training goals. During this period, the State’s staffing levels were slightly above the approved benchmarks for the program. The State remains committed to staffing its program at the benchmark level, within the current budgetary constraints. 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 2013.

		FY 2008	FY 2009	FY 2010	FY2011	FY2012
Safety	Benchmark	22	22	22	22	22
	Positions Allocated	27.33	25.33	24.33	24.33	24.33

	Positions Filled	24	23	19.33	23.33	22.33
	Vacancies	3.33	2.33	5	1	2
	Percent of Benchmarks Filled	100	100	87.9	100	100
Health	Benchmark	14	14	14	14	14
	Positions Allocated	16.66	16.66	16.66	16.66	16.66
	Positions Filled	15.66	15.66	14.66	14.33	14.33
	Vacancies	1	1	2	2.33	2.33
	Percent of Benchmarks Filled	100	100	100	100	100

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 has developed and implemented a formal Internal Evaluation Program (ADM-TN03-00-011). 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. The Kingsport Area Office was evaluated in FY 2012.

V. Assessment of State Progress in Achieving Annual Performance Goals

During FY 2012 Tennessee completed the first year of its new Five-Year Strategic Performance Plans. 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.

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	1,946	422	2,368
Serious Violations/Hazards	4,991	2,521	7,512
Non-Serious Violations/Hazards	2,923	323	3,246
Repeated Violations	163	N/A	5
Willful Violations	1	N/A	1
Regulatory Hazards	N/A	322	322
Total Violations/Hazards	8,082	3,166	11,248

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 2012, the Compliance and Consultation sections documented the elimination of CO hazards impacting 13 employers resulting in reducing the exposure of 345 employees.

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

The Tennessee SOAR for FY 2012 indicates that noise levels have been reduced through engineering and hearing protection in 27 workplaces, affecting over 253 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 2012, the Compliance and Consultation sections documented the 298 hearing conservation hazards in 89 workplaces and reduced hazardous noise exposure of 1,489 employees.

Goal 1.4: 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 10 in FY 2009, 7 in FY 2010, and 5 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 495 workplaces where fall hazards were identified.

Goal 1.5: Reduce amputations injuries in the workplace by 1 percent.

This goal was previously identified as Goal 1.6 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 303 worksites and identified 652 hazards related to amputations during FY 2012. During this period amputations decreased from 140 in FY 2011, to 117 in FY 2012.

Goal 1.6: Reduce the number of bloodborne pathogen exposure for 1,000 employees.

TOSHA has a Targeting Initiative using the Bloodborne Pathogens standard to address needle-stick injuries in hospitals and ambulatory surgical centers.

HOSPITAL AND SURGICAL CENTER VIOLATIONS

	Inspections/Visits	Violations/Hazards	Employees
Compliance	32	273	6,507
Consultation	17	115	855
TOTAL	49	388	7,362

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

TOSHA personnel performed 430 training sessions during this period, which reached over 9,823 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 265 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 2,659 occasions during 843 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 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 – New and Continued Findings and Recommendations
FY 2012 Tennessee State Plan Abridged FAME Report

Tennessee does not have any new or continued findings or recommendations.

Appendix B – Observations Subject to Continued Monitoring
FY 2012 Tennessee State Plan Abridged FAME Report

Tennessee does not have any new or continued observations.

Appendix C – Status of FY 2011 Findings and Recommendations

FY 2012 Tennessee State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
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.	Corrected during the onsite evaluation.	TOSHA agrees with this recommendation. All 2011 files contained the document however, in several cases the data was not entered into the IMIS system. All 2011 questionnaires not previously entered have been entered into the system. Staff has been made aware of the need to enter the information and the compliance managers will monitor the entry in the future. This item was corrected during the onsite evaluation.	Corrected.
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.	All supervisors have been instructed to follow the rule and the Field Operations Manual when granting PMA requests. The citation package has been updated to clearly explain the PMA process requirements to employers. Corrected on May 29, 2012	TOSHA agrees with this recommendation. All supervisors have been instructed to follow the rule and the Field Operations Manual when granting PMA requests. The citation package has been updated to clearly explain the PMA process requirements to employers. This item has been corrected by the State.	Corrected.
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.	The letter to the employer notifying them of hazards has been updated to request proof of abatement and a tracking system has been implemented to assure abatement is documented. Corrected on February 1, 2012	TOSHA agrees with this recommendation. The letter to the employer notifying them of hazards has been updated to request proof of abatement and a tracking system has been	Corrected.

Appendix C – Status of FY 2011 Findings and Recommendations

FY 2012 Tennessee State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				implemented to assure abatement is documented. This item has been corrected by the State.	

Appendix D – FY 2012 State Activity Mandated Measures (SAMB) REPORT

FY 2012 Tennessee State Plan Abridged FAME Report

NOV 09, 2012 RID: 0454700

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	2068 7.65 270	131 8.73 15	Negotiated fixed number for each state
2. Average number of days to initiate Complaint Investigations	1162 3.35 346	31 2.06 15	Negotiated fixed number for each state
3. Percent of Complaints where Complainants were notified on time	257 95.19 270	14 100.00 14	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 1410	0 .00 1410	100%
Public	0 .00 1424	0 .00 1424	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	52550 38.63 1360	4702 35.35 133	2032800 55.9 36336 National Data (1 year)
Health	17553 68.29 257	2656 68.10 39	647235 67.9 9527 National Data (1 year)

0*TN FY12

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix D – FY 2012 State Activity Mandated Measures (SAMM) REPORT

FY 2012 Tennessee State Plan Abridged FAME Report

NOV 09, 2012 RID: 0454700

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	915	92	76860
Safety	65.40	72.44	58.5
	1399	127	131301
	102	12	9901
Health	62.96	66.67	53.0
	162	18	18679
9. Average Violations per Inspection with Violations			
	3111	292	367338
S/W/R	1.92	1.67	2.1
	1620	174	175950
	2394	248	216389
Other	1.47	1.42	1.2
	1620	174	175950
10. Average Initial Penalty per Serious Violation (Private Sector Only)	2325775	211850	624678547
	1496.63	1349.36	1990.5
	1554	157	313826
11. Percent of Total Inspections in Public Sector	638	40	1811
	32.53	31.25	31.0
	1961	128	5848
12. Average lapse time from receipt of Contest to first level decision	11409	1038	3197720
	393.41	346.00	187.0
	29	3	17104
13. Percent of 11c Investigations Completed within 90 days*	12	9	
	38.71	64.29	100%
	31	14	
14. Percent of 11c Complaints that are Meritorious*	4	5	1619
	12.90	35.71	23.4
	31	14	6921
15. Percent of Meritorious 11c Complaints that are Settled*	4	5	1444
	100.00	100.00	89.2
	4	5	1619

*Note: Discrimination measures have been updated with data from SAMM reports run on 1/3/20130*TN FY12

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E - State OSHA Annual Report (SOAR)
FY 2012 North Carolina State Plan Abridged FAME Report

[Available Upon Request]