

**FY 2015 Comprehensive
Federal Annual Monitoring and Evaluation (FAME) Report**

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



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I. Executive Summary

A. State Plan Activities, Trends, and Progress

The purpose of the Federal Annual Monitoring Evaluation (FAME) Report is to assess the State Plan's progress toward achieving their performance goals established in its Fiscal Year (FY) 2015 Strategic Plan and to review the effectiveness of programmatic areas related to enforcement activities, including a summary of the 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 six-person OSHA team was assembled to conduct the onsite evaluation in Nashville, Tennessee, during the timeframe of January 11 through January 15, 2016. 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 2013 case file reviews and the FY 2015 reviews showed that the State Plan is maintaining a high level of quality in the documentation of files. However, there are concerns regarding the classification of violations, specifically the percent of violations related to programmed inspections classified as serious and the percent of violations classified as serious, willful, or repeat for all inspections compared to federal data.

There are additional concerns regarding turnover and the impact it is having on the number of inspections being conducted by the State Plan. TOSHA conducted 1,503 workplace inspections during FY 2015, falling short of their goal of 1,721 (-218), which is 25 fewer than the total number of inspections conducted in FY 2014, and 208 fewer than FY 2013. TOSHA identified 6,303 hazards, resulting in penalties of \$2,029,000. This matter is discussed in further detail in Section II of the report.

No new findings or recommendations were identified during FY 2015, nor were there any findings and recommendations identified during FY 2014, as outlined in Appendix A. There were two new observations identified during this evaluation. Additionally, four of the five observations identified in the FY 2014 Follow-up FAME Report have been resolved. Therefore, only one observation has been continued into the FY 2015 FAME Report. An observation is an item that has not proven to impact the effectiveness of the State Plan's program, but which the Region wishes to continue to monitor. A detailed explanation of TOSHA's performance evaluation is found in this report.

B. State Plan Introduction

TOSHA was created by legislation in 1972, and became operational on July 5, 1973. The program operated as a dual-designee with the health functions housed in the Tennessee Department of Health and the safety functions in the Department of Labor until July 1977. At that time, the General Assembly enacted legislation to transfer the health functions to the Department of Labor. The Tennessee Occupational Safety and Health Administration

program was certified in May 1978, and received final 18(e) approval in July 22, 1985. The Tennessee State Plan covers all private and state and local government sector workers within the state, with the exception of railroad workers, federal workers, maritime workers (longshoring, shipbuilding, shipbreaking, and marine terminal operations), private contractors working at government-owned/contractor-operated facilities, Tennessee Valley Authority (TVA) workers and contractors operating on TVA sites, as well as U.S. Postal Service workers.

During the review period, the Commissioner for the Tennessee State Plan was Burns Phillips, the Deputy Commissioner was Dustin Swayne, and the Administrator was Steve Hawkins. Also, this report, which covers the time period of October 1, 2014, through September 30, 2015, was prepared under the direction of Kurt A. Petermeyer, Regional Administrator for Region IV, which is headquartered in Atlanta, Georgia.

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 worker 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 workers. The Training and Education Section assists employers, workers, 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. At the time of the onsite evaluation, there were a total of six safety and six health vacancies. The approved benchmark for TOSHA is 36 compliance safety and health officers (CSHOs), 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 2,653,392 people. There are approximately 140,890 employers in the state. The program services are administered through a central office in Nashville and seven field offices located strategically throughout the state in Knoxville, Memphis, Chattanooga, Kingsport, and Jackson, as well as two in Nashville.

Worker 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 Occupational Safety and Health Review Commission is a quasi-judicial body empowered to hear and rule on appeals regarding citations issued by the State Plan. The Occupational Safety and Health 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 workers. The Safety and Health Achievement and Recognition Program (SHARP) is administered through the Consultative Services Section.

C. Data and Methodology

This is OSHA's report on the operation and performance of the TOSHA program. It was compiled using information gained from the FY 2015 State Office Annual Report and OSHA Information System (OIS) reports, as well as the State Activity Mandated Measures (SAMM) Report for FY 2015.

During this evaluation, a total of 95 inspection case files, comprised of both safety and health, were randomly selected for review. Ten fatality inspection files were reviewed, and 46 complaint investigation (non-formal) and inspection files (formal) 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, employer reported referrals, and state and local government sector files. This was a small percentage of the 1,503 inspections conducted in FY 2015, but it 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 FAME Report was obtained from the reports stated above, the FY 2015 23(g) grant, discussions with State Plan staff, and the onsite review conducted in January 2016. During the onsite evaluation, 19 State Plan staff workers were interviewed, which included three safety and health supervisors, three program managers, the State and Local Government Sector Program manager, the training and education manager, the VPP manager, the consultation manager, the standards and procedures manager, the Assistant Administrator, the Administrator, and six CSHOs.

D. Findings and Observations

The FY 2014 Follow-up FAME Report contained no new findings and recommendations. During the FY 2015 evaluation period, there were no repeat or new findings or recommendations identified. Additionally, four of the five observations identified in the FY 2014 Follow-up FAME Report have been resolved. This report contains one observation continued from the FY 2014 Follow-up Report, as well as three new observations identified as a result of monitoring activities conducted during FY 2015.

II. Major New Issues

There were none observed.

III. Assessment of State Plan Performance

As previously stated, a total of 95 inspection case files were reviewed, which included 46 complaint investigations (non-formal) and inspection files (formal) and ten fatality investigation files. The others were a random selection of files from the following categories: referral; employer reported referrals; programmed general industry safety; programmed general industry health; and programmed construction.

TOSHA continues to maintain sufficient documentation based on the case files reviewed. 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 or issues. The violations contained all of the required information and supporting documentation for a prima fascia violation, including all of the required forms, photographs, diagrams, and other technical documentation. A few items regarding documentation that were identified during previous evaluations continue to exist; however, these items have never 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 coding.

TOSHA continues its outreach to employers and workers with brochures, online videos, and DVDs, and a robust training program, including free seminars. The state's latest injury and illness rate for private industry achieved an all-time low of 3.2 per 100 full-time workers in 2014, 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 2014 and continues a downward trend. The Bureau of Labor Statistics (BLS) compiles the injury and illness rate data. The state experienced a 20% increase in workplace fatalities for the first time in more than five years (2014 fatality rates are not currently available for Tennessee); however, the injury and illness rate decreased from 3.4 to 3.2. These reductions are due in part to appropriate goal setting, adequate resource allocation, and outcome-driven strategy development.

A. STATE PLAN ADMINISTRATION

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

1) Training

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

Newly-hired TOSHA compliance officers 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. Basic training is completed when the eight courses outlined in the directive are completed. The State Plan currently tracks worker training using a chart, which is referred to as the OTI Training Plan. The purpose of the OTI Training Plan is to document all formal training completed by compliance personnel. In addition to the OTI Training Plan, the State Plan 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 workers 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 workers. TOSHA workers are permitted to travel to training courses outside the state, and in FY 2015, Tennessee spent \$125,000 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 workers interested in obtaining their professional certifications are provided access to training materials. The state does not finance the worker's enrollment in preparation courses or the actual certification examination. However, if a worker successfully completes the certification examination, he or she is provided with a 5% increase in salary, which is equivalent to one step on the state pay scale.

TOSHA is currently developing a new training database, which will enable the State Plan to effectively track the training of all its personnel throughout their career. The new database will also allow the State Plan to compile several training-related reports. TOSHA should also be commended for the level of outreach training it effectively conducts throughout the state. TOSHA also coordinates special training, which is focused on topics, such as the revised recordkeeping reporting requirements.

The one training-related concern raised by the OSHA team involved the limited number of TOSHA staff members effectively trained in ergonomics. This issue has been documented in the FY 2015 FAME Report as an observation.

FY 2015-OB-01: The State Plan has several compliance officers trained in ergonomics; however, it has been a decade since all but one had the training. Only the one compliance officer is utilized for ergonomics inspections.

Federal Monitoring Plan: The OSHA Area Office will continue to effectively monitor TOSHA's staffing and turnover, as well as their CSHO training.

2) Funding

The FY 2010 21(d) Consultation Cooperative Agreement Number CS-19397-1075-F47 and 23(g) Grant Number SP-19427-1055-F47 were awarded to the Tennessee Department of Labor and Workforce Development on October 1, 2009.

FY 2010 21(d) Consultation Cooperative Agreement Number CS-19397-1075-F47:
During FY 2010, the total authorized award equaled \$1,011,112 (federal funds equaled \$910,000, and non-federal funds equaled \$101,112). For the quarter ending December 31, 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 \$910,000. Review of the 21(d) Consultation Program revealed the grantee expended 100% of authorized federal funds for the period ending December 31, 2010. There are no issues to report.

FY 2010 23(g) State Plan Grant SP-19427-1055-F47:
During 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 31, 2010, the Certified Federal Financial Report (Closeout) actual federal expenditures and system draw downs in the 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 31, 2010. There are no issues to report.

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

Additionally, during this review period, the TOSHA program operated without experiencing funding-related concerns, such as the inability to match the federal base level funding. Overall, the TOSHA program is well-funded and fully supported by the state government.

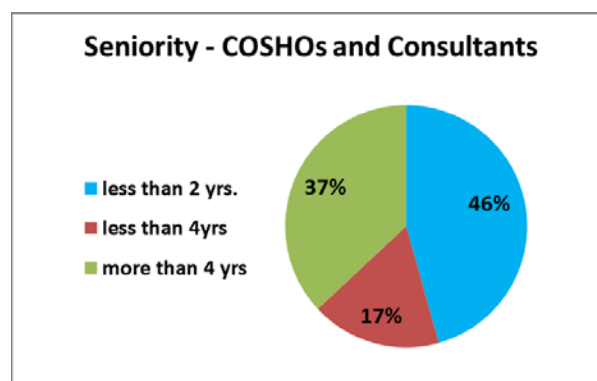
3) Staffing

Under the terms of the 1978 court order in *AFL-CIO v. Marshall*, compliance staffing levels (benchmarks) necessary for a “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 23 safety compliance officers and 15.3 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 2015, TOSHA operated at or above the staffing benchmark. There are currently six vacant safety compliance positions and six 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 its vacant safety and health compliance officer positions.

Areas of concern include the impact the attrition of senior staff is having on the State Plan's ability to meet their mission. This is evident in the reduction in the number of private sector inspections being conducted and the lack of CSHOs trained in specialty areas, such as ergonomics and process safety management (PSM). Currently, 63% of compliance officers and consultants have less than four years of experience, and 46% of compliance officers and consultants have less than two years of experience. It is acknowledged that vacancies have been aggressively filled. Analysis determined that there were a number of underlying reasons for the decline in the number of compliance inspections. These factors include:

- In the past few years, the State Plan has lost experienced and productive CSHOs due to retirements and the promotion of experienced staff members to fill the resulting vacancies. This resulted in the introduction of a large number of entry-level personnel.
- The State Plan also lost experienced and productive CSHOs as a result of TOSHA salaries for safety and health professionals not being competitive with other employers.
- Vacancies have been aggressively filled, and the new personnel are in training; however, less experienced CSHOs require more time to complete inspections, especially the more complicated investigations.



4) Information Management

TOSHA remains the only State Plan in Region IV which fully participated in the implementation of OIS. In fact, TOSHA's standards and procedures manager serves on the OIS State Plan Working Group with the OSHA National Office.

Tennessee has consistently used various OIS reports and other data for effective program management. This includes both mandated activity and activity goals and outcome goals included in the Strategic Plan. All supervisors, compliance managers, the Assistant Administrator, and the Administrator are familiar with standard OIS reports and use 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 OIS reports revealed that TOSHA 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 completed. 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 OIS 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 and 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.

5) 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. The intent of the procedure is to evaluate two Area Offices each fiscal year on an ongoing basis. TOSHA's standards and procedures manager serves as the lead auditor. The Nashville North and Nashville South Area Offices were evaluated during FY 2015, and since its implementation, all seven of the Area Offices have been evaluated. This document meets the criteria outlined in the State Plan Policies and Procedures Manual.

B. ENFORCEMENT

1) Complaints

TOSHA'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 672 complaints in FY 2015, and conducted 119 complaint inspections. According to the SAMM Report, TOSHA responds timely to complaints. Complaint investigations were initiated within an average of 0.60 days with a goal of 5 days, and complaint inspections were initiated within an average of 2.94 days with a goal of 15 days. A review of the OIS reports showed that during 2015, approximately 31.8% 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 Plan places a great deal of emphasis on customer service and ensuring that each complaint is given attention consistent with the complaint directive. Current workers are always provided the opportunity and encouraged to formalize their complaint.

Forty-six 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 22 complaint investigation files (those complaints handled by letter or TOSHA's phone, fax, and fix procedure) and 24 complaint inspection files. Several standard OIS reports of complaint activity were reviewed. TOSHA thoroughly evaluates all complaints to determine the appropriate course of action based on the seriousness of the alleged hazard, as well as information provided in the complaint. This allows them to investigate by phone and fax, enabling them to efficiently utilize their limited resources. Complaint files reviewed demonstrated that complaints are handled appropriately per the State Plan's policies and procedures.

A review of the complaint inspection files revealed that all allegations were thoroughly investigated, and response letters provided sufficient information to the complainants regarding each allegation. Letters were sent to complainants 97.8% of the time with the results of the inspection, and procedures for updating the OIS with complaint activity were being followed. Established procedures for tracking the status of complaints to ensure they are handled in a timely manner, were being followed consistently per the FOM. Abatement documentation was adequate, complaint responses were tracked to ensure corrective action was completed, and workers were protected from unsafe and unhealthful working conditions. It was determined that policies and procedures were followed during these inspections.

2) Fatalities

TOSHA investigated 30 fatalities and three catastrophes in FY 2015. Fatalities increased from 24 in FY 2014 to 30 in FY 2015, an increase of 25% from FY 2014. The number of workplace fatalities in FY 2013 was 27. There were 20 general industry deaths in FY 15, which was an increase from 18 in FY 14. There were six construction deaths in FY 15, which was an increase from five in FY 2014. There were four other fatalities experienced in the state; one in agriculture and three in the state and local government sector. State and local government sector fatalities increased by two from FY 2014 to FY 2015. Investigations are normally initiated within one day of notification of the fatality. The leading cause of the work-related fatalities in FY 2015 was falls, with 12 fatalities attributed to this hazard. Ten workers died from falls from elevations while the other two were slips and falls on the same

level. Nine workers died after being struck by equipment or other objects, and seven workers died after being caught in between equipment and objects. There was one electrocution and one worker who died from injuries sustained from a gas explosion. The three catastrophes were a result of workers being hospitalized after being over-exposed to carbon monoxide and other hazardous chemicals. In FY 2015, services and construction were the two leading industries for fatal accidents, with ten in the service industry and six in construction. There were five fatalities in manufacturing, a decrease from nine in FY 2014. Retail trade experienced one fatal accident. There were two fatalities in the transportation and public utility industry.

TOSHA’s procedures for investigation of occupational fatalities are essentially the same as those of OSHA and are designed to ensure the quality of fatality investigations. It is agency policy to conduct accident and fatality investigations as soon as possible and generally within one day of receiving notice of the incident. A supervisor works closely with the CSHO when the case file is being prepared to ensure 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 ensure 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	FY 2014	FY 2015
Total Fatalities	29	28	27	24	30
Construction	9	9	10	5	6
General Industry	17	16	12	18	20
Agriculture	0	1	3	0	1
State and Local Government Sector	3	2	2	1	3

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 Offices were sent the OSHA-36 form in a timely manner. Case files contained police and coroner’s reports. TOSHA has a longstanding procedure for communication with family members of deceased workers. In 10 of 10 (100%) files, the required initial and final next-of-kin (NOK) letters were sent. According to the State Plan’s procedures, a letter is sent by the TOSHA Administrator notifying each victim’s family that an investigation is underway and providing the family with contact information for the area supervisor overseeing the investigation. Follow-up letters are sent to the victim’s family as the investigation, citation, and contest processes progress. The TOSHA Administrator sends the NOK a letter informing them of the results of the investigation and a copy of any citation(s) issued. Additionally, the NOK is notified of informal conferences and hearings, as well as any changes in the citations as a result of a settlement or hearing. Copies of the NOK letters are maintained in the file. In 90% 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.

3) Targeting and Programmed Inspections

According to inspection statistics run for this report, TOSHA conducted 1,503 inspections in FY 2015, 997 of which were programmed. This includes 216 of the 270 inspections conducted in the construction sector. According to the OIS data, 83.9% of programmed safety inspections and 95.6% of programmed health inspections had violations. Also, 63.9% of safety inspections and 66.3% of health inspections had serious, willful, repeat, and unclassified violations. Additional data indicates that an average of 3.3 violations were cited per inspection and that 34.7% of safety violations and 42.3% of health violations were classified as serious, repeat, and willful compared to the national average of 66.7% for safety and 49.7% for health.

A review of the BLS data over the last five years reveals a decline in the days away, restricted, transferred (DART) rate and the total case incident rate (TCIR).

Year	DART		TCIR	
	TOSHA Private	U.S. Private	TOSHA Private	U.S. Private
2014	1.6	1.7	3.2	3.2
2013	1.6	1.7	3.3	3.3
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

The 2014 TCIR for all industries (private and state and local government sector) in Tennessee is 3.3 and is slightly lower than the national average of 3.4. The 2014 TCIR for private industries in Tennessee is 3.2 and is identical to the national average of 3.2.

TOSHA has 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 NAICS codes. These NAICS codes are run through a database to create the list of sites for inspection. The State Plan has an additional targeting system to address amputation hazards that uses workers’ compensation data to identify employers who have experienced accidents involving amputations. The State Plan uses the Dodge System, as well as Emphasis Programs, to target and address hazards in the construction industry.

TOSHA continues to utilize a variety of Special Emphasis Programs (SEPs), some of which are associated with their strategic goals, and some of which are National Emphasis Programs (NEPs). TOSHA maintained the following Local Emphasis Programs (LEPs): Trenching and Excavation, Carbon Monoxide, Workplace Noise, and Fall Protection. They also

participated in the following NEPs: Amputations, Hexavalent Chromium, Petroleum Refinery PSM, Combustible Dust, Isocyanates, Nursing and Residential Care Facilities (this program expired April 5, 2015), and Lead.

Of the 270 construction inspections conducted, 216 were programmed inspections, primarily under their SEPs for Fall Hazards and Trenching and Excavation, as well as the Dodge System. These were associated with their strategic goal to reduce construction fatalities caused by falls each year and to reduce the DART rate in the construction industry each year. Many programmed construction inspections are partial in scope due to the LEPs for construction activities. In FY 2015, TOSHA identified 541 fall hazards in construction, impacting 241 companies.

The following tables outline the total number of violations for programmed activity, as well as, the in-compliance rate and the percentage of serious, willful, and repeat violations for construction and general industry.

General Industry Programmed Inspections	TOSHA
Average Number of Violations per Inspection	3.5
In-Compliance Rate	26.9%
% Violations Classified as Serious, Repeat, and Willful	53.3

Construction Programmed Inspections	TOSHA
Average Number of Violations per Inspection	2.7
In-Compliance Rate	18.5%
% Violations Classified as Serious, Repeat, and Willful	73.4%

FY 2015-OB-02: Only 34.7% (66.7% - national) of safety violations and 42.3% (49.7% – national) of health violations for programmed inspections were classified as serious, repeat, and willful.

Federal Monitoring Plan: The OSHA Area Office will continue to effectively monitor TOSHA’s procedures for determining the classification of serious, repeat, and willful violations associated with programmed inspections.

4) Citations and Penalties

In FY 2015, OIS data provided that the 1,503 inspections conducted resulted in an average of 3.5 violations per non-in-compliance inspection, including 1.6 serious violations per non-in-compliance safety inspection and 3.7 serious violations per non-in-compliance health inspection, with 68.1% of the safety violations and 66.1% of the health violations classified as serious. Even though this is an improvement, this remains 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 ensure violations are properly classified. Proper classification has been and 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.

TOSHA’s average current penalty per serious violation in private sector (SAMM 8: 1-250+ workers) was \$1,444.32 in FY 2015. The further review level (FRL) is +/-25% of the national average (\$2,002.86), which equals \$1,502.14. Penalty levels are at the core of effective enforcement, and State Plans are, therefore, required to adopt penalty policies and procedures that are “at least as effective” (ALAE) as those contained in the FOM, which was revised on October 1, 2015, to include changes to the penalty structure in Chapter 6 – Penalty and Debt Collection.

Note that with the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA is now required to raise its maximum penalties in 2016 and to increase according to the consumer price index each year thereafter. State Plans are required to follow suit. As a result of this increase in maximum penalties, OSHA will be revising its penalty adjustment factors in Chapter 6 of the FOM. Following completion of the FOM revision and after State Plans have the opportunity to adopt the required changes in a timely manner, OSHA will be moving forward with conducting ALAE analysis of State Plan penalty structures, to include evaluation of average current penalty per serious violation data.

TOSHA routinely places an emphasis on keeping citation lapse times low. The average citation lapse times for safety and health are well below those for OSHA. According to the SAMM Report, in FY 2015, the average lapse time in days from opening conference to citation issuance is identified below:

Average Lapse Time	TOSHA	National Average (1 year)
Safety	24.8	42.8
Health	33.8	53.5
Total Average	27.0	44.0

TOSHA has a performance goal to ensure effective service by maintaining average report turnaround time, or lapse times, within the following targets: less than 35 days for safety compliance and less than 55 days for health compliance.

Ninety-five case files reviewed included adequate documentation overall to support the violations with minor exceptions. As with previous FAME evaluations, knowledge was lacking in many of the case files reviewed. Compliance officers are establishing and documenting constructive knowledge (with the exercise of reasonable diligence the employer should have known) rather than actual knowledge in the knowledge section of the Violation Worksheet Form. However, in many of the files, actual knowledge was evident in hazard descriptions or other areas of the Violation Worksheet Form and/or narrative. This has not proven to have a negative impact in supporting the violations. As a matter of fact, the state’s attorney has never had an issue defending a citation as a result of lack of knowledge.

Significant case actions and correspondence, both 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. The use of the case diary has improved; however, they were used very minimally by some of the compliance officers, supervisors, and program managers. It has been a long-standing practice to not include inspection field notes in the inspection files. The field notes are destroyed at the instruction of the state's attorney when the compliance officer completes the Violation Worksheet Form. It has been and remains the state's contention that information contained in the field notes are transferred to the Violation Worksheet Form, and the notes are no longer necessary at that point. In addition, the state's attorney feels certain information could have a negative impact, and the state's attorney can better defend the case if field notes are not included in the file. Field notes will be included if the TOSHA attorney determines it is in the best interest to include them. This has never been challenged in litigation, nor has it negatively impacted the state's ability to defend a citation.

With the exception of fatality files, many of the case files reviewed did not contain witness or management statements. Interviews and photographs were referenced in the file, but there was no documentation, including field notes containing interview notes. Only photographs 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 photographs until the case becomes a final order. Narratives contained very detailed documentation supporting that the safety and health programs were reviewed, and there was justification for actions related to good faith reductions. In a few cases, the frequency and duration related to worker exposure was generic (e.g. eight hours per day for five days a week) and did not agree with the information provided for the hazardous condition. Managers and supervisors have placed emphasis on accurate frequency and duration documentation and continue to monitor it during case file reviews. This issue does not appear to negatively impact the effectiveness of the State Plan's program. Photographs supporting the violations are placed in the files, and all inspection photographs 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.

In FY 2015, TOSHA issued five willful violations and 42 repeat violations. All willful violations are reviewed by the Administrator, Assistant Administrator and the state's attorney prior to issuance. According to OIS data, TOSHA's percent serious/willful/repeat/unclassified was 40.6% in FY 2015, compared to OSHA's percent serious/willful/repeat/unclassified at 77.0%. The average penalty issued and received for the willful violations is \$14,200, compared to an average penalty of \$39,385 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 and Other-Than-Serious		
	TOSHA	OSHA
Serious (only)	39.5%	69.9%
OTS	59.4%	22.4%

In FY 2015, the average current penalty per serious, repeat, and willful violations for private sector inspections was as follows:

Classification	TOSHA	OSHA	% Difference
Willful	\$ 14,200.00	\$39,385.00	63.9%
Repeat	\$ 2,435.19	\$6,597.00	63.1%
Serious	\$ 1,444.25	\$1,969.00	26.6%

In FY 2015, TOSHA’s penalty calculation procedures continue to differ from OSHA in several aspects. 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 Plan implemented procedures that include a probability and severity quotient (formula). Probability is determined by averaging the number of workers 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 workers)	< 25 = 60% 26-100 = 40 % 101-250 = 20% >250 = 0%	< 25 = 60% 26-100 = 40% 101-250 = 20% >250 = 0%
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

FY 2015-OB-03 (formerly FY 2014-OB-01 and FY 2013-OB-01): TOSHA’s procedures for determining the classification of violations are the same as those of OSHA; however, TOSHA classifies a lower percentage of safety violations [36.7% (62.2% - national)] and health violations [46.3% (53.3% - national)] as serious.

Federal Monitoring Plan: The OSHA Area Office will continue to effectively monitor TOSHA's performance in this area to ensure that all safety and health violations are properly classified.

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 OIS reports weekly to track the status of abatement.

The case files reviewed contained written documentation, photographs, work orders, or employer's certification of abatement. Petitions for Modification 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 2015, 0.93% of inspections conducted were follow-ups compared to OSHA at 3.1%.

6) Worker and Union Involvement

TOSHA's procedures for worker and union involvement are identical to those of OSHA. Case files reviewed disclosed that workers were included during fatality investigations and other inspections, as well as informal conferences. Ninety-nine percent of TOSHA's initial inspections were conducted with worker walk around representation or worker interviews. Unions are provided with correspondence regarding complaints and fatalities and copies of citations.

C. 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. As a result of informal conferences, the penalty retention rate was 90%. Supervisors are required to prepare an informal conference memorandum explaining the informal conference and justifying any penalty reduction that is provided following an informal conference. The memorandum 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.

2) Formal Review of Citations

In FY 2015, 25 citations were contested, and 29 were resolved before the Tennessee Occupational Safety and Health Review Commission. The Tennessee Occupational Safety and Health Review Commission holds hearings and issues decisions on contested citations. The three members of the Review Commission are appointed to the part-time positions by the governor and generally serve a three-year term. The Tennessee Department of Labor and Workforce Development implemented steps to reduce the lapse time between receipt of contest and first-level decision. A staff attorney and paralegal assigned to the office provide 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 fatality inspections and other high profile inspections. Compliance staff 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. According to TOSHA, for violations that were contested, 1.6% were vacated, 1% were reclassified, and 90% of penalties were retained. No negative trends or problems with citation documentation have been identified.

D. STANDARDS AND FEDERAL PROGRAM CHANGES (FPC) ADOPTION

1) Standards Adoption

In accordance with 29 CFR 1902, State Plans are required to adopt standards and FPCs within a six-month timeframe. State Plans that do not adopt identical standards and procedures must establish requirements that are "at least as effective as" the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards.

The State Plan’s adoption process for standards and directives starts with the development of a draft document by the standard manager. The draft document is then submitted to the Commissioner, the TOSHA Administrator, and the TOSHA Counsel for review. Following review by the Tennessee Department of Workforce Development, the draft document is submitted to the Office of the Tennessee Attorney General for review, followed by the Tennessee Secretary of State. Once the document clears these series of reviews, it is submitted to the Government Operations Committee, which consists of members from both chambers of the Tennessee legislature. This group votes the draft document up or down. If approved, the document is assigned an effective date.

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	Adopted	Date
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	Date	Identical	Promulgated
Final Rule for Confined Spaces in Construction	05/04/2015	Yes	07/01/2015
Cranes and Derricks in Construction - Operator Certification Final Rule	09/26/2014	Yes	11/10/2014
Occupational Injury and Illness Recording and Reporting Requirements NAICS Update and Reporting Revisions	09/18/2014	Yes	02/24/2014
Final Rule for Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment	04/11/2014	Yes	01/01/2014

2) OSHA/State Plan-Initiated Changes

During this period, TOSHA adopted all of the federal directives or “at least as effective as” procedures which required action in a timely manner. Directives not implemented by the State Plan addressed maritime and the OSHA Partnership Program and did not impact TOSHA. 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	Adoption Date
Whistleblower Investigations Manual, CPL 02-03-005	04/21/2015	Yes	06/15/2015
Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis, CPL 02-02-078	06/30/2015	Yes	08/15/2015
Inspection Procedures for the Hazard Communication Standard (HCS 2012), CPL 02-02-079	07/09/2015	Yes	08/15/2015
REVISION - National Emphasis Program – Primary Metal Industries	10/20/2014	Yes	11/15/2014
Compliance Directive for the Cranes and Derricks in Construction Standard	10/17/2014	Yes	11/15/2014
Mandatory Training Program for OSHA Compliance Personnel	7/21/2014	No	10/01/2014
Inspection Procedures for Accessing Communication Towers by Hoist	7/17/2014	Yes	08/17/2014
Inspection Procedures for the Respiratory Protection Standard	6/26/2014	Yes	08/17/2014
Shipyard Employment Tool Bag Directive, CPL 02-00-157	02//6/2014	No	N/A
Site-Specific Targeting 2014 (SST-14)	02/02/2014	Yes	03/31/2014
OSHA Strategic Partnership Program for Worker Safety and Health	11/06/2013	No	N/A

Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification	09/30/2013	No	N/A
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E. VARIANCES

TOSHA 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 2015.

F. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

In the early 1970's, state and local government sector employers in Tennessee were given the option of complying with the State and Local Government Sector Program or submitting to traditional enforcement. The majority of the state and local government sector operations selected the State and Local Government Sector Program option, which is very similar to OSHA's handling of federal agencies. However, a few state and local government sector employers expressed a preference for traditional enforcement. The Tennessee State and Local Government 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 state and local government 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 527 state and local government sector inspections in FY 2015, which accounted for 35.3% of all inspections. The average citation lapse time for state and local government sector enforcement files is 21 days, which is slightly above the performance goal of 20 days. The 2014 TCIR for the state and local government sector in Tennessee is 4.1, lower than the national average of 5.0.

State and Local Government Sector Programmed Inspections	TOSHA
Average Number of Violations/Inspection	2.3
In-Compliance Rate	35.9%

% Violations Classified as Serious, Repeat, and Willful	95.2%
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G. WORKPLACE RETALIATION PROGRAM

TOSHA is responsible for enforcing the 11(c) discrimination provisions under the State Act. This act prohibits discrimination against workers 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.

TOSHA’s procedures for handling safety and health discrimination cases are very similar to those of OSHA. The Whistleblower Investigation Manual is used 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 without further investigation.

The following table shows TOSHA performance in this area based on the SAMM Report, which uses cases closed during the fiscal year.

Meritorious Complaints		Merit Cases Settled	
FY 2015	12.6%	FY 2015	100%
FY 2014	13.6%	FY 2014	82%
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	0	0
Dismissed Non-Merit	21	26.5
Dismissed, Lack of Cooperation	24	30.3
Settlement	10	12.6
Withdrawal	8	10.1
Untimely Filed	7	8.8
Screened and Closed, Lack of Jurisdiction	9	11.3

During FY 2015, TOSHA received 79 complaints, compared to 60 complaints in FY 2013. Of the complaints received, 63 were docketed. This included all complaints except those

deemed untimely, without jurisdiction, or screened/closed. According to the SAMM Report, 18% of the investigations were completed timely, that is, completed within ninety days, compared to 53.66% in FY 2013. The average lapse time for discrimination cases was 128 days. TOSHA has continued to successfully work on improving their completion rate of discrimination investigations.

A review of 21 files established that the case files are organized in a logical sequence and comport with the applicable policies. The use of a case tracking system to document incoming complaints and record final determinations is similar to that utilized by OSHA. It appears that the investigators have a working knowledge of the investigative process and the pertinent evidentiary burdens that are applicable to a discrimination allegation. Investigative findings are accurately documented in the case files and support the findings. All complaints appeared to have been investigated at least as thoroughly as OSHA would have investigated. It is suggested that certain standardized forms be implemented, to include a Designation of Representative Form and a Release of Medical Information Form and that sensitive information contained in the case file be clearly marked to avoid inadvertent disclosure. 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.

H. COMPLAINTS ABOUT STATE PROGRAM ADMINISTRATION (CASPA's)

During this review period, there was one CASPA filed regarding the State Plan. This matter was fully investigated by OSHA with TOSHA's cooperation. The CASPA did not result in findings or recommendations regarding the state program; however, it remains open pending the concurrence of the OSHA National Office.

I. 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 37 participating worksites. During FY 2015, two new sites were evaluated for participation in the Volunteer Star Program. However, during this same period, a total of three worksites also withdrew from the program. The program is similar to the federal Voluntary Protection Program (VPP). However, TOSHA limits participation to the Star level while the OSHA VPP also includes Merit and Demonstration levels. TOSHA continues to effectively manage the growth of its program by primarily limiting participation to employers in the manufacturing NAICS 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. During this review period, none of the state's VPP sites experienced a fatal accident.

Overall, TOSHA continues to operate the Volunteer Star Program in a manner consistent with the VPP Policy Improvement Memorandums issued by OSHA. For example, concerns regarding the employer's incentive program are fully assessed during onsite evaluations conducted by TOSHA and documented on the Volunteer Star Program Site Worksheet.

J. STATE AND LOCAL GOVERNMENT SECTOR ON-SITE CONSULTATION PROGRAM

As previously mentioned, TOSHA operates a State and Local Government Sector Program, which enforces workplace safety and health among the majority of state and local government sector employers. The State and Local Government Sector Program also extends on-site consultative support to employers in the state and local government sector. During this review period, two on-site consultative visits were requested by state and local government sector employers. During FY 2015, no hazards were identified during either consultative visit.

Since the last comprehensive FAME visit, TOSHA's State and Local Government Sector Program has developed and implemented a tracking tool which monitors inspection status and hazard abatement, as well as lapse time. Additionally, Tennessee Code Annotated requires that local governments and state agencies covered by TOSHA's State and Local Government Sector Program develop and provide TOSHA with its written program of compliance.

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

During FY 2015, TOSHA completed the fourth year of its Five-Year Strategic Performance Plan. In general, these goals address the effective elimination and control of hazards in several industries, such as construction, healthcare, metal working, and others. TOSHA continues to demonstrate a high degree of success accomplishing its targeted goals. In FY 2015, TOSHA accomplished 12 of its 15 performance goals. Details regarding the State Plan's performance in this area are provided in this section.

Goal 1.1: Eliminate 6,000 serious violations or hazards in workplaces where interventions take place.

The table below illustrates the State Plan's performance in this area. Through a combination of compliance inspections and consultation visits, the State Plan established a goal to effectively eliminate over 6,000 serious workplace hazards. During this review period, the State Plan achieved this goal. According to the table below, TOSHA identified 3,222 serious hazards during compliance inspections and 2,946 serious hazards during consultation visits, which resulted in the identification of 6,168 total serious hazards. These figures compare favorably to the 6,466 serious violations and hazards identified by TOSHA in FY 2014.

	Compliance	Consultation	Total
Inspections and Visits	1,501	463	1,964
Serious Violations and Hazards	3,222	2,946	6,168
Non-Serious Violations and Hazards	1,827	255	2,082
Repeated Violations	48	N/A	48
Willful Violations	0	N/A	0
Regulatory Hazards	N/A	393	393
Total Violations and Hazards	6,535	4,057	10,655

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

Carbon monoxide (CO) levels have been documented and reduced through elimination and engineering controls. TOSHA has a SEP for Worker Exposure to CO (CPL-TN-04-00-001 – effective date 09/16/1999). 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 2015, the Compliance and Consultation Sections documented the elimination of CO hazards, impacting 11 employers and resulting in the reduced exposure of 1,072 workers; these figures compare well to the 22 employers and 975 workers identified in FY 2014.

Goal 1.3: Reduce noise exposure to 400 workers through facilitating improvements in hearing conservation programs.

This goal addresses the elimination of noise hazards in Tennessee workplaces, and it was effectively achieved by the State Plan. As illustrated in the table below, noise levels were documented as reduced through improvements in hearing conservation programs in 13 workplaces, impacting a total of 673 workers.

Fiscal Year	Companies	Workers
2014	20	542
2015	13	673

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

TOSHA achieved this goal in FY 2015. However, significantly reducing falls on a consistent basis has proven to be elusive for Tennessee. During this review period, the state experienced 10 fatalities, compared with four in FY 2014 and six in FY 2013, respectively. TOSHA is currently working to reduce falls through a combination of enforcement activities and outreach efforts. An example of the latter includes Tennessee’s participation in OSHA’s National Fall Prevention Campaign and its related stand-down event.

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

During this review period, TOSHA continued to follow its SEP 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 achieved this goal in FY 2015, since the number of total amputations was 185 compared to the 352 in the baseline year of 2007.

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

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 2015, reaching a total of 4,468 workers, compared with 4,278 workers in FY 2014.

Hospital and Surgical Center Violations			
	Inspections or Visits	Violations or Hazards	Workers
Compliance	73	364	4,084
Consultation	105	321	384
TOTAL	178	685	4,468

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

TOSHA continues to conduct a significant number of occupational safety and health training sessions for employers, as well as workers. During this review period, TOSHA personnel performed 349 formal training sessions, compared to 283 in FY 2014. In FY 2015, these training sessions reached 11,880 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 |
| State and Local Government | Safer Needle Devices |
| Sector Update | Train the Trainer |
| TOSHA Overviews | Walking and Working Surfaces |
| Trenching | |

Goal 2.2.1: Intervene and assist in the improvement of 850 occupational safety and health programs.

TOSHA once again achieved this goal by improving over 888 occupational safety and health programs through consultation program assistance, as well as compliance inspections. These program assistance visits provide the companies with evaluations of their safety and health programs and provide recommendations on how those companies can improve their programs.

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

This goal was established in FY 2013. During this review period, the goal was achieved by the State Plan in one of the three areas, which was consultation. TOSHA performed 956 private sector compliance inspections, 527 state and local government sector inspections, and 462 consultative visits.

Goal 2.3: Evaluate two applications in the VPP (Volunteer Star).

During this review period, TOSHA accomplished this goal. However, in FY 2014, TOSHA did not achieve this goal, which required the approval of three new VPP sites. In FY 2015, TOSHA achieved the revised goal by approving two new companies for participation in the Volunteer Star Program.

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

During this review 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 an average report turnaround time within the following targets: less than 35 days for safety compliance; less than 55 days for health compliance; less than 20 days for consultation; and less than 25 days for state and local government sector compliance.

TOSHA’s performance in this area was commendable; however, this goal was not accomplished. A detailed review of TOSHA’s performance regarding lapse time is provided in the following table.

Program	Goal (Days)	Average Turnaround in FY 2015 (Days)
Safety Compliance	35	37.8
Health Compliance	55	45.6
On-site Consultation	25	13.5
State and Local Government Sector Compliance	20	19.8

Goal 3.2: Ensure effective service by responding to complaints within the negotiated timeframes: less than 15 days for inspections and less five days for inquiries.

In FY 2015, TOSHA achieved this goal with the following response time results.

Activity	Goal (Days)	Average Days in FY 2015
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Compliance Inspections	15	2.93
Inquiries	5	0.6

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

In FY 2015, TOSHA did not achieve this goal.

Discrimination Cases	Goal (75%)	Closed Within 90 Days
98	58%	57

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

In FY 2015, TOSHA achieved this goal with the following results.

Number of Professional Staff	Goal (90%)	Number that Attended Training
63	100%	63

V. Other Special Measures of Effectiveness and Areas of Note

There were none observed.

Appendix A – New and Continued Findings and Recommendations
FY 2015 Tennessee Comprehensive FAME Report

FY 20XX-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
	NONE		

Appendix B – Observations Subject to New and Continued Monitoring

FY 2015 Tennessee Comprehensive FAME Report

Observation # FY 20XX- OB-#	Observation# FY 20XX-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2015-OB-01		The State Plan has several compliance officers trained in ergonomics; however, it has been a decade since all but one had the training. Only the one compliance officer is utilized for ergonomics inspections.	The OSHA Area Office will continue to effectively monitor TOSHA's staffing and turnover, as well as their CSHO training.	New
FY 2015-OB-02		Only 34.7% (66.7% - national) of safety violations and 42.3% (49.7% - national) of health violations for programmed inspections were classified as serious, repeat, and willful.	The OSHA Area Office will continue to effectively monitor TOSHA's procedures for determining the classification of serious, repeat, and willful violations associated with programmed inspections.	New
FY 2015-OB-03	FY 2014-OB-01 FY 2013-OB-01	TOSHA's procedures for determining the classification of violations are the same as those of OSHA; however, TOSHA classifies a lower percentage of safety violations [36.7% (62.2% - national)] and health violations [46.3% (53.3% - national)] as serious.	The OSHA Area Office will continue to effectively monitor TOSHA's performance in this area to ensure that all safety and health violations are properly classified.	Continued
FY 2014-OB-02	FY 2013-OB-02	The file contained case file diary sheets to document significant actions associated with that particular file; however, they were used very minimally by most compliance officers, supervisors, and program managers.		Closed
FY 2014-OB-03	FY 2013-OB-03	Field notes are destroyed at the instruction of the state's attorney when the compliance officer completes the violation form (1B Worksheet).		Closed
FY 2014-OB-04	FY 2013-OB-04	In many case files, knowledge was lacking. Compliance officers are establishing and documenting constructive knowledge (with the exercise of reasonable diligence that the employer should have known) rather than actual knowledge in the Knowledge Section of the 1B Worksheet.		Closed
FY 2014-OB-05	FY 2013-OB-05	In a significant number of cases, the frequency and duration related to worker exposure was generic, eight hours per day for five days a week, and did not agree with the information provided for the hazardous condition.		Closed

Appendix C - Status of FY 2014 Findings and Recommendations

FY 2015 Tennessee Comprehensive FAME Report

FY 20XX-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
	NONE				

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

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OSHA is in the final stages of moving operations from NCR, a legacy data system, to OIS, a modern data system. During FY 2015, OSHA case files and most State Plan case files were captured on OIS. However, some State Plan case files continued to be processed through NCR. The SAMM Report, which is native to IMIS, a system that generates reports from the NCR, is not able to access data in OIS. Additionally, certain algorithms within the two systems are not identical. These challenges impact OSHA's ability to combine the data. In addition, SAMMs 5, 8, 9, 11, 12, 15, and 17 have further review levels that should rely on a three-year national average. However, due to the transition to OIS, the further review levels for these SAMMs in this year's report will rely on a one-year national rate pulled only from OIS data. Future SAMM year-end reports for FY 2016 and FY 2017 should rely on a two-year national average and three-year national average, respectively. All of the State Plan and federal whistleblower data is captured directly in OSHA's WebIMIS System. See the Notes column below for further explanation on the calculation of each SAMM.

All of the Tennessee State Plan's enforcement data was captured in OIS during FY 2015. The Tennessee State Plan opened 1,479 enforcement inspections, and they were all captured in OIS.

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

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U.S. Department of Labor

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

State Plan: Tennessee – TOSHA			FY 2015	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	4.99	15	State Plan data is pulled from OIS. Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	2.94	N/A	State Plan data is pulled only from OIS. This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	1.67	5	State Plan data is pulled from OIS. Further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	.60	N/A	State Plan data is pulled only from OIS. This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.

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5	Average number of violations per inspection with violations by violation type	SWRU: 1.92	+/- 20% of SWRU: 1.92	State Plan data is pulled from OIS.
		Other: 1.30	+/- 20% of Other: .87	Further review level is based on a one-year national rate, pulled only from OIS.
6	Percent of total inspections in state and local government workplaces	35.29%	+/- 5% of 34.17%	State Plan data is pulled from OIS. Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
7	Planned v. actual inspections – safety/health	S: 1,131	+/- 5% of S: 1,369	State Plan data is pulled from OIS.
		H: 348	+/- 5% of H: 352	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,444.32	+/- 25% of \$2,002.86	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	a. Average current serious penalty in private sector (1-25 workers)	\$917.66	+/- 25% of \$1,402.49	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,333.09	+/- 25% of \$2,263.31	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	c. Average current serious penalty in private sector (101-250 workers)	\$1,881.64	+/- 25% of \$3,108.46	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.

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	d. Average current serious penalty in private sector (greater than 250 workers)	\$2,443.51	+/- 25% of \$3,796.75	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
9	Percent in compliance	S: 26.62%	+/- 20% of S: 28.47%	State Plan data is pulled from OIS.
		H: 23.10%	+/- 20% of H: 33.58%	Further review level is based on a one-year national rate, pulled only from OIS.
10	Percent of work-related fatalities responded to in one workday	90.32%	100%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
11	Average lapse time	S: 24.83	+/- 20% of S: 42.78	State Plan data is pulled from OIS.
		H: 33.83	+/- 20% of H: 53.48	Further review level is based on a one-year national rate, pulled only from OIS.
12	Percent penalty retained	90.00%	+/- 15% of 67.96%	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
13	Percent of initial inspections with worker walk around representation or worker interview	99.66%	100%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	18%	100%	State Plan data is pulled from WebIMIS. Further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	26%	+/- 20% of 24%	State Plan data is pulled from WebIMIS. Further review level is based on a three-year national average, pulled from WebIMIS.

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16	Average number of calendar days to complete an 11(c) investigation	128	90	State Plan data is pulled from WebIMIS. Further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.41%	+/- 25% of 1.35%	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.