

**FY 2013 Comprehensive
Federal Annual Monitoring and Evaluation (FAME) Report**

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



Evaluation Period: October 1, 2012 – September 30, 2013

**Initial Approval Date: June 28, 1973
Program Certification Date: May 3, 1978
Final Approval Date: July 22, 1985**

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I. Executive Summary

A. Summary of the Report

The purpose of Federal Annual Monitoring Evaluation (FAME) report is to assess the State's progress towards achieving their performance goals established in their Fiscal Year (FY) 2013 Strategic Management Plan and to review the effectiveness of programmatic areas related to enforcement activities, including a summary of an onsite evaluation. This report assesses the current performance of the Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health (TOSHA) 23(g) program.

A five-person OSHA team was assembled to conduct the onsite evaluation in Nashville, Tennessee, during the time frame of February 10th through February 14th, 2014. The OSHA team's evaluation consisted of case file reviews, a review of TOSHA's performance statistics, and staff interviews. A comparison of the FY 2011 case file reviews and the FY 2013 review showed the State is maintaining a high level of quality in the documentation of files, including appropriate coding and letters sent by the Supervisors and discrimination investigators. However, there are concerns regarding the establishment of knowledge and the maintenance of field notes in case files. It does not appear that this has had a negative impact on the effectiveness of the program. This is addressed in other areas of this report.

TOSHA has taken action towards addressing the three recommendations found in the FY 2011 FAME report. One item was resolved during the onsite evaluation in FY 2011 and the other two were resolved prior to the FY 2012 follow-up report. The State completed action requests relating to the FY 2011 recommendations. The action requests resulted in the State following a previously established policy regarding Petition for modification of abatement, modifying a policy regarding abatement for Public Sector consultation visits, and providing training to staff regarding the IMMLANG coding of fatalities. There were no repeat or new findings or recommendations as a result of monitoring activities conducted during FY 2012.

There are no repeat or new findings or recommendations as a result of monitoring activities conducted during FY 2013. A detailed explanation of TOSHA's performance evaluation is found in the Assessment of State Performance, Section III of this report. Appendix B details the three Observations identified during the onsite review. An Observation is an item that has not proven to impact the effectiveness of the State's program, but for which the Region wishes to continue monitoring.

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. 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 2,699,420 people.

There are approximately 143,381 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.

C. Data and Methodology

This report was prepared under the direction of Teresa A. Harrison, Acting Regional Administrator, Region IV, Atlanta, Georgia, and covers the period from October 1, 2012 through September 30, 2013. During the review period, the Tennessee State Plan was administered by the Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health (TOSHA) under the direction of Burns Phillips, Commissioner; Dustin Swayne, Deputy Commissioner and Steve Hawkins, TOSHA Administrator. This is OSHA's report on the operation and performance of the TOSHA Program. It was compiled using information gained from Tennessee's State Office Annual Report (SOAR) for FY 2013, IMIS reports, as well as the SAMM and SIR reports for FY 2012.

During this evaluation, a total of 107 inspection case files, comprised of safety and health, were randomly selected for review. 20 fatality inspection files were reviewed and 12 complaint investigation (non-formal) and inspection files were reviewed. The others 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 public sector files. This was a small percentage of the 1,711 inspections conducted in FY 2013, 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. Data referenced in this report was obtained from the State Activity Mandated Measures (SAMMs), FY 2013 23(g) Grant, Integrated Management Information System (IMIS) reports, discussions with State staff, and onsite review conducted in February 2014. During the onsite evaluation, 10 State Plan staff employees were interviewed, which included two safety and health Supervisors, the Administrator, the Assistant Administrator, and six compliance officers.

D. Findings and Recommendations

The FY 2012 FAME follow-up report contained no new Findings and Recommendations. During the FY 2013 evaluation period, there are no repeat or new findings or recommendations identified as a result of monitoring activities conducted during FY 2013. Appendix B details the three Observations identified during the FY 2013 evaluation. The specific Observations are as follows:

FY13-OB-1: Tennessee's procedures for determining the classification of violations are the same as those of OSHA; however, TOSHA classifies a lower percentage of safety violations 54.8% and health 46.9% as serious.

FY13-OB-2: In many case files, documentation of actual employer knowledge was lacking. Compliance officers are establishing and documenting constructive (with the exercise of reasonable diligence the employer should have known) rather than actual knowledge in the knowledge section of the 1B worksheet.

FY13-OB-3: In a significant number of cases, the frequency and duration related to employee exposure was generic, 8 hours per day for 5 days a week, and did not agree with the information provided for the hazardous condition.

II. Major New Issues

Recently the State experienced a significant change in leadership with the appointment of Burns Phillips, Commissioner and Dustin Swayne, Deputy Commissioner by Tennessee Governor Bill Haslam. In addition, Jim Flanagan was appointed to the vacant position of Assistant Administrator. Additional special accomplishments are addressed in the Special Accomplishments section on page 21 of the SOAR.

III. Assessment of State Plan Performance

As previously stated, a total of 107 inspection case files were reviewed, which included 47 complaint investigations (non-formal) and inspection files (formal) and 20 fatality investigation files. The others were a random selection of files from the following categories: programmed general industry safety; programmed general industry health; and programmed construction.

Overall, case files that were reviewed contained sufficient documentation. With few exceptions, the case files that were reviewed were documented with detailed narratives explaining the inspection process, the employer's business/processes, findings, and any other factors/issues. The violations contained all of the required information and supporting documentation for a prima fascia violation including all of the required forms, photos, diagrams, and other technical documentation. Several items regarding documentation were identified however these items have not proven to impact the effectiveness of the State's program. They are discussed in detail in other areas of this report. Inspections were coded with the appropriate emphasis and strategic codes.

TOSHA continues its outreach to employers and employees with brochures, on line videos and DVDs, and a robust training program including seminars. The State's latest injury and illness rate for private industry achieved an all-time low of 3.5 per 100 full-time workers in 2012 which is not statistically different from national rate. The injury and illness rate in Tennessee for private industry has shown a steady decline from 2006 to 2011 and remained unchanged in 2012. The U.S. Bureau of Labor Statistics compiles the injury and illness rate data. The State has achieved a reduction in the workplace fatalities by 16.7% (2012 fatality rates are not currently available for Tennessee) and the injury and illness rate remained the same at 3.7. With three years of statistical data available, the State has reduced the fatality rate by 17% and the injury and illness rate by nearly 3%. This reduction in the number of fatalities as well as the injury and illness rates is due in part to appropriate goal setting, adequate resource allocation and outcome driven strategy development.

1. ENFORCEMENT

a) Complaints

Tennessee's procedures for handling complaints alleging unsafe or unhealthful working conditions are very similar to those of OSHA. These procedures are covered in TOSHA'S Field Operations Manual (FOM), Chapter 9: Complaint and Referral Processing. Inspection data indicates that TOSHA handled 788 complaints in FY 2013, and conducted 275 complaint inspections. According to the SAMM report, TOSHA responds timely to complaints. Complaint investigations were initiated within an average of 2.8 days with a goal of 5 days, and complaint inspections were initiated within an average of 6.32 days with a goal of 15 days. A review of the IMIS reports showed that during 2013 approximately 33.5% 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.

27 Complaint investigations and inspections were reviewed to determine if they were processed in accordance with FOM Chapter 9, Complaint and Referral Processing. This evaluation included reviews of 12 complaint investigation files (those complaints handled by letter, or Tennessee's phone, fax and fix procedure) and 15 complaint inspection files. Several standard IMIS reports of complaint activity were reviewed. TOSHA thoroughly evaluates 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 by phone and fax some valid formal complaints enabling them to efficiently utilize the limited resources that they have. Of the complaint inspection and inquiry files that were reviewed, there were no instances of complaints that were investigated which 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. Letters were sent to the complainants 100% of the time with the results of the inspection and procedures for updating the IMIS with complaint activity were being followed. Established procedures for tracking the status of complaints were being followed consistently. Complaints were handled timely following the requirements of the FOM. Abatement documentation was adequate and complaint allegations were tracked to ensure corrective action was completed and workers were protected from unsafe/unhealthful working conditions. It was determined that policies and procedures were followed during these inspections.

b) Fatalities

TOSHA investigated 29 fatalities in FY 2013. In addition, two catastrophes at general industry worksites were investigated by the state. Fatalities fell from 28 in FY 2012 to 27 in FY 2013, a decrease of 3.6% from FY 2012. The number of workplace fatalities in FY 2011 was 32. The 12 general industry deaths were decrease from 17 and the 10 construction deaths was an increase from nine from 2012 to 2013. The other five fatalities experienced in the state were three in agriculture and two in the Public Sector. Fatalities in the public sector remained the same from FY 2012 to FY 2013. Investigations are normally initiated within one day of notification of the fatality. The leading cause of the work-related fatalities in FY 2013 was struck-by events with ten. Seven workers died from falls from elevations, and seven workers died after being caught in/between objects. There were two that were electrocuted. One worker died from inhalation of toxic fumes and/or chemicals. One worker died after being shot during a robbery. The two catastrophes were a result of employees being hospitalized after being over-exposed to carbon monoxide. In FY 2013 construction and manufacturing were the two leading industries for fatal accidents with ten in construction and eight in manufacturing.

There were nine fatalities in manufacturing, an increase from four in FY 2012. Retail trade experienced one fatality which was a murder committed during a robbery. There were four fatalities in the transportation and public utility industry as well as agriculture. Three of the deaths were in the services industry.

Tennessee’s procedures for investigation of occupational fatalities are effectively the same as those of OSHA and are designed 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 to assure that the case documentation is legally sufficient. Ultimately the determination is made 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	FY 2013
Total Fatalities	29	28	27
Construction	9	9	10
General Industry	17	16	12
Agriculture	0	1	3
Public Sector	3	2	2

A review of the fatality inspection files showed that the correct fatality inspection procedures were followed. Fatality inspections were opened in a timely manner and the Regional and National Office was sent the OSHA 36 in a timely manner. Case files contained police and corner’s reports. TOSHA has a longstanding procedure for communication with family members of deceased workers. In 20 of 20 (100%) files, the required initial and final NOK

were sent. According to the State Plan’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. In 100% of the files reviewed, OSHA-36 and OSHA-170 forms were in all the files as well as all other required documentation. The compliance officers obtained statements and interviewed witnesses in the fatality case files.

c) Targeting and Programmed Inspections

According to inspection statistics run for this report, TOSHA conducted 1,711 inspections in FY 2013, 1,279 of which were programmed. This includes many of the 444 inspections conducted in the construction sector. According to the IMIS data, 81% of programmed safety inspections and 90.5% of programmed health inspections had violations. Additional data indicates that an average of 3.2 violations were cited per inspection, and that 54.6% of safety violations and 46.9% 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 plateau in the Days Away, Restricted, Transferred (DART) and the Total Case Incident Rate (TCIR).

Year	DART		TCIR	
	TN Private	US Private	TN Private	US Private
2012	1.8	1.8	3.5	3.4
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 2012, the most recent BLS data available, Tennessee’s TCIR of 3.7 for all industries including state and local governments is equal to the national average of 3.7.

The State Plan 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 have a General Schedule Program in which they use data provided by OSHA’s National Office to 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.

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/metal working were targeted under a targeting initiative which was complete in FY2013. One hundred percent of the surgical centers and hospitals in Tennessee have been inspected. This program has had great success however it has run its course and will be discontinued.

Of the 444 construction inspections conducted, 432 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 2013, TOSHA identified 800 fall hazards in construction, impacting 378 companies.

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	Construction Programmed Inspections	TOSHA
Average Number of Violations	3.2	Average Number of Violations	2.1
In-Compliance Rate	21.9%	In-Compliance Rate	17.2%
Percentage of Violations Classified as Serious, Repeat, and Willful	55.1%	Percentage of Violations Classified as Serious, Repeat, and Willful	59.5%

d) Citations and Penalties

In FY 2013, IMIS data provided that the 1,711 inspections conducted resulted in an average of 3.2 violations per non-incompliance safety inspection and 3.1 violations per non-incompliance health inspection, with 54.8% of safety violations and 46.9% of health violations classified as serious. This is an area of concern, not only for OSHA but also the State Plan. TOSHA management, including the area supervisors and section managers, review reports to assure violations are properly classified. Proper classification continues to be an area of focus. TOSHA’s position is that they issue violations correctly and reclassify and vacate a significantly less number of violations than the federal program. The average current penalty per serious violation for private sector inspections was \$1,521 compared to an average of \$2,024 for national data. TOSHA should review penalties and determine the

cause of the lower average penalty for serious violations. TOSHA routinely places an emphasis on keeping citation lapse times low. The average citation lapse time for safety and health are well below OSHA. According to the SAMM, in FY 2013, the average lapse time (in days) from opening conference to citation issuance is identified below:

Average Lapse Time	TOSHA	OSHA
Safety	27.4	43.4
Health	43.51	57.05

TOSHA has a performance goal to ensure effective service by maintaining average report turnaround time (lapse times) within the following targets: Less than 35 days (Safety Compliance), Less than 55 days (Health Compliance).

One hundred-seven case files reviewed included adequate documentation overall to support the violations with minor exceptions. In many case files, documentation of actual employer knowledge was lacking. Compliance officers are establishing and documenting constructive (With the exercise of reasonable diligence the employer should have known) rather than actual knowledge in the knowledge section of the 1B worksheet. However, in some of the files actual knowledge was evident in hazard descriptions or other areas of the 1B and or narrative. Significant case actions and correspondence, internal and external, such as calls or correspondence between program managers and supervisors, supervisors and compliance officers, and TOSHA and the employer are recorded on a case file diary sheet to memorialize each particular action or milestone. However, they were used very minimally by most compliance officers, supervisors, and program managers. According to interviews of management, supervisors and compliance officers, field notes are destroyed at the instruction of the state's attorney when the compliance officer completes the violation form (1B Worksheet). It remains the state's contention that information contained in the field notes are transferred to the violation form (1B Worksheet) and the notes are no longer necessary at that point.

In addition, the state's attorney feels certain information could have a negative impact they can better defend the case if field notes are not included in the file. Field notes will be included if the TN OSHA Attorney determines it is in the best interest to include them. This has never been challenged in litigation. Monitoring of this issue has not shown that the absence of the field notes has proven to negatively impact the effectiveness of the State's program; however, it has been and will continue to be monitored. Field notes are an integral and valuable part of an inspection or investigation file and should be maintained. In addition, field notes can prove 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 containing interview notes that had been in the file during the course of the inspection and while it was open. Only photos and documents that the CSHO includes in the final case file are maintained in the official file when it is scanned. The compliance officers are required to maintain all inspection photos until the case becomes a final order. Narratives contained detailed documentation supporting that the safety and health programs were reviewed and there was justification for actions related to

good faith reductions. In a significant number of cases, the frequency and duration related to employee exposure was generic, 8 hours per day for 5 days a week, and did not agree with the information provided for the hazardous condition. This is an indication that some of the compliance officers do not understand frequency and duration. None of these issues appear to impact the effectiveness of the State's program; however, the OSHA will continue to monitor them in the future. Photographs supporting the violations are placed in the files and all inspection photos are maintained in the files until they are scanned when the case file is closed. Supervisors indicated that they do review each case file before citations are issued, or prior to closing for in-compliance cases, and they look at the photographs during their review.

In FY 2013, TOSHA issued two willful violations and 109 repeat violations. All willful violations were reviewed by the administrator, assistant administrator and the state's attorney prior to issuance. According to the State Plan IMIS data, TOSHA's percent serious/willful/repeat/unclassified is 55.9% in FY2013, compared to OSHA serious/willful/repeat/unclassified at 79%. The average penalty issued/received for the willful violations is \$54,000 compared to an average penalty of \$39,455 for willful violations issued by OSHA. A review of procedures and discussions with state compliance personnel found that procedures for determining willfulness are the same as those for 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.

Although, the State Plan's procedures for determining the classification of violations are the same as those of OSHA, TOSHA classifies a lower percentage of violations as serious.

Percent of Violations Cited Serious/Other Than Serious

	TOSHA	OSHA
Serious	53.4%	75%
OTS	44%	20.4%

In FY 2013, the average current penalty per serious, repeat and willful violations for private sector inspections was as follows:

Classification	TOSHA	OSHA
Willful	\$54,000	\$39,455
Repeat	\$1,179	\$6,473
Serious	\$1,522	\$2,024

In 2013, TOSHA's penalty calculation procedures continue to differ in several aspects from Federal OSHA. Both 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 OSHA as follows:

Penalty Reductions	TOSHA	OSHA
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

FY13-OB-1: Tennessee's procedures for determining the classification of violations are the same as those of OSHA; however, TOSHA classifies a lower percentage of safety violations 54.8% and health 46.9% as serious.

FY13-OB-2: In many case files, documentation of actual employer knowledge was lacking. Compliance officers are establishing and documenting constructive (with the exercise of reasonable diligence the employer should have known) rather than actual knowledge in the knowledge section of the 1B worksheet.

FY13-OB-3: In a significant number of cases, the frequency and duration related to employee exposure was generic, 8 hours per day for 5 days a week, and did not agree with the information provided for the hazardous condition.

e) Abatement

Available procedures and inspection data indicate that Tennessee 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 case files reviewed contained written documentation, photos, work orders, or employer's certification of abatement. Petitions for Modification (PMA) of abatement were

appropriately provided when the employer requested an extension for their corrective action timeframe. Interim protection was in the case file.

TOSHA conducted follow-up inspections according to their policy and procedures. Supervisors assign follow-up inspections to CSHOs based on the criteria listed in the FOM, Chapter 7-XII – Follow-Up Inspection Procedures for Abatement Verification. In FY 2013, 2.86% of inspections conducted were follow-ups compared to Federal OSHA at 3%.

f) Worker and Union Involvement

Tennessee's procedures for employee and union involvement are identical to those of OSHA. Case files reviewed disclosed that employees were included during fatality investigations and other inspections as well as informal conferences. All of TOSHA's initial inspections were present with employee walk around representation or employee interviews. Unions are provided with correspondence regarding complaints and fatalities, and copies of citations.

2. REVIEW PROCEDURES

a) 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, 2.2% of violations were vacated and 1.0% of violations were reclassified as a result of informal settlement agreements. The penalty retention rate was 85.5%. 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 maximum 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.

b) Formal Review of Citations

In FY 2013, 22 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, 2.2% were vacated and 1.0% was reclassified. 85.5% of penalties were retained. No negative trends or problems with citation documentation have been identified.

3. STANDARDS AND FEDERAL PROGRAM CHANGES (FPCs) ADOPTION

a) Standards 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 OSHA initiated standards, which required action, in a timely manner. The table below identifies the OSHA-initiated standards:

Standards Requiring Action	Federal Register Date	Adopted Identical	Date Promulgated
Updating OSHA Standards Based on National Consensus Standards; Head Protection	11/16/2012	Yes	01/01/2013
Direct Final Rule - Cranes and Derricks in Construction: Underground Construction and Demolition	04/25/2013	Yes	07/13/2013

b) OSHA/State Plan-Initiated Changes

During this period, TOSHA adopted all of the federal directives or "as effective as" procedures, which required action, in a timely manner. The table below identifies the federal directives which required action by the State Plan.

Federal Program Changes Requiring Action and Federal Directive Number	Date of Directive	Adopted Identical	Date Adoption Date
Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification	09/30/2013	No	N/A
[CPL 02-00-155] Federal Program Change Memo	09/06/2013	Yes	10/16/2013
[CPL 03-00-017] - National Emphasis Program Occupational Exposure to Isocyanates	06/20/2013	Yes	07/01/2013
Site-Specific Targeting 2012 (SST-12)	01/04/2013	Yes	02/01/2013
Inspection and Citation Guidance for Roadway and Highway Construction Work Zones	10/16/2012	Yes	01/01/2013

4. VARIANCES

Tennessee currently has two permanent variances and there are no temporary variances. Both permanent variances were granted in FY 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 OSHA. The State Plan shares variance requests with federal monitors and requests input prior to their 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 FY 2013.

5. PUBLIC EMPLOYEE PROGRAM

In the early 70’s, public sector employers in Tennessee were given the option of complying with the State Plan’s public sector program or submitting to traditional enforcement. The majority of the State Plan public sector operations selected the public sector program option, which is very similar to OSHA’s handling of federal agencies. However, a few public sector employers expressed a preference for traditional enforcement. The Tennessee public sector program requires that each agency and department head designate a staff member to administer 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 534 public sector inspections in FY 2013, which accounted for 31.89 percent of all inspections. The average citation lapse time for public sector enforcement files is 14.6 days which is well below the performance goal of 20 days.

6. DISCRIMINATION PROGRAM

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 OSHA protection from discrimination under Section 11(c) of the OSH Act.

Tennessee’s procedures for handling safety and health discrimination cases are very similar to those of OSHA. They use 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.

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

Meritorious Complaints		Merit Cases Settled	
FY 2013	21.95%	FY 2013	75%

FY 2012	12.90%	FY 2012	100%
FY 2011	38.89%	FY 2011	100%

Status	Number of Cases	Percentage
Merit	1	1.63
Dismissed Non-Merit	29	47.5
Dismissed Lack of Cooperation	14	24.6
Settlement	6	9.84
Withdrawal	4	6.56
Untimely Filed	1	1.63
Screened & Closed	5	8.2

During FY 2013, TOSHA received 60 complaints compared to 65 complaints in FY 2012. Of the complaints received, 55 were docketed. TOSHA has continued to successfully work on improving their completion rate of discrimination investigations. According to the SAMM report, 20 (53.66%) of the investigations were timely completed compared to 12 (38.71%) in FY 2012. The average lapse time for discrimination cases was 86.6 days. TOSHA has continued to successfully work on improving their completion rate of discrimination investigations.

It appears that all investigators conduct personal interviews and perform onsite investigations in almost every case. All complaints appeared to have been investigated at least as thoroughly as 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 OSHA. 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.

7. SPECIAL STUDY – STATE PLAN TARGETING PROGRAMS

Tennessee has developed a Strategic Management Plan with outcome goals that are consistent with OSHA activity. The plan includes specific outcome measures for each goal in the plan. The plan's various areas of emphasis are managed by the administrator and assistant administrator. Strategies to achieve outcome goals are continuously reviewed and can be altered to enhance program performance. Any changes to the plan are documented annually, and the revised plan is submitted to OSHA as part of the 23(g) grant application process.

Tennessee did not adopt CPL 04-00-001 nor did they develop a state-specific directive or guidance for the development of Special Emphasis Programs (SEP). However, CPL 04-00-001 is referenced in Tennessee's FOM Chapter 2-VI-D - Special Emphasis Programs (SEPs) and the State Plan has developed several emphasis programs for general industry and construction which are contained in State Directives which follows the guidance this guidance. As stated previously, TOSHA has safety and health general industry targeting procedures, and has adopted the federal Site-Specific Targeting (SST) procedures. They also

have a General Schedule Program in which they use data provided by OSHA's National Office to create a General Schedule Inspection list that is made up of the top 200 high hazard SIC codes to supplement the SST. These SIC codes are run through Workers' Compensation to create the list of sites for inspection. In addition, 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.

In addition, TOSHA has a variety of SEPs, 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 have adopted numerous National Emphasis Programs (NEP) including but not limited to trenching and excavations, lead, hexavalent chromium, and isocyanates. Hazards addressed by NEPs are identified and addressed appropriately during other inspection activities and are coded accordingly. The State has not developed any State specific emphasis programs related to NEPs.

The targeting program special study conducted by OSHA focused on two specific programs: Fall Protection and Carbon Monoxide Inspections. During the onsite evaluation, eighteen Programmed Falls Protection case files were reviewed and twelve Programmed Carbon Monoxide files were reviewed.

The State Plan has a performance goal to reduce the number of fatalities due to falls each year by 1.7% from a baseline of the average number of yearly fatalities (8.2) due to falls from 2003 – 2007. This goal has been met. TOSHA continues to maintain a local emphasis program addressing fall hazards, CPL-TN-04-00-004 Local Emphasis Program (LEP) for Fall Protection which was established on September 24, 1999. This LEP is established to reduce employee reduce employee injuries and eliminate deaths from falls in both construction and general industry. When this program was established, falls were the leading cause of worker fatalities in Tennessee. The agency determined that an increased TOSHA presence at worksites where the potential for falls is present is warranted. TOSHA recognizes that accidents involving falls are generally complex events frequently involving a variety of factors. This LEP covers workers in Construction as well as General Industry.

Training was provided to TOSHA compliance and consultation personnel to make them aware of fall hazards and the appropriate standards which apply to different situations and included specific training on this SEP. It also provided a training program for industry to help industry understand the significance of the hazards associated with fall hazards, the proper application of protective systems available and the TOSHA standards which cover various fall situations. It requires Compliance Officers to address fall hazards on each inspection. When a possible violation is observed but is not able to be cited, the situation will be addressed with the company representative and noted in the inspection narrative. Examples would be violations without employee exposure, i.e. roofing work on a site not yet started, erecting steel below 15 feet, etc. The compliance officer provides information to aid the employer in the elimination or control of the fall. The program developed an intervention procedure to address fall hazards observed outside the traditional inspection arena. These were given in several areas of the state and included a 15 minute fall protection presentation

at each seminar that TOSHA presented to industry. When a possible violation is observed but is not able to be cited, the situation is addressed with the company representative and noted in the inspection narrative. TOSHA has established inspection guidelines for compliance officers to follow which are contained in the Directive. Compliance and Consultation documented the elimination of more than 10,600 fall hazards and reduced more than 11,700 employees' exposure to falls by issuing citations and identifying hazards.

Tennessee also has a performance goal to reduce carbon monoxide exposures for 300 employees. The Local Emphasis Program for Carbon Monoxide (CPL-TN-04-00-001) was established on September 16, 1999, to reduce employee exposure and eliminate deaths from carbon monoxide throughout Tennessee. All health and safety compliance personnel are instructed to be diligent in their efforts to identify worksites where gasoline and propane operated equipment are used and conduct a referral inspection to evaluate if there is a potential for high levels of CO. Inspections are conducted for every observation of such operation regardless of whether or not a violation is observed and anytime TOSHA receives any other notice of an operation where high carbon monoxide levels are possible (including complaints, other government agency referrals, and reports from members of the public). Safety compliance officers are trained to screen for carbon monoxide and make referrals to the Industrial Hygiene Manager as necessary. TOSHA has established inspection guidelines for compliance officers to follow which are contained in the Directive. Training and outreach has been conducted through news and media sources; handouts which are distributed during inspections and outreach activities; distribution of handout materials to rental companies; and information of the TOSHA webpage. From FY 2004 to FY 2013, CO levels have been documented as reduced through elimination and engineering controls protecting more than 10,500 employees.

Each targeting program relating to an LEP or SEP has a recording and tracking component. This could include a specific IMIS code. Compliance and Consultation data is evaluated monthly. An annual evaluation will be performed to evaluate the LEPs and SEPs for their effectiveness, impact upon the workplace, and its continuation.

8. CASPAs

During this period there were no CASPAs filed with the OSHA Area Office in Nashville, Tennessee.

9. VOLUNTARY COMPLIANCE PROGRAM

TOSHA did not adopt the OSHA Strategic Partnership Program or the OSHA Alliance Program. However, TOSHA implemented the Tennessee Volunteer Star Program in 1997 and the program currently features 38 participating worksites. This includes two new sites added during FY 2013. 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 continues to effectively manage 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 and the document has been designated as CSP – TN 03-01-003. The directive effectively addresses enforcement activities at VPP sites, such as fatality investigations. However, during this period, none of the State Plan’s VPP sites experienced a fatal accident.

The State Plan is also operated in a manner consistent with the VPP Policy Improvement Memorandums issued by OSHA. Previously, all VPP participants were required to provide a written description of any incentive programs in their annual self-evaluation report and incentive programs that negatively impact recordkeeping were prohibited. Concerns regarding the employer’s incentive program also were fully assessed during the onsite evaluations conducted by TOSHA and documented on the VPP Site Worksheet.

10. PUBLIC SECTOR ON-SITE CONSULTATION PROGRAM

As previously mentioned, Tennessee operates a public sector program, which enforces workplace safety and health among the majority of public sector employers. The State Plan’s public sector program also extends on-site consultative support to employers in the public sector. During this period, three on-site consultative visits were requested by public sector employers and TOSHA conducted one courtesy visit. Courtesy visits are a training tool used by TOSHA’s public sector program, following the departure of a city manager, a mayor, or other responsible officials. During FY 2013, hazards were only identified during one of the three consultative visits. In that case, members of the public sector staff worked cooperatively with representatives from the State government agency to properly document hazard abatement in the case file.

Since the last comprehensive FAME visit, TOSHA’s public sector program has developed and implemented a tracking tool, which monitors inspection status, hazard abatement, as well as lapse time. Additionally, Tennessee Code Annotated (TCA) requires that local governments and state agencies covered by TOSHA’s public sector program develop and provide TOSHA with its written program of compliance. During this period, TOSHA also developed and implemented a tracking tool to monitor the status of the public sector employer’s written program of compliance, which must be updated every seven years.

11. STATE PLAN ADMINISTRATION

During the onsite monitoring visit, interviews were conducted with the TOSHA Administrator, the Assistant Administrator, and several staff members, regarding the administration and management of TOSHA. Issues addressed during these interviews included State Plan 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

As stated earlier, 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 (OJT) training.

Newly-hired TOSHA compliance officers are immediately registered in learn-link for participation in the initial training courses conducted at the OSHA Training Institute (OTI). Additional courses are scheduled as dictated in the instruction. Basic training is completed when the eight courses outlined in the directive are completed. The State Plan also 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 training and administered an in-house test, which evaluates their knowledge of the standards and TOSHA procedures. The Commissioner of the Tennessee Department of Labor and Workforce Development, Burns Phillips, supports the career development and training of employees. TOSHA employees are permitted to travel to training courses outside State and in FY 2013 Tennessee spent \$134,812 for OTI training and related expenses. 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 or if a special need exists.

Once a CSHO's basic training needs are met, TOSHA attempts to enroll compliance personnel in at least one career development course each year. Additionally, TOSHA employees interested in obtaining their professional certifications are provided access to training materials. The State Plan 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 five percent increase in their salary, which is equivalent to one-step on the State Plan pay scale.

Funding

The last financial audit of TOSHA was conducted in FY 2010, the total authorized award equaled \$6,935,911.33 (federal funds equaled \$3,621,100 and non-federal funds equaled \$3,314,811.33). For the quarter ending December 30, 2010 the Certified Federal Financial Report (Closeout) actual federal expenditures and system draw downs in the Health and Human Services Payment Management System (HHSPMS) were \$3,463,166. Review of the 23(g) Grant revealed the grantee expended 96% of authorized federal funds for the period ending December 30, 2010. No issues to report.

Additionally, during this period, the TOSHA Program operated without experiencing any funding related concerns, such as the inability to match the federal base level funding. However, the recent federal budget crisis and government shut-down did result in a three-day

furlough for TOSHA’s compliance staff, with the exception of supervisors. Overall, the TOSHA program is well-funded and fully supported by the State government.

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 compliance officers. After opportunity for public comments and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on July 22, 1985. At the time of this report, TOSHA’s compliance staffing included 18.33 safety compliance officers and 14.66 health compliance officers.

These totals account for the fact that a supervisory position is equivalent to one-third of a full-time compliance position. During the majority of FY 2013 TOSHA operated at or above the staffing benchmark. However, at the end of the year, a safety compliance officer was hired to fill a vacant health supervisor position, two compliance officers left the program to pursue other employment opportunities, a senior compliance officer retired, and another safety compliance officer passed-away. As a result, there are currently six vacant safety compliance positions and two vacant health compliance positions; however, the State Plan is committed to maintaining its staffing at the established benchmark level. In fact, the State Plan is currently attempting to fill four vacant safety compliance officer positions.

		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 has consistently used various available IMIS reports and other data for effective program management. This includes both mandated activity and activity goals and outcome goals included in the Strategic Management Plan. 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. The reports are used not only to track program activity but to also assess activity by individual CSHOs. The frequency of report runs can vary from weekly to quarterly as conditions dictate. By tracking activity, a potential outlier can be detected before it becomes a real issue. 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 Plan'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.

TOSHA remains the only state plan in Region IV planning to fully participate in the implementation of OIS. In fact, TOSHA's Standards and Procedures manager is currently serving on the OIS State Plan Working Group with OSHA's National Office.

State Internal Evaluation Program

TOSHA has developed and implemented ADM-TN 03-00-011, Audit Program for the Central and Area Offices, to provide guidance regarding the internal evaluation of its program. TOSHA's Standards and Procedures manager serves as the lead auditor and since its implementation, the State Plan has evaluated four of the six area offices. This document meets the criteria outlined in the State Plan Policies and Procedures Manual.

IV. Assessment of State Plan Progress in Achieving Annual Performance Goals

During FY 2013 Tennessee completed the second year of its 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. During this period, revised the measures for two goals, revised another goal based on industry trends, as well as implementing a total of five new goals to enhance the program's effectiveness.

Goal 1.1: Eliminate 7,500 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 established a goal to effectively eliminate over 7,500 serious workplace hazards. However, during this period, the State did not achieve this goal. According to the table below, TOSHA identified 3,860 serious hazards during compliance inspections and 2,869 serious hazards during consultation visits, which resulted in the identification of 6,729 total serious hazards. This total is below the measure set for this goal and well below the 7,512 total hazards identified in FY 2012.

	Compliance	Consultation	Total
Inspections/Visits	1,711	414	2,125
Serious Violations/Hazards	3,860	2,869	6,729
Non-Serious Violations/Hazards	2,311	761	3,072
Repeated Violations	131	N/A	313
Willful Violations	2	N/A	2
Regulatory Hazards	N/A	472	472
Total Violations/Hazards	8,015	4,102	12,531

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. Activities related to this program are tracked and communicated with the field on a monthly basis. In FY 2013, the Compliance and Consultation sections documented the elimination of CO hazards impacting 10 employers and resulting in the reduced exposure of 405 employees, these figures compare well to the 13 employers and 345 employees identified in FY 2012.

Goal 1.3: Conduct 15 inspections to identify and eliminate abrasive blasting hazards

This goal previously addressed the elimination of hazard noise hazards in Tennessee workplaces. However, in FY 2013 this goal was revised to address the elimination of abrasive blasting hazards, in an effort to have a great impact on workplace health and safety. This pilot program resulted in limited success; therefore, this goal will once again focus on the elimination of hazard noise levels in FY 2014. During FY 2013, TOSHA conducted 18 inspections targeting abrasive blasting and documented 76 serious hazards.

Goal 1.4: Reduce the number of fatalities due to falls by 1.7 percent.

This goal was not achieved in FY 2013. During this period, the State experienced six fatalities due to falls, compared with five in FY 2012. However, overall fatal accidents are trending downward in the State from 37 in FY 2012, to 35 in FY 2013.

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

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 did not achieve this goal in FY 2013, since the number of total amputation remained the same at 117. TOSHA conducted inspections at 292 worksites and identified 618 hazards related to amputations during FY 2013, compared with 303 worksite inspections and the identification of 652 hazards 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. TOSHA met this goal in FY 2013 reaching a total of 4,278 employees, compared with 7,362 in FY 2012.

HOSPITAL AND SURGICAL CENTER VIOLATIONS

	Inspections/Visits	Violations/Hazards	Employees
Compliance	15	95	3,683
Consultation	24	147	595
TOTAL	39	242	4,278

Goal 2.1: Train 9,500 people in occupational safety and health.

During this period, TOSHA personnel performed 324 training sessions and 939 on-site consultation visits, which reached 10,041 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 2.2.1: Intervene and assist in the improvement of 850 occupational safety and health programs.

TOSHA achieved this goal by improving over 1,200 occupational safety and health programs through consultation program assistance, as well as compliance inspections. 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.

Goal 2.2.2: Increase employer/employee awareness of safety and health management systems through onsite outreach during 1,150 private sector compliance inspections, 550 public sector compliance inspections, and 300 consultation visits.

This goal was newly established in FY 2013. Overall TOSHA achieved this goal by accomplishing 1,168 compliance inspections, 543 public sector inspection and 393 consultative visits.

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

During this period, TOSHA approved just two new companies for participation in the Volunteer Star Program, rather than the targeted three employers.

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

During this period, TOSHA's On-site Consultative Services achieved this goal by approving two new companies for SHARP.

Goal 3.1: Ensure effective service by maintaining average report turnaround time within the following targets: Less than 35 days (Safety Compliance); Less than 55 days (Health Compliance); Less than 20 days (Consultation); and Less than 25 days (Public Sector Compliance).

In FY 2013, TOSHA achieved this goal with the following lapse time results.

Program	Goal (Days)	Average Turnaround in FY 2013 (Days)
Safety Compliance	35	27.6
Health Compliance	55	44.3
On-site Consultation	20	14.6
Public Sector Compliance	25	14.4

Goal 3.2: Ensure effective service by responding to complaints within the negotiated times frames, less than 15 days (inspections), and less 5 days (inquiries).

In FY 2013, TOSHA achieved this goal with the following response time results.

Activity	Goal (Days)	Average Days in FY 2013
Compliance Inspections	15	6.3

Inquiries	5	2.8
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Goal 3.3: Ensure effective service by meeting discrimination case file turnaround time of 90 days for at least 75% of cases.

In FY 2013, TOSHA did not achieve this goal.

Discrimination Cases	Goal (75%)	Closed within 90 Days
65	71%	46

Goal 3.4: Ensure effective service by requiring at least 90% of staff to attend professional development training.

In FY 2013, TOSHA achieved this goal with the following results.

Number of Professional Staff	Goal (90%)	Number that Attended Training
61	98%	60

V. Other Special Measures of Effectiveness and Areas of Note

None observed.

Appendix A – New and Continued Findings and Recommendations
FY 2013 Tennessee State Plan Comprehensive FAME Report

Rec #	Finding	Recommendation	FY 2012

There were no new findings in FY 2013.

Appendix B – Observations Subject to Continued Monitoring
FY 2013 Tennessee State Plan Comprehensive FAME Report

OB-#	Observation	Federal Monitoring Plan	FY 2012
OB-1	Tennessee’s procedures for determining the classification of violations are the same as those of OSHA; however, TOSHA classifies a lower percentage of safety violations 54.8% and health 46.9% as serious.	The OSHA Area Office will continue to effectively monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2014.	
OB-2	In many case files, documentation of actual employer knowledge was lacking. Compliance officers are establishing and documenting constructive (With the exercise of reasonable diligence the employer should have known) rather than actual knowledge in the knowledge section of the 1B worksheet.	The OSHA Area Office will continue to effectively monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2014.	
OB-3	In a significant number of cases, the frequency and duration related to employee exposure was generic, eight hours per day for five days a week, and did not agree with the information provided for the hazardous condition.	The OSHA Area Office will continue to effectively monitor the State Plan’s performance in this area during quarterly meetings throughout FY 2014.	

Appendix C - Status of FY 2012 Findings and Recommendations
FY 2013 Tennessee State Plan Comprehensive FAME Report

FY 12- Rec #	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status

There were no findings in FY 2012.

Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report
FY 2013 Tennessee State Plan Comprehensive FAME Report

OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to national averages (the collective experience of State Plans and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (collective experiences of State Plan and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

U.S. Department of Labor

Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)

State: Tennessee

FY 2013

SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	6.32	(Negotiated fixed number for each state) - 15	State data taken directly from SAMM report generated through IMIS.
2	Average number of work days to initiate complaint investigations	2.8	(Negotiated fixed number for each state) - 5	State data taken directly from SAMM report generated through IMIS.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100%	100%	State data taken directly from SAMM report generated through IMIS.
5	Number of denials where entry not obtained	0	0	State data taken directly from SAMM report generated through IMIS.
9a	Average number of violations per inspection with violations by violation type'	1.8	SWR: 2.04	State data taken directly from SAMM report generated through IMIS;

Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report
FY 2013 Tennessee State Plan Comprehensive FAME Report

9b	Average number of violations per inspection with violations by violation type	1.37	Other: .88	national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2011-2013.
11	Percent of total inspections in the public sector	31.89	(Negotiated fixed number for each state) - 32%	State data taken directly from SAMM report generated through IMIS.
13	Percent of 11c Investigations completed within 90 calendar days	53.66	100%	State data taken directly from SAMM report generated through IMIS.
14	Percent of 11c complaints that are meritorious	21.95	24.8% meritorious	State data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2011-2013.
16	Average number of calendar days to complete an 11c investigation	86.6	90 Days	State data taken directly from SAMM report generated through IMIS.
17	Planned vs. actual inspections - safety/health	1340/366	(Negotiated fixed number for each state) - 1500/397	State data taken directly from SAMM report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
18a	Average current serious penalty - 1 -25 Employees	a. 1043.16		State data taken directly from SAMM report generated through IMIS; national data is not available.
18b	Average current serious penalty - 26-100 Employees	b. 1281.03		
18c	Average current serious penalty - 101-250 Employees	c. 2253.69		
18d	Average current serious penalty - 251+ Employees	d. 2815.83		

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18e	Average current serious penalty - Total 1 - 250+ Employees	e. 1521.59		
19	Percent of enforcement presence	1.78%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
20a	20a) Percent In Compliance – Safety	Safety - 18.87	Safety - 29.1	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
20b	20b) Percent In Compliance – Health	Health - 25.39	Health - 34.1	
21	Percent of fatalities responded to in 1 work day	80%	100%	State data is manually pulled directly from IMIS for FY 2013
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
23a	Average Lapse Time - Safety	24.74	43.4	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY
23b	Average Lapse Time - Health	43.51	57.05	

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				2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
24	Percent penalty retained	91.65	66	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
25	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State data taken directly from SAMM report generated through IMIS.