

**FY 2017 Comprehensive  
Federal Annual Monitoring Evaluation (FAME) Report**

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



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## I. Executive Summary

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) 2017 Strategic Plan and to review the effectiveness of programmatic areas related to enforcement activities, including a summary of the on-site 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.

The State Plan has been very open and responsive to identified findings and recommendations through the years. They have worked diligently to implement recommendations and/or corrective actions to address any findings identified in the FAME reports. TOSHA reduced the number of findings and recommendations from nine in FY 2009 to three in FY 2011, which was the last year a finding and recommendation was identified in Tennessee. This is attributed to the commitment of the State's top leadership, managers and supervisors efforts to maintain a quality OSH program.

During FY 2017, TOSHA increased the number of inspections that were conducted by 117 and increased the number of hazards that were identified by 1,239. The 18% increase in the number of hazards identified was a significant accomplishment considering 58% of the State's compliance officers have less than four years of experience, and 25% have less than one year of experience. During FY2017 the pay structure for Tennessee OSHA compliance and consultation personnel was increased significantly in an attempt to curtail turnover.

In fact, the increase in the pay structure has already had a positive impact with regard to turnover and has brought the pay of the State's compliance officers closer to parity with the pay of federal compliance officers. This action was a big step towards stabilizing the State's workforce. It has also had a positive impact on the morale of the compliance staff.

The State Plan program administration is continuously working to improve program performance. TOSHA exceeded all but two of their performance goals. The State Plan did not meet the goal to evaluate two applications for participation in the Voluntary Protection Program (Volunteer STAR). Only one application was received and evaluated during FY 2017. The State did not meet the goal to evaluate two applications for the Safety and Health Achievement Recognition Program (SHARP). During FY 2017, TOSHA consultation services received one application which was evaluated for participation. However, it should be noted that the submission of applications is out of the State Plan's control.

There were no new findings or recommendations identified in the FY 2016 report. There were also no new observations identified during the FY 2016 evaluation period. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of previous findings with associated completed corrective actions.

## II. State Plan Background

### A. Background

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. This report covers the time period of October 1, 2016, through September 30, 2017, and it was prepared under the direction of Kurt A. Petermeyer, Regional Administrator for Region IV, 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 83.75 positions were funded under the 23(g) grant. At the time of the on-site evaluation, there were a total of 21 safety and 16 health compliance officers on staff, as well as four safety, one health, and two industrial hygiene (IH) supervisor vacancies. The approved benchmark for TOSHA is 22 are safety and 14 are health, which is a total of 36 compliance safety and health officers (CSHOs). These CHSOs are assigned to field offices, which are operated throughout the state.

The table below shows TOSHA's funding levels from FY 2013 through FY 2017.

FY 2012-2017 Funding History					
Fiscal Year	Federal Award (\$)	State Plan Match (\$)	100% State Funds (\$)	Total Funding (\$)	% of State Plan Contribution
2017	3,850,300	3,850,300	483,016	8,183,616	52.95
2016	3,850,300	3,850,300	483,014	8,183,614	52.95
2015	3,833,000	3,833,000	517,623	8,183,623	53.16
2014	3,833,000	3,883,000	517,615	8,183,615	53.77

<b>2013</b>	3,777,100	3,777,100	629,426	8,183,626	53.85
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[Reference: State Plan Grant]

TOSHA’s primary objective is to improve occupational safety and health in workplaces throughout the state. The worker population in Tennessee consists of approximately 2,820,198 people. There are approximately 150,237 employers in the state. The program services are administered through a central office in Nashville, and seven field offices are 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 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.

The Tennessee State Plan experienced several successes/highlights during FY 2017. The most significant involved the number of hazards that were identified. During this evaluation period, Tennessee OSHA performed 1,706 workplace inspections, as compared to 1,589 in FY 2016 [Reference: OIS Inspection Summary Report, 2017 and 2016 SOAR]. During these inspections, 6,749 hazards were identified, as compared to 5,110 hazards in FY 2016. This is an increase of more than 1,600 hazards that were identified (24.3%). [Reference: OIS Violation Detail Data Report] The total penalties assessed increased by more than \$425,000. [Reference: OIS Violation Detail Data Report]

Another highlight involved outreach and compliance assistance. TOSHA published a free quarterly newsletter, “Together with TOSHA,” distributed through TOSHA’s website, and listserv containing more than 1,325 registered users and maintained by the training and education office. The newsletter offers information, interpretations, best practices, and compliance recommendations on occupational safety and health topics. Topics covered in the newsletters in FY 2017 include the following:

- Reports on the Tennessee fatality rates and a review of “What Kills In Tennessee” along with prevention and hazard control;
- OSHA published documents for National Stand Downs, Silica, Beryllium, Zika, Recordkeeping, Permit-Required Confined Spaces for Construction, Heat Stress, Cold Stress, Tree Trimming, Storm Clean-up, Walking-Working Surfaces, Workplace Violence, Disaster Response, Aerial Lifts, ATVs, & Safety & Health Program Management;
- State VPP and SHARP participant updates, awards, and best practices;
- Recent TOSHA outreach efforts including Permit-Required Confined Spaces in Construction, Reporting of Fatalities, Amputations, In-patient Hospitalizations, and Loss of Eye, Walking-Working Surfaces, Silica in Construction & General Industry, Dentistry, Basic Safety, TOSHA’s Most Cited Standards for Construction & General Industry, and Hazard Communication & Globally Harmonized System; and

- Local safety and health education efforts in surrounding communities, including Safety Fest TN in Oak Ridge, Tennessee Valley Section AIHA annual fall conference, and the Tennessee Safety and Health Conference in Nashville, TN.

## **B. Major New Issues**

During this period, the State Plan transferred the two administrative positions from field offices to the TOSHA headquarters office, to establish a centralized administrative pool. Four of the administrative positions were then converted into compliance staff positions.

To increase employee recruitment and retention, the State raised employee salaries by 21.6 percent. This action has effectively halted the staff turnover, which was a major concern expressed in the FY 2015 FAME Report.

## **III. Assessment of State Plan Progress and Performance**

### **A. Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2017 is a comprehensive year, and as such, OSHA was required to conduct an on-site evaluation and case file review. A six-person OSHA team, which included a whistleblower investigator, was assembled to conduct a full on-site case file review. The case file review was conducted at the Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health, Tennessee State Plan office, during the timeframe of December 4 through December 8, 2017. A total of 140 safety, health, and whistleblower inspection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (Oct 1, 2016, through September 30, 2017). The selected population included the following:

- Twenty-six (26) fatality case files;
- Thirty-five (35) complaint case files;
- Thirty-five (35) programmed planned case files;
- Ten (10) referral case files (including employer reported referrals);
- Ten (10) un-programmed case files;
- Three (3) follow-up files;
- Five (5) No Inspection files; and
- Sixteen (16) closed whistleblower case files.

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the following:

- State Activity Mandated Measures Report (Appendix D);
- State Information Report;
- State OSHA Annual Report (Appendix E);
- State Plan Annual Performance Plan;
- State Plan Grant Application;
- Quarterly monitoring meetings between OSHA and the State Plan; and
- Comprehensive cases file review.

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (FRL), which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that fall outside the FRL trigger a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2017 State Activity Mandated Measures Report and includes the FRL for each measure.

## **A. Review of State Plan Performance**

### **1. PROGRAM ADMINISTRATION**

During the on-site 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.

#### **a) Training**

The State Plan continues to operate a training and education program, which is similar 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 (OTJ) training.

Newly-hired TOSHA compliance officers are immediately registered in LearningLink 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 personnel complete the OTI training courses, they are provided OTJ 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 personnel are permitted to travel to training courses outside the state, and in FY 2017, Tennessee spent \$158,891 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 personnel interested in obtaining their professional certifications are provided access to training materials. The state Plan 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's pay scale.

TOSHA has completed the development and implementation of its updated training database, which enables the State Plan to effectively track the training of all its personnel throughout their career. The updated 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. A total of 10,434 people were trained.

#### **b) OSHA Information System (OIS)**

TOSHA remains the only State Plan in Region IV, that uses OIS directly, rather than through an interface system. TOSHA continues to utilize various OIS reports, and other data for effective program management. This includes both mandated activity, activity goals, and outcome goals, as per 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 also, to 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 have been 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 Plan'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. The report is shared with the federal monitoring office in Nashville. The TOSHA Administrator is required by the Commissioner to report on the 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. Also, the Administrator is required to give a briefing to the Commissioner for all fatalities.

#### **c) State Internal Evaluation Program Report**

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 procedure evaluates two Area Offices each fiscal year on an ongoing basis. TOSHA’s standards and procedures manager serves as the lead auditor. The Knoxville and Nashville South Area Offices were evaluated during FY 2017, 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.

**d) 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 21 safety compliance officers and 16 health compliance officers. During most of FY 2017, TOSHA operated at or above the staffing benchmark. There are currently four vacant safety compliance positions and one vacant health compliance position. There are also two vacant health supervisor positions. During this period, the State Plan has worked aggressively to fill all vacant positions. Currently, 52% of compliance officers and consultants have less than two years of experience.



**2. ENFORCEMENT**

**a) 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 1,367 complaints in FY 2017, and conducted 416 complaint inspections. [Reference: OIS Inspection Summary

Report] The State Plan places a great deal of emphasis on customer service and ensures that each complaint is given attention consistent with the complaint directive.

According to the SAMM Report, TOSHA responds timely to complaints. Complaint investigations were initiated within an average of 1.22 days with a goal of five (5) days, and complaint inspections were initiated within an average of 6.15 days with a goal of 15 days. [Reference: SAMMs 1a, 2a] Both were within the established negotiated goal of 15 days for inspections and five days for investigations. Except for anonymous complaints, letters were sent to complainants 100% of the time with the results of the inspection. Case file reviews found that the reports sent to the complainants following the investigations were well-written, easy to understand, thorough, and consistent.

Thirty-five complaint investigations and inspections were reviewed to determine if they were processed per the FOM Chapter 9: Complaint and Referral Processing. This evaluation included reviews of 15 complaint investigations (phone and fax) files and 20 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 utilize their limited resources efficiently. Complaint files reviewed demonstrated that complaints are handled appropriately per the State Plan's policies and procedures.

The 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. 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 TOSHA policies and procedures were followed during these inspections.

The State Plan did not receive any denials of entry during this evaluation period. [Reference: SAMM 4]

## **b) Fatalities**

TOSHA's procedures for investigation of occupational fatalities are essentially the same as OSHA's, and are designed to ensure the quality of fatality investigations. TOSHA investigated 42 fatalities in FY 2017. Fatalities increased from 35 in FY 2016 to 42 in FY 2017, an increase of 17% from FY 2016. The number of workplace fatalities in FY 2015 was 30. In FY 17, there were 19 general industry deaths, 17 construction deaths, and six other fatalities experienced in the state; one in agriculture, and four in the state and local government sector.

TOSHA has a longstanding procedure for communication with family members of deceased workers. In 24 of 25 (96%) files reviewed [Reference: File Reviews and Manager Interviews], the required initial and final next-of-kin (NOK) letters were sent.

In the one file missing the initial NOK communication letter, the accident involved a police officer who died while on duty. He reported to a suspected suicide at the end of a boat ramp. The police officer drowned, after entering the river in full uniform. Initially, TOSHA believed this was not within their jurisdiction because the person was charged with a crime. The inspection was initiated to ensure that proper protocols were in place. TOSHA did not send an initial letter because they were uncertain if TOSHA had jurisdiction over the event that occurred in the line of duty, and during the commission of a crime. TOSHA determined that adequate procedures were in place and no citations were issued. 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.

There were no reported fatalities that were handled inappropriately. All work-related fatalities were investigated. The Program Managers and Administrators review all reported fatalities to assure the appropriate use of "no inspection" or "no jurisdiction," when a fatality falls outside their jurisdiction.

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 review of the fatality inspection files showed that the correct fatality inspection procedures were followed. Fatality inspections were opened timely, and the Regional and National Offices were sent the OSHA-36 form in a timely manner. The State Plan responded to 92.7% of the fatalities within one working day. [Reference: SAMMs 10]. However, there were three outliers which were explained. The first fatality investigation had a data entry error of 01-09-17 for the opening conference date on the Inspection report. The inspection was initiated with the employer by phone on 01-05-17, and the CSHO was physically present at the employer's worksite to initiate the investigation on 01-09-17. The second fatality investigation was initially reported as a hospitalization by the employer on 12/24/2016. The victim died on 12/28/16, and the investigation was initiated on 12/29/2016. The third fatality occurred on 2/2/2017, and the investigation was initiated on 2/8/2017. The initiation of an investigation was delayed while a determination was made as to whether or not this would be treated as a criminal act. The inspection was initiated to ensure that proper protocols were in place.

TOSHA uses all available resources, including the Bureau of Labor Statistics rates to assess trending and appropriate targeting of resources, as well as their statistics and trends to focus their targeting and resources to prevent workplace fatalities. TOSHA has maintained strategic goals related to reducing the number of exposures to carbon monoxide and falls in the workplace.

The established TOSHA procedure for fatality investigations: Field Operations Manual (FOM) Chapter 11 – II. Fatality and Catastrophe Investigations are designed to ensure the quality of the fatality investigations. 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 to ensure that the root cause of the accidents are identified, and a thorough investigation was completed. 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. Fatality case file reviews identified that the state exhibited a high level of professionalism by consistently responding to fatalities in a very timely manner. Files were well-organized, and inspections were handled efficiently. The cases reviewed demonstrated that the state conducted thorough investigations of workplace fatalities.

**c) Targeting and Programmed Inspection**

According to inspection statistics run for this report, TOSHA conducted 1,706 inspections in FY 2017, 1,003 of which were programmed. This includes 282 of the 391 inspections conducted in the construction sector. [Reference: OIS Inspection Summary Report]

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	
	TN Private	U.S.	TN Private	U.S.
2016	1.6	1.7	3.0	3.2
2015	1.6	1.7	3.2	3.3
2014	1.6	1.8	3.3	3.4
2013	1.7	1.8	3.4	3.5
2012	1.9	1.8	3.7	3.7

Tennessee OSHA has established annual performance goals that address hazards for targeted high hazard industries to leverage resources, where employees are at the greatest risk. These goals incorporate targeted inspections employing an inspection scheduling system, the DODGE inspection scheduling system, and local and national emphasis programs. Tennessee OSHA’s General Schedule Program uses data provided by OSHA’s National Office to 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 generate the list of sites for inspection. Due to the high injury rate in construction, TOSHA has focused inspections on these sites in an attempt to prevent injuries and illnesses. Trenching and excavation operations have continued to be targeted under the Special Emphasis Program (SEP). Fall hazards continued to be targeted under the National Emphasis Program (NEP) for falls. Workplaces with high noise were targeted to identify the efficacy of all elements of the hearing conservation program. Carbon monoxide exposures were evaluated on all compliance inspections. Amputations were targeted through the NEP for amputations. The State Plan maintained the following Local Emphasis Programs (LEPs): Carbon monoxide; Fall Protection; and Noise.

Additionally, the State participated in the following NEP's: Trenching and Excavation; Amputations; Hexavalent Chromium; PSM Covered Facilities; Primary Metal Industries; Combustible Dust; and Lead.

The FRL for percent in-compliance for safety inspections is +/- 20% of the two- year national average of 29.53% which equals an FRL range of 23.6% to 35.4%. The Tennessee State Plan's percent in-compliance for safety is 12.059%, which is substantially lower than the FR range, and is well below the national data, as well as the data of all state plan RIDs. The FRL for percent in-compliance for health inspections is +/- 20% of the two-year national average of 35.46% which equals an FRL range of 28.37% to 42.55%. The Tennessee State Plan's percent in-compliance for health is 27.63% which is slightly below the FRL, and is well below the national data, as well as the data of all state plan RIDs. [Reference SAMM 9]

The Tennessee State Plan's low in-compliance rates for both safety and health during this review period are attributed to two factors. These factors include the commitment of TOSHA's leadership to provide workers with a quality OSH program, as well as their strong emphasis on the identification of serious hazards.

The State Plan identified hazards, which led to the issuance of 3,231 violations during targeted programmed inspections. According to the OIS data, 89.2% of programmed safety inspections and 85.7% of programmed health inspections had violations. [Reference: Inspection Summary Report]

An average of 2.42 SWRU violations were cited per inspection. [Reference: SAMM 5 and Inspection Summary Report] Data supports that 89.2% of safety inspections, and 59.5% of health inspections had serious, willful, repeat, and unclassified violations. Additionally, 75.7% of safety violations, and 46.9% of health violations were classified as serious, repeat, and willful. [Reference: Inspection Summary Report]

Tennessee OSHA did not have any targeting or programmed inspections that resulted in a significant case with a penalty of \$180,000 or greater during this period.

#### **d) Citations and Penalties**

In FY 2017, OIS data provided that the 1,706 inspections conducted resulted in an average of 3.1 violations per non-in-compliance inspection, including 3.6 serious violations per non-in-compliance safety inspection and 2.5 serious violations per non-in-compliance health inspection, with 52.7% of the safety violations and 49.6% of the health violations classified as serious. [Reference: OIS Inspection Summary Report] This remains an area of focus for the State Plan. TOSHA management, including the area supervisors and section managers, review reports to ensure violations are properly classified. The proper classification has been and continues to be an area of emphasis. TOSHA's position is that they issue violations correctly and reclassify and vacate a significantly less number of violations than OSHA.

The 124 compliance case files that were 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 documenting constructive knowledge (with the exercise of reasonable diligence the employer should have known), rather than actual knowledge or providing an adequate explanation for the constructive knowledge in the Violation Worksheet. In many of the files, actual knowledge was evident in hazard descriptions or other areas of the Violation Worksheet and/or narrative. Even though this has not proven to have a negative impact in supporting the violations, the Tennessee Field Operations Manual (FOM) Chapter 4 –II. Serious Violations - C. Four Steps to be Documented – 4. Knowledge of Hazardous Condition - a. states, “CSHOs shall record any/all evidence that establishes employer knowledge of the condition or practice. CSHOs shall record any evidence that substantiates that the employer could have known of the hazardous condition.” The State’s attorney has never had an issue defending a citation as a result of lack of knowledge. The review of a general duty violation (1 of 1 files reviewed) identified that there is no documentation to support that all elements of the justification for the violation were documented in the violation worksheet. There was no documentation in the violation worksheet showing that (1) The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed; (2) The hazard was recognized; (3) The hazard was causing or was likely to cause death or serious physical harm; and (4) There was a feasible and useful method to correct the hazard. This issue was brought to the TOSHA management team’s attention. The Tennessee Field Operations Manual (FOM) Chapter 4, – III, General Duty Requirements - F. Procedures for Implementation of General Duty Clause Enforcement - 1. Gathering Evidence and Preparing the File – a. also states, “The evidence necessary to establish each element of a general duty violation shall be documented in the file. This includes all photographs, videotapes, sampling data, witness statements, and other documentary and physical evidence necessary to establish the violation.”

It has been a long-standing practice not to 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 the information contained in the field notes is transferred to the Violation Worksheet Form, and the notes are no longer necessary at that point. Also, the State’s attorney feels specific information may 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 Plan’s ability to defend a citation.

Except for some of the fatality files, 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. In some cases, the only evidence that employees were interviewed was through the documentation stating they were interviewed, and/or their names and addresses being in the case file. Additionally, the compliance officers did not take any written statements from any member of management. Written statements are critical to prove employer knowledge, support violations, identify potential willful violations, and assess the employer’s overall safety and health program. Actual knowledge was not established in many of the citations. In 20 of the 81 files reviewed, violations did not establish actual knowledge. The State’s Field Operations Manual - Chapter 3 Inspections Procedures –

VII. Walk-around Inspection – I. Interviews – 5. Conducting Employee Interviews – b. Interview Statements states, “Interview statements of employees or other persons shall be obtained whenever CSHOs determine that such statements would be useful in documenting potential violations.” Interviews shall normally be reduced to writing and written in the first person in the language of the individual. Employees shall be encouraged to sign and date the statement,” and vi. states, “Interview statements should normally be recorded on the TOSHA Witness Statement Form (LB-0056).” CSHO didn’t take written statements from any member of management. These written statements can be used to prove employer knowledge. However, this has not had a negative impact on TOSHA supporting and defending violations.

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 were missing; and/or generic (e.g. eight hours per day for five days a week). Managers and supervisors have continued to place emphasis on accurate frequency and duration documentation, and continue to monitor it, during case file reviews. This issue does not appear to impact the effectiveness of the State Plan’s program negatively. 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 before closing for in-compliance cases.

Case file reviews support that with few exceptions the State issues appropriate citations for all apparent violations. During this review period, TOSHA issued 4,866 violations, including 3,284 serious, 63 repeat, 1,158 other than serious, and one failure to abate (FTA). Of those violations, 67.5% of the violations were serious, 1.3% were repeat violations and 31.2% were other than serious. The State did not issue any willful violations during this period. [Reference: OIS Inspection Summary Report]

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

<b>Percent of Violations Cited Serious and Other-Than-Serious</b>		
	<b>TOSHA</b>	<b>OSHA</b>
<b>Serious (only)</b>	67.5%	70.5%
<b>OTS</b>	31.2%	21.1%

[Reference: OIS Inspection Summary Report]

The State’s policy and practices for grouping violations are essentially the same as OSHA’s. When a source of a hazard is identified which involves interrelated violations of different standards, the violations may be grouped into a single violation. When violations classified either as serious or other-than-serious (OTS) are so closely related, they may constitute as a single hazardous condition, such violations can be grouped,

and the overall classification is normally based on the most serious item. When two or more violations are found, which if considered individually, represent OTS violations, but together create a substantial probability of death or serious physical harm, the violations may be grouped as a serious violation. The State Plan does not group for violations discovered during multiple inspections of a single worksite, for violations at separate establishments of the same employer, for general duty violations, and egregious violations. Case file reviews support that the State Plan is following their procedures when grouping violations.

In FY 2017, TOSHA did not issue any willful violations; however, 63 repeat violations were issued. All willful violations are reviewed by the Administrator, Assistant Administrator and the state’s attorney before issuance. According to OIS data, TOSHA’s percent serious/willful/repeat/unclassified was 67% in FY 2017, compared to OSHA’s percent serious/willful/repeat/unclassified at 75.4%. [Reference: OIS Inspection Summary Report] A review of procedures and discussions with State Plan 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.

All inspection reports and citations are reviewed by the industrial hygiene or safety area supervisor, and the section manager. All citations are reviewed, issued, and signed by the TOSHA Administrator or Assistant Administrator.

TOSHA routinely places an emphasis on keeping citation lapse times low. The average citation lapse times for safety and health are well below the national average. According to the SAMM Report, in FY 2017, the average lapse time in days from opening conference to citation issuance is identified below:

<b>Average Lapse Time</b>	<b>TOSHA</b>	<b>National Average (1 year)</b>
<b>Safety</b>	21	45
<b>Health</b>	44	62
<b>Total Average</b>	26	47

[Reference: OIS Inspection Summary Report and SAMM]

TOSHA has a 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.

TOSHA’s average current penalty per serious violation in the private sector (SAMM 8: 1-250+ workers) was \$1,510.98 in FY 2017. The further review level (FRL) is -25% of the two-year national average (\$2,516.80), which equals an FRL range of \$1,887.60 to \$2,132.63. Penalties are one component of effective enforcement, and State Plans are required to adopt penalty policies and procedures that are “at least as effective” (ALAE) as those contained in OSHA’s Field Operations Manual (FOM), which was revised on August 2, 2016, to include changes to the penalty structure in Chapter 6 – Penalty and Debt Collection. [Reference: SAMM 8]

TOSHA’s penalty calculation procedures differ from OSHA’s 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. TOSHA’s penalty chart remains at \$7,000.

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

<b>Penalty Reductions</b>	<b>TOSHA</b>	<b>OSHA</b>
<b>Size (number of workers)</b>	< 25 = 60% 26-100 = 40 % 101-250 = 20% >250 = 0%	< 25 = 60% 26-100 = 40% 101-250 = 20% >250 = 0%
<b>Good Faith</b>	10%, 20%, or 30%	10%, 15%, or 25%
<b>History</b>	10% = no S, W, R violations in past 3 years	10% = no S, W, R violations in past 5 years

**e) 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 OIS reports weekly to track the status of abatement.

TOSHA’s Abatement Verification procedure is very similar to OSHA’s. Appropriate abatement periods, including the use of extensions and overall timeliness, are established and utilized to assure effective abatement is achieved. During the closing conference, the Compliance Officer thoroughly explains the abatement verification requirements to the employer. The CSHO discusses and negotiates a feasible abatement period for the employer to effectively complete the corrective action. Employers are required to verify in writing with supporting documents, plans, and progress reports if necessary that they have abated cited conditions. If the CSHO observes abatement for a violation that would normally require abatement documentation by the employer, the documentation in the case file must indicate that abatement is complete. Where it is possible, photographs or videos of the corrective action are taken as evidence of

abatement. Notations stating, “Corrected during inspection,” or “Employer has abated all hazards” cannot be made in cases, where there is evidence of a continuing violative practice by an employer.

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. No issues regarding abatement were identified.

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 2017, 2.1% of inspections conducted were follow-ups, as compared to OSHA at 3.3%. [Reference: OIS Inspection Summary Report]

#### **f) 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 in all aspects of inspections and investigations. Unions and/or union representatives are informed of informal conferences, settlement agreements, contests, and results of litigation. With the exception of fatality files, case files reviewed did not contain employee witness statements. Interviews were referenced in the file, and there is an indication that workers were interviewed but there was no documentation, including field notes containing any interview notes. In some cases, the only evidence that employees were interviewed was through the documentation stating they were interviewed, and / or their names and addresses. See paragraph (d) in the section above for additional information, regarding interviews and statements. Over ninety-nine percent of initial inspections, included employee walk-around, representation and/or employee interviews. [Reference: *SAMM 13*]

### **3. 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. As a result of informal conferences, the penalty retention rate was 88.8%. [Reference: *SAMM 12*]

Supervisors are allowed to provide a maximum 25% penalty reduction for the settlement of cases. Supervisors are required to get the employer to agree to concessions in exchange for penalty reductions. This has been very effective in managing penalty reductions. Informal conferences resulted in Tennessee vacating 1.66% of the violations compared to OSHA’s 2.69% and reclassifying 2.25% of violations compared to OSHA’s 3.28%. [Reference: *SIR 5A and 6A*] Tennessee’s retention rate for penalties following reductions provided during informal conferences is 88.7% compared to 68.75 for OSHA. TOSHA’s average penalty reduction for cases

settled by informal conferences was 22.9%. [Reference: SIR 7A and SAMM 12]

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 for review and approval. Case file reviews support the appropriateness and documentation of changes made.

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. There were no cases identified, where changes to citations were the result of problems, nor were any patterns of settlements identified.

#### **b) Formal Review of Citations**

In FY 2017, 1.8% or 32 of the inspections and a total of 120 violations were contested in six cases that were resolved before a hearing, and four cases were resolved before the Tennessee Occupational Safety and Health Review Commission. There are 22 cases pending resolution. [Reference: OIS Inspection Summary Report and State Data] 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 is assigned to the office to provide legal representation for TOSHA. The attorney works within the office and is 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 has a very good working relationship with the attorney assigned to them, and they are very knowledgeable of OSHA requirements, and what is needed for a case to be legally sufficient. No negative trends or problems with citation documentation have been identified.

According to TOSHA, for violations that were contested, 25.3% were vacated, and 24.3% were reclassified. For violations that were contested, 97.1% of penalties were retained. [Reference: Inspection Summary and State Data] As stated in 2.d. Citations and Penalties paragraph (i) above, knowledge was lacking in many of the case files reviewed. This has not proven to have a negative impact in supporting the violations. The State's attorney spoke positively of the quality of the case file documentation allowing him to successfully defend the violations. He has never had an issue defending a citation as a result of lack of knowledge.

During FY 2017 the State Plan did not receive any negative decisions by the Tennessee Occupational Safety and Health Review Commission. The Commission held one meeting and granted four default motions. All decisions are reviewed by the TOSHA Administrator and senior management staff to determine if changes in policies and procedures need to be made.

All meetings of the Tennessee Occupational Safety and Health Review Commission are announced in advance, and a notice is placed on the department’s website <https://www.tn.gov/workforce/contact-the-department0/boards---commissions/boards---commissions-redirect/tosha-review-commission/tosha-review-commission-public-notices.html>, and the state of Tennessee Meeting page <https://www.tn.gov/meetings>. Accommodations are available for members of the public that wish to attend the meeting. The conclusions of law and findings of fact are available to the public, upon request in compliance with the Tennessee Open Records Act.

The Review Commission typically follows federal precedence with some exceptions that are unique to the Tennessee OSH Act. Most notably, the Volks decision is not valid in Tennessee because state law requires citations to be issued within six months of the opening conference; and not the date the violation occurred. The Review Commission follows rules located in Tennessee Rules 1030-1 to 1030-7, as well as the Tennessee Administrative Procedures Act set forth in Title 4 Chapter 5 of Tennessee Code Annotated and the Tennessee Rules of Civil Procedure.

#### 4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) 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 ALAE 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 Standards and Procedures 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 then assigned an effective date.

During this period, TOSHA adopted all of the OSHA-initiated standards which required action in a timely manner. The only exceptions were the standards impacting the penalty levels. Most State Plans have delayed action regarding this matter. The table below identifies the OSHA-initiated standards.

**Standards Adoption FY 16 and FY 17**

<b>Standards Requiring Action</b>	<b>Federal Register Date</b>	<b>Adopted Identical</b>	<b>Date Promulgated</b>
Final Rule on the Implementation of the 2017 Annual Adjustment to Civil Penalties for Inflation	1/18/2017	NA	NA
Final Rule on Occupational Exposure to Beryllium	1/9/2017	Yes	07/09/2017

Final Rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)	11/18/2016	Yes	03/31/2017
Interim Final Rule on Maximum Penalty Increases	7/1/2016	NA	NA
Final Rule to Improve Tracking of Workplace Injuries and Illnesses	5/12/2016	Yes	06/22/2016
Final Rule for Occupational Exposure to Respirable Crystalline Silica	3/25/2016	Yes	07/01/2016

During this period, TOSHA adopted all of the federal directives, or ALAE procedures which required action in a timely manner. Directives not implemented by the State Plan addressed shipbuilding and actions, which did not require adoption by the State. The table below identifies the federal directives which required action by the State Plan.

### Maximum Penalty Increase

With the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA raised its maximum penalties effective August of 2016. As required by law, OSHA then increased maximum penalties annually, on January 1, 2017 and January 1, 2018, according to the CPI. State Plans are required to adopt both initial increase and subsequent annual increases.

The Tennessee OSH Act has not been amended by the Tennessee General Assembly to increase statutory maximum penalties; however, the Governor has taken this into consideration. OSHA will continue to work with Tennessee on this issue.

### Federal Program/State Initiated Changes FY 16 and FY 17

Federal Program Changes Requiring Action and Federal Directive Number	Date of Directive	Adopted Identical	Adoption Date
Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence	1/10/2017	No	Not required
Field Operations Manual Directive CPL 02-00-160	8/2/2016	Yes	02/02/2017
National Emphasis Program on Shipbreaking CPL 03-00-020	3/7/2016	No	No Jurisdiction
Whistleblower Investigations Manual CPL 02-03-007	1/28/2016	Yes	02/15/2017
Consultation Policies & Procedures Manual, Directive CSP-02-00-003	11/19/2015	Yes	01/15/2016
Mandatory Training Program for OSHA Whistleblower Investigators TED 01-00-020	10/8/2015	No	10/08/2015
Field Operations Manual Directive CPL 02-00-159	10/1/2015	Yes	04/01/2016
Alternative Dispute Resolution Process for Whistleblower Protection Program CPL 02-03-006	8/18/2015	No	Not required

## **5. VARIANCES**

TOSHA still has just 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 has agreed to share variance requests with federal monitors and requests input before their approval. Additionally, the manager of standards and procedures maintains a log of variances to track the status of each variance. However, TOSHA received no variance request from employers in FY 2017.

## **6. 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 629 state and local government sector inspections in FY 2017, which accounted for 36.9% of all inspections. [Reference: SAMM 6] The average citation lapse time for state and local government sector enforcement files is 14 days, well below the performance goal of 20 days. The 2016 TCIR for the state and local government sector in Tennessee is 3.9, lower than the national average of 4.7.

## **7. WHISTLEBLOWER 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. The determination in each of the reviewed cases is supported by sound legal reasoning consistent with the available evidence and applicable statute.

TOSHA's procedures for handling safety and health discrimination cases are very similar to OSHA's. 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.

<b>Meritorious Complaints</b>		<b>Merit Cases Settled</b>	
<b>FY 2017</b>	14.5%	<b>FY 2017</b>	100%
<b>FY 2016</b>	13.2%	<b>FY 2016</b>	92%
<b>FY 2015</b>	12.6%	<b>FY 2015</b>	100%
<b>FY 2014</b>	13.6%	<b>FY 2014</b>	82%
<b>FY 2013</b>	21.95%	<b>FY 2013</b>	75%

[Reference: State Data and Interviews]

<b>Status</b>	<b>Number of Cases</b>	<b>Percentage</b>
<b>Merit</b>	0	0
<b>Dismissed Non-Merit</b>	12	19.3%
<b>Dismissed, Lack of Cooperation</b>	20	32.2%
<b>Settlement</b>	9	14.5%
<b>Withdrawal</b>	8	12.9%
<b>Untimely Filed</b>	0	0
<b>Screened and Closed, Lack of Jurisdiction</b>	8	12.9%

[Reference: State Data and Interviews]

During FY 2017, TOSHA received 62 complaints, as compared to 99 complaints in FY 2016. Of the complaints received, 54 were docketed. This included all complaints, except those deemed untimely, without jurisdiction, or screened/closed. According to the SAMM Report, 30% of the investigations were completed timely; that is, completed within ninety days, as compared to 18% in FY 2015. The average lapse time for discrimination cases was 87 days. TOSHA has continued to successfully work on improving their completion rate of discrimination investigations. [Reference: SAMMs 14, 15, 16]

A review of 16 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. 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.

## **8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)**

During this review period, there were no CASPAs filed regarding the State Plan. However, in the past, TOSHA has responded to CASPA investigations in a timely manner, and provided appropriate written responses to OSHA.

## **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 continues to operate effectively. Currently, the Tennessee Volunteer Star Program features 36 participating worksites. During FY 2017, one new site was evaluated for participation in the Volunteer Star Program, and 11 sites were recertified for participation in the program. However, during this same period, a total of three worksites also withdrew from the program. Two worksites lost management commitment and support for the program, while the third site closed due to economic conditions. The program is similar to the federal Voluntary Protection Program (VPP). 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 on-site evaluations conducted by TOSHA, and documented on the Volunteer Star Program Site Worksheet.

#### **10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM**

As previously mentioned, TOSHA operates a State and Local Government Program which enforces workplace safety and health among the majority of state and local government sector employers. The State and Local Government 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 2017, hazards were identified during one of the consultative visits.

TOSHA’s State and Local Government 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 Program develop and provide TOSHA with its written program of compliance.

**Appendix A – New and Continued Findings and Recommendations**  
FY 2017 Tennessee Comprehensive FAME Report

There were no findings in 2017.

**Appendix B – Observations Subject to New and Continued Monitoring**  
FY 2017 Tennessee Comprehensive FAME Report

There were no observations in 2017.

## **Appendix C - Status of FY 2016 Findings and Recommendations**

FY 2017 Tennessee Comprehensive FAME Report

There were no findings in FY 2016.

## Appendix D – FY 2017 State Activity Mandated Measures (SAMM) Report

### FY 2017 TOSHA Comprehensive FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Tennessee - <b>TOSHA</b>			FY 2017	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	6.15	15	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	3.96	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	1.22	5	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	0.56	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 2.42	+/- 20% of SWRU: 1.83	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 1.46 to 2.20 for SWRU and from 0.79 to 1.19 for OTS.
		Other: 1.03	+/- 20% of Other: 0.99	
<b>6</b>	Percent of total inspections in state and local government workplaces	36.87%	+/- 5% of 37.17%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 35.31% to 39.03%.

## Appendix D – FY 2017 State Activity Mandated Measures (SAMM) Report

### FY 2017 TOSHA Comprehensive FAME Report

<b>7</b>	Planned v. actual inspections – safety/health	S: 1,364	+/- 5% of S: 1,100	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,045 to 1,155 for safety and from 309.70 to 342.30 for health.
		H: 342	+/- 5% of H: 326	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,510.98	+/- 25% of \$2,516.80	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,887.60 to \$3,146.00.
	<b>a.</b> Average current serious penalty in private sector (1-25 workers)	\$1,012.51	+/- 25% of \$1,706.10	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,279.58 to \$2,132.63.
	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	\$1,425.59	+/- 25% of \$2,867.94	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,150.96 to \$3,584.93.
	<b>c.</b> Average current serious penalty in private sector (101-250 workers)	\$1,875.59	+/- 25% of \$3,952.26	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,964.20 to \$4,940.33.
	<b>d.</b> Average current serious penalty in private sector (greater than 250 workers)	\$2,764.51	+/- 25% of \$5,063.48	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$3,797.61 to \$6,329.35.
<b>9</b>	Percent in compliance	S: 12.05%	+/- 20% of S: 29.53%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 23.62% to 35.44% for safety and from 28.62% to 42.94% for health.
		H: 27.63%	+/- 20% of H: 35.78%	
<b>10</b>	Percent of work-related fatalities responded to in one workday	92.68%	100%	The further review level is fixed for all State Plans.

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### FY 2017 TOSHA Comprehensive FAME Report

<b>11</b>	Average lapse time	S: 20.88	+/- 20% of S: 45.29	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 36.23 to 54.35 for safety and from 44.82 to 67.24 for health.
		H: 44.24	+/- 20% of H: 56.03	
<b>12</b>	Percent penalty retained	88.77%	+/- 15% of 67.44%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 57.32% to 77.56%.
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	99.24%	100%	The further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	30%	100%	The further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	36%	+/- 20% of 25%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 20% to 30%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	156	90	The further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	1.60%	+/- 25% of 1.26%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 0.95% to 1.58%.

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FY 2017 TOSHA Comprehensive FAME Report

State of Tennessee  
Department of Labor and Workforce Development  
State Office Annual Report  
October 1, 2016 – September 30, 201

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## Appendix E – FY 2017 State OSHA Annual Report (SOAR)

### FY 2017 TOSHA Comprehensive FAME Report

## *Introduction*

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The Tennessee Occupational Safety and Health Administration (TOSHA) was created by legislation in 1972 and became operational in July 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 (now the Tennessee Department of Labor and Workforce Development) until July 1977. At that time the General Assembly enacted legislation to transfer the health function to the Department of Labor. The Tennessee Occupational Safety and Health Administration program was certified in May 1978 and final determination (18-E) was achieved in July 1985.

The General Assembly enacted legislation giving Tennessee OSHA the mission of ensuring that employers furnish a place of employment which is free of recognized hazards and provide a safe and healthful workplace. Tennessee OSHA's primary objective is to improve occupational safety and health in workplaces throughout the state. The worker population in Tennessee is approximately 2,730,032. There are approximately 145,729 employers in the state.

Tennessee OSHA achieves this objective through:

- Enforcement of the general industry, construction, and agricultural occupational safety and health standards, as well as the Tennessee Department of Labor and Workforce Development rules for private and public sector employees.
- Delivering training programs designed to target the most prominent injuries and illnesses affecting Tennessee workers.
- Providing Tennessee Department of Labor and Workforce Development rules and OSHA general industry, construction and agriculture standards at cost.
- Providing interpretations of Tennessee OSHA standards and rules.
- Providing assistance to employers, employees and the general public on controlling hazards in the workplace by answering technical questions on a daily basis.
- Administering the consultation program to advise and assist employers in the improvement of occupational safety and health in the workplace.
- Maintaining employer recognition programs to promote workplace safety and health.

Tennessee OSHA's program services are delivered through a central office in Nashville and field offices located in six strategic geographical areas with 20 Reporting IDs. Those areas are as follows:

- Nashville - 0454700, 0454712, 0454722 and 0454732
- Memphis - 0454711, 0454721 and 0454731
- Knoxville - 0454714, 0454724 and 0454734
- Chattanooga - 0454713, 0454723 and 0454733
- Jackson - 0454715, 0454725 and 0454735
- Kingsport - 0454716, 0454726 and 0454736
- Consultation – 0494701

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### **FY 2017 TOSHA Comprehensive FAME Report**

The Tennessee OSHA website (Compliance and Consultation) is <http://tn.gov/workforce/section/tosha>. All current directives, the Tennessee OSHA Act, and Tennessee OSHA state rules are accessible from the site.

As of November 30, 2017, two industrial hygienist supervisor, two industrial hygienist and four occupational safety specialist positions were vacant (23g). TOSHA intends to fill four of the eight vacancies prior to December 31, 2017.

## Appendix E – FY 2017 State OSHA Annual Report (SOAR)

### FY 2017 TOSHA Comprehensive FAME Report

## ***Mandated Activities***

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### **Enforcement**

During FY 2017, Tennessee OSHA performed 1,706 workplace inspections (*source: Inspection One Liner*). During these inspections 6,749 hazards (*source: Violation Detail Data Report*) were identified and penalties of \$2,850,565 (*source: Violation Detail Data Report*) were assessed. Unpaid penalties are assessed a late fee of 10% at 30, 60, and 90 days and statutory interest is assessed until the penalty is paid. Unpaid penalties are forwarded to the state attorney general's office for collection. During this evaluation period approximately 88% of employers assessed penalties by Tennessee OSHA paid those penalties within 90 days of citation issuance.

### **Complaints**

During FY 2017, complaint inspections were initiated an average of 3.96 days following receipt of the complaint, as indicated in the State Activity Mandated Measures (*Source: SAMM*). Complaint investigations were initiated in an average of 0.56 days. Both were within the goal of 15 days for inspections and 5 days for investigations.

### **Fatalities**

During FY 2017, TOSHA received 47 reports of fatal injury or illness (*source: State Accident Fat/Cat Log*). TOSHA evaluated each report and in response, conducted 44 on site investigations. When no investigation was conducted, it was determined that TOSHA did not have jurisdiction to conduct an inspection or the injury/illness was not work related. Of the reported fatalities, 42 were work related fatalities. It is agency policy to conduct fatality investigations as soon as possible and generally within one day of receiving notice of the incident. 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.

### **Targeting and Special Emphasis Programs**

Tennessee OSHA participated in the following national emphasis programs: Trenching and Excavation, Amputations, Hexavalent Chromium, PSM Covered Facilities, Primary Metal Industries, Combustible Dust, and Lead.

In addition, Tennessee OSHA also maintained the following local emphasis programs: carbon monoxide, fall protection, and noise.

### **Evaluation of Mandated Activities**

Tennessee OSHA management reviews the State Activity Mandated Measures (SAMM)

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as well as other management reports periodically to assure the mandated activities are carried out effectively and efficiently. A review of the SAMM FY 2017, Violation Detail Data Report, Inspection Summary, and Inspection One-Liner reports indicated Tennessee OSHA performed at a high level of professionalism and productivity. Highlights include the following: serious hazards were identified during 86.4% of programmed safety inspections. Serious hazards were identified during 54.8% of programmed health inspections (*source: Inspection Summary, Inspections with Violations tab*). Tennessee OSHA reclassified 1.88% of violations (*source: Violation Detail Data Report*) and 91.4% (*source: Inspection Summary, Penalty Metrics tab*) of penalties assessed were retained. The average time to initiate a complaint inspection was 3.96 days (*source: SAMM*). The average time to initiate a complaint investigation was 0.56 days (*source: SAMM*). The average lapse time in days to issue citations for safety and health violations was 20.88 days and 44.24 days, respectively (*source: SAMM*).

As of November 30, 2017: 58% of compliance officers (does not include supervisor or managers) have less than four years of experience and 25% of compliance officers have less than one year of experience. As of November 30, 2017 there were six vacant compliance officer positions. TOSHA intends to fill three of those six positions prior to December 31, 2017. New personnel are in training and TOSHA will continue to aggressively fill all vacancies.

During FY2017 the pay structure for Tennessee OSHA compliance and consultation personnel was increased significantly in an attempt to curtail turnover.



### Public Sector Activity

During FY 2017, Tennessee OSHA performed 36.87% of all inspections in the public sector (*source: SAMM*). Public sector employers were given the opportunity to participate in the public sector program during the first two years following the formation of Tennessee OSHA and again, by statute, between July 1, 2004, and July 1, 2006. State law mandates that Tennessee OSHA inspect these entities every two years. Participants in the program must designate a safety and health director and establish a safety and health program. Participants are not issued monetary penalties for violations; however the governor can remove a participant from the program for failure to comply with the

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TOSH Act. All public employers not currently participating in the program are treated as private employers as mandated by state law. The 2016 total case incident rate (TCIR) for state and local government in Tennessee was 3.9 and is significantly lower than the national average of 4.7.

#### Citation and Inspection Review

All inspection reports and citations are reviewed by the industrial hygiene or safety area supervisor and the section manager. All citations are reviewed and issued by the TOSHA Administrator or Assistant Administrator. Informal conferences are held by the appropriate area supervisor and reviewed by the section manager. All changes to the penalty or citation are reviewed and issued by the TOSHA Administrator or Assistant Administrator.

During FY 2017, 32 citations were contested and 6 were resolved prior to a hearing before the Tennessee Occupational Safety and Health Review Commission. As of September 30, 2017, of the 26 contested cases remaining, 1 settlement was scheduled to be resolved pending approval. The other 25 were pending resolution by settlement or hearing. All penalty reductions associated with contested citations must be approved by the Attorney General, the Comptroller, and the Governor.

#### Review of Bureau of Labor Statistic Data

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

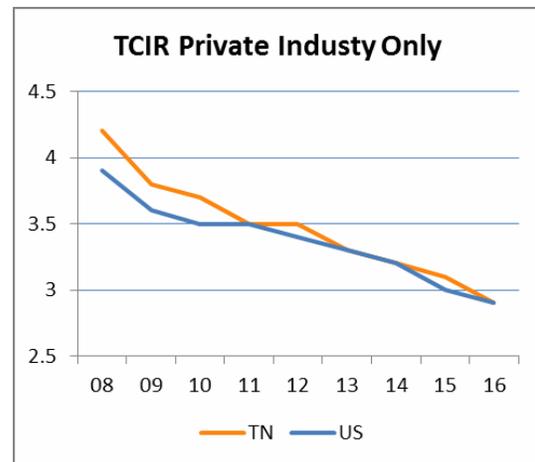
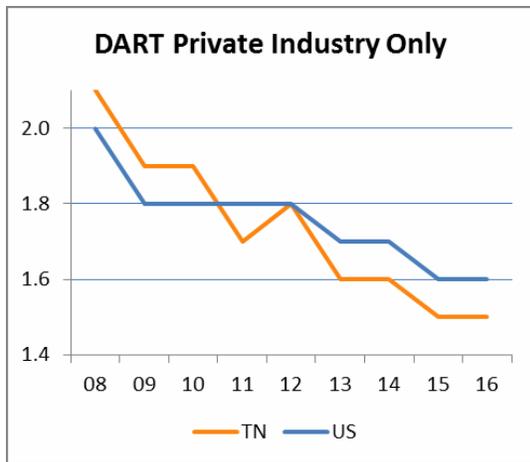
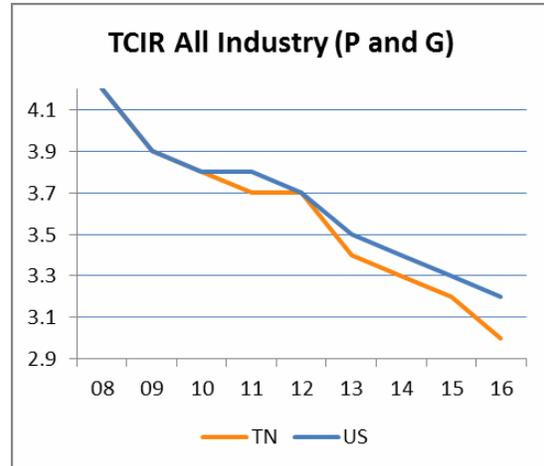
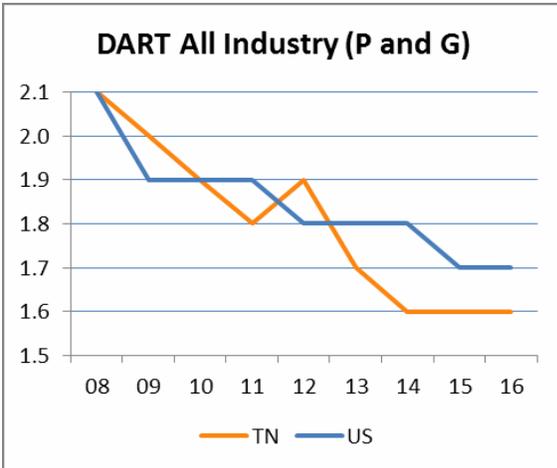
##### *All Industries Public and Private*

Year	DART		TCIR	
	TN Private	US	TN	US
2016	1.6	1.7	3.0	3.2
2015	1.6	1.7	3.2	3.3
2014	1.6	1.8	3.3	3.4
2013	1.7	1.8	3.4	3.5
2012	1.9	1.8	3.7	3.7

Year	DART		TCIR	
	TN	US	TN	US
2016	1.5	1.6	2.9	2.9
2015	1.5	1.6	3.1	3.0
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

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### Training of TOSHA Compliance Personnel

Newly-hired TOSHA compliance officers are trained as outlined in the instruction “Initial Training Program for TOSHA Compliance Personnel” (TED-TN 001-00-019). The OSHA Training Institute (OTI) is used as the primary source for most of the training courses. As soon as OTI course enrollments become available, a new compliance officer is enrolled in the “Initial Compliance” course. Additional courses are scheduled as detailed in the instruction. Basic training is completed when the ten courses outlined in Phase 1 are completed within the three-year period. After the three-year period, the training needs of all TOSHA compliance personnel are evaluated annually by the supervisors in each area office in conjunction with the section manager, and follow Phase 2 & 3 of the training plan.

In FY 2017, TOSHA employees attended classes at the OSHA Training Institute (OTI), in addition to OTI webinars on #0002 Cranes & Rigging Safety for Construction, #0003 Excavator Quick Couplers, #0037 Fall Protection in Residential Construction, #0123 Lockout/Tagout – Minor Servicing Alternatives; #0117 New Working-Walking Surfaces and PPE, #0035 Permit Space Entry Options, #0118 PSM RAGAGEP Enforcement &

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Revised Chem NEP, #0067 Safeguarding Robotics, #3158 Tower Safety, and #0121 Workplace Violence Directive.

TOSHA employees also attended training events sponsored by private entities including, Hazardous Waste and Emergency Response, Asbestos Inspector/Refresher training, Active Shooter, Intro to Electrical Transmission & Distribution, and OSHA Requirements for Power Presses.

By virtue of these training opportunities, as well as attendance at the annual Tennessee Safety and Health Congress, Safety Fest 2017, and the Tennessee Valley Section of AIHA, 100% of the TOSHA staff received professional development training in FY 2017.

#### **Standards**

The Commissioner of the Tennessee Department of Labor and Workforce Development has the statutory authority to promulgate occupational safety and health standards. Tennessee has generally adopted all federal standards that are applicable in Tennessee. Standards promulgated by federal OSHA are adopted by reference in Tennessee Department of Labor and Workforce Development rules. There were two rule proposals submitted during this period that adopted all federal OSHA promulgated standards during FY 2017 in a timely manner. No unique state standards were adopted during this period. The following compliance directive was adopted: CPL-TN 03-00-021 PSM Covered Chemical Facilities NEP.

The Tennessee OSH Act has not been amended by the Tennessee Legislature to increase statutory maximum penalties as enacted by Congress in November 2015. The Governor has taken this under consideration.

All directives are listed on the division's web page.

TOSHA responded to 231 Public Records Act requests during this period. All Freedom of Information requests forwarded to the division by federal OSHA were satisfied in a timely manner.

TOSHA received no requests for a variance during FY 2017.

#### **Volunteer STAR Program (VPP) and Safety and Health Awards Programs**

The TOSHA Volunteer STAR (VPP) Program is administered according to the TOSHA VPP Policy and Procedures Manual (CSP-TN 03-01-003). Tennessee OSHA recognizes only the STAR level of achievement.

Tennessee OSHA currently has 36 sites and 22,483 employees, participating in the Volunteer STAR program. During FY 2017 one new application was evaluated and approved. A review of the 2017 annual self-evaluation data for Volunteer STAR sites reveal total case incident rates 66% below and days away, restricted, and transfer rates 65%

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below their respective national industry averages.

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

During FY 2017, TOSHA presented 17 Governor’s Awards and 11 Commissioner’s Awards. No exemption or other benefit, with the exception of recognition, is granted to the recipients.

#### **Training and Education Outreach Program**

Training seminars are offered to the public in the spring and fall of each year. Seminar topics include: new regulations, basic requirements related to occupational safety and health, and current topics of interest. TOSHA partners with co-sponsors to offer seminars, including the University of Tennessee, the Tennessee Chamber of Commerce and Industry, and several state community colleges. The seminars are offered at various locations across the state.

The TOSHA training staff is currently comprised of industrial hygienists, and occupational safety specialists who are approved as trainers in addition to their compliance or consultation duties. In FY 2017, TOSHA trainers conducted training sessions on several topics including “Basic Safety Requirements,” “Maintenance-Related TOSHA Standards,” “OSHA 10-and-30-Hour Courses,” “TOSHA Recordkeeping”, “Permit Required Confined Spaces for Construction”, “GHS & Hazard Communication”, and “Dock and Warehouse Safety and Health”. Safety and health training was provided to 10,434 attendees across the state.

TOSHA published a free quarterly newsletter, “Together with TOSHA” distributed through TOSHA’s web site and listserv containing 1,325 registered users maintained by the training and education office. In addition, many employer and employee associations and other groups forward the newsletter to their members. The electronic publication of the newsletter in portable document format (pdf) allows the reader to follow embedded web links to additional information or print the document for employees without electronic access. The newsletter offers information, interpretations, best practices, and compliance recommendations on occupational safety and health topics. Topics covered in the newsletters in FY 2017 include:

- Reports on the Tennessee fatality rates and a review of “What Kills In Tennessee” along with prevention and hazard control;
- OSHA published documents for National Stand Downs, Silica, Beryllium, Zika, Recordkeeping, Permit Required Confined Spaces for Construction, Heat Stress, Cold Stress, Tree Trimming, Storm Clean-up, Walking-Working Surfaces, Workplace Violence, Disaster Response, Aerial Lifts, ATVs, & Safety & Health

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- Program Management;
- State VPP and SHARP participant updates, awards, and best practices:
    - Recent TOSHA outreach efforts including Permit Required Confined Spaces in Construction, Reporting of Fatalities, Amputations, In-patient Hospitalizations, and Loss of Eye, Walking-Working Surfaces, Silica in Construction & General Industry, Dentistry, Basic Safety, TOSHA’s Most Cited Standards for Construction & General Industry, and Hazard Communication & Globally Harmonized System;
  - Local safety and health educational efforts in surrounding communities, including Safety Fest TN in Oak Ridge, Tennessee Valley Section AIHA annual fall conference, and the Tennessee Safety and Health Conference in Nashville, TN.

### **Complaints About State Program Administration**

During FY 2017 no complaints were received regarding TOSHA program administration.

### **Discrimination**

All allegations of discrimination were investigated by Tennessee OSHA in accordance with established policies and procedures. Allegations found to be of merit were settled or forwarded to the Attorney General’s office for consideration for prosecution. During FY 2017, 63 complaints alleging discrimination in violation of T.C.A. 50-3-409 were filed. Of these, 7 were settled, 8 were withdrawn by the complainant, 8 were found to lack merit, and 19 were closed because the complainant failed to cooperate, 6 were screened and closed, and 2 were outside the jurisdiction of the statute. The remaining complaints are still under investigation.

### **Inspection Quality Assurance**

Tennessee OSHA compliance officers are trained to perform the essential job functions in a professional and competent manner. Each compliance officer has a job plan and an annual evaluation with at least two interim evaluations during the year. Supervisors performing the annual evaluation accompany compliance officers on an inspection to assure inspection policies and procedures are followed. Newly hired compliance officers are trained as discussed in the training section.

Each inspection report and proposed citations are reviewed by the industrial hygiene or safety supervisor in the area office where the inspection was conducted. The inspection report and proposed citations are forwarded to the industrial hygiene or safety section manager in the central office for additional review. All citations are issued by signature of the TOSHA Administrator, or in his absence, by the Assistant Administrator, as required by state law.

The review of each inspection file and citations by each management level provides continuous assurance of quality work and consistency across all area offices.

A procedure (ADM-TN 03-00-011) has been developed and implemented to audit each

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### **FY 2017 TOSHA Comprehensive FAME Report**

area office to assure policies and procedures are being followed. The Chattanooga and Kingsport area offices were evaluated during FY 2017. The intent of the procedure is to evaluate two area offices each FY on an ongoing basis.

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### FY 2017 TOSHA Comprehensive FAME Report

## *Annual Performance Goals*

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### **Performance Goal 1.1**

Eliminate 6,000 serious violations/hazards in workplaces where interventions take place.

**Summary** - Tennessee OSHA exceeded this goal.

	Compliance	Consultation	Total
Inspections/Visits	1,706	353	2,059
<b>Serious Violations/Hazards</b>	<b>4,751</b>	<b>2,213</b>	<b>6,964</b>
Non-Serious Violations/Hazards	1,916	410	2,326
Repeated Violations	51	n/a	51
Willful Violations	3	n/a	3
Regulatory Hazards	n/a	283	283
Total Violations/Hazards	6,721	2,906	9,627

### **Performance Goal 1.2 - Carbon Monoxide**

Reduce carbon monoxide exposures for 300 employees.

**Summary** – Tennessee OSHA exceeded this goal

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CO levels have been documented as reduced through elimination and engineering controls as follows:

FY	COMPANIES	EMPLOYEES
2013	10	405
2014	22	975
2015	11	1,072
2016	9	923
<b>2017</b>	<b>15</b>	<b>573</b>

### **Performance Goal 1.3 – Noise**

Reduce noise exposures for 400 employees.

**Summary** - Tennessee OSHA exceeded this goal.

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Noise levels have been documented as reduced through improvements in hearing conservation programs as follows:

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FY	COMPANIES	EMPLOYEES
2014	20	542
2015	13	673
2016	20	468
<b>2017</b>	<b>12</b>	<b>876</b>

#### **Performance Goal 1.4**

Eliminate 500 fall hazards in the workplace.

**Summary** – Tennessee OSHA exceeded this goal.

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Compliance and consultation documented the elimination of fall hazards and reduced employees' exposure to falls by issuing citations and identifying hazards as outlined in the chart below.

FY	COMPANIES	HAZARDS
2013	378	800
2014	301	707
2015	241	541
2016	246	450
<b>2017</b>	<b>347</b>	<b>789</b>

TOSHA informs employers and employees about the fall hazard special emphasis program during each inspection and visit. The goal is to increase employers and employees ability to identify fall hazards and reduce employee exposure to falls.

#### **Performance Goal 1.5 – Bloodborne Pathogen Exposure Reduction**

Reduce the number of bloodborne pathogen exposures for 500 employees. Bloodborne pathogen exposures were documented as reduced through engineering/work practice controls and participation by employees in a formal training program.

**Summary** – Tennessee OSHA exceeded this goal.

Bloodborne Pathogen Data

	Inspections/Visits	Violations/Hazards	Employees
Compliance	82	273	1,397
Consultation	83	276	895
<b>TOTAL</b>	<b>165</b>	<b>549</b>	<b>2,292</b>

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#### **Performance Goal 2.1**

Train 9,500 people in occupational safety and health training classes.

**Summary** – Tennessee OSHA exceeded this goal.

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	Programs	Personnel
Formal Training	141	10,434
Consultation On-site	351	3,476
<b>TOTAL</b>	<b>492</b>	<b>13,910</b>

#### **Performance Goal 2.2**

Implement significant improvements in employer occupational safety and health programs in 850 workplaces where Tennessee OSHA compliance had an intervention.

**Summary** – Tennessee OSHA exceeded this goal.

#### **Inspection Results**

	Workplaces	Program Violations
Compliance	792	2,090
Consultation	254	1,233
<b>TOTAL</b>	<b>1046</b>	<b>3,323</b>

#### **Performance Goal 2.3**

Increase employer/employee awareness of safety and health management systems through onsite outreach during 1,000 private sector compliance inspections, 500 public sector compliance inspections, and 365 consultation visits.

**Summary** – Tennessee OSHA exceeded this goal in 2 of 3 sections.

	Goal	Workplaces
Private Sector Compliance	1,000	1,077
Public Sector Compliance	500	629
Consultative Services	365	353
<b>TOTAL</b>	<b>1,865</b>	<b>2,059</b>

#### **Performance Goal 2.4**

Evaluate two applications for participation in the Voluntary Protection Program (Volunteer STAR).

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**Summary** – Tennessee OSHA did not meet this goal.

Tennessee OSHA evaluated two applications for participation in the Volunteer STAR program.

The following applications were evaluated:

1. Valero Memphis Refinery

### **Performance Goal 2.5**

Evaluate two applications for the Safety and Health Achievement Recognition Program (SHARP).

**Summary** – Tennessee OSHA did not meet this goal.

Tennessee OSHA consultation services evaluated one new employer during FY 2016.

The following companies were evaluated:

1. Sauter Timber LLC

### **Performance 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), less than 25 days (public sector compliance):

**Summary** – Tennessee OSHA exceeded this goal in 3 of 4 sections.

	<b>Goal (days)</b>	<b>Average Turnaround (days)</b>
Safety Compliance	35	36.1
Health Compliance	55	53.6
Public Sector Compliance	20	19.5
Consultation	25	14.1

### **Performance Goal 3.2**

Ensure effective service by responding to complaints within the negotiated time frames, less than 15 days (inspections), less than 5 days (inquiries):

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**Summary** – Tennessee OSHA exceeded this goal.

	<b>Goal (days)</b>	<b>Average Days to Open</b>
Inspections	15	3.96
Inquiries	5	0.56

### **Performance Goal 3.3**

Ensure effective service by completing lab analysis within 14 days.

The TOSHA laboratory was decommissioned during this fiscal year. This item is no longer being tracked.

### **Performance Goal 3.4**

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

**Summary** – Tennessee OSHA exceeded this goal.

<b>Number of Professional Staff</b>	<b>Number that Attended Training</b>
66	66

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#### *Significant Inspections*

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##### **Nissan North America Inc. (\$29,000)**

A fatality inspection was conducted at Nissan North America Inc. located in Smyrna, TN. The facility is a vehicle manufacturer. An employee received fatal injuries when he stuck his head in an unguarded opening and was struck by the counterweight of a seat elevator system. The inspection resulted in 1 serious safety citation item and 1 repeat citation item. Citation items were primarily related to lock out tag out violations.

##### **Armstrong Flooring Inc (\$22,250)**

A fatal accident investigation was conducted at Armstrong Flooring Inc. The company manufactures hardwood flooring. The inspection resulted in 4 serious safety citation items and 1 other than serious safety citation item. The serious citation items related primarily to powered industrial truck violations.

##### **R & L Carriers Shared Services LLC (\$25,600)**

A fatal accident investigation was conducted at R & L Carriers Shared Services LLC. The company is a "less than truckload" shipping operation. The inspection resulted in 5 serious safety citation items. All citation items related to flammable liquid violations.

##### **Dyer County (No Monetary Penalty Assessed – Public Sector Employer)**

A fatal accident investigation was conducted of the Dyer County Highway Department. The department was conducting highway related landscape maintenance. The inspection resulted in 1 serious safety citation item. The citation item related to failure of a tractor operator to wear a seatbelt.

##### **Langley Wire Cloth Components Inc. (\$49,050)**

An unprogrammed inspection was conducted at Langley Wire Cloth Components Inc. The company manufactures filters for industrial and automotive use. The inspection resulted in 23 serious safety citation items and 4 other than serious safety citation items. Citation items related primarily to lock out tag out and machine guarding violations.

##### **Mueller Co (\$23,400)**

An unprogrammed inspection was conducted at Mueller Co. The company melts and pours iron into molds for the production of valve bodies and parts. The inspection resulted in 7 serious safety citation items and 8 other than serious safety citation items. The citation items primarily related to walking/working surface and machine guarding violations.

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#### **MEI/Aqua Treat Inc. (\$26,325)**

An unprogrammed inspection was conducted at MEI/Aqua Treat Inc. The company receives waste water and non-hazardous materials that are stored in tanks, treated, and then disposed of. The inspection resulted in 10 serious safety citation items and 1 other than serious safety citation item. The citation items primarily related to welding violations.

#### **Coca Cola Bottling Company United, Inc. (\$22,500)**

An unprogrammed inspection was conducted at Coca-Cola Bottling Company United, Inc., a beverage manufacturer and distributor in Chattanooga, TN. The inspection investigated a media report of an explosion and employee injury at the facility. The inspection resulted in 13 serious health citation items. Citation items were primarily related to respiratory protection and emergency response.

#### **Tenneco Automotive Operating Company, Inc. (\$21,600)**

An unprogrammed inspection was conducted of Tenneco Automotive Operating Company, Inc. (Tenneco) located in Smithville, TN. The company employs metal fabrication and welding processes to manufacture automotive exhaust products. The inspection resulted in 20 serious health citation items. Citation items were primary related to respiratory protection and exposure to hexavalent chromium violations.

#### **Unarco Material Handling, Inc. (\$24,000):**

An unprogrammed health inspection was conducted of Unarco Material Handling, Inc. (Unarco) located in Springfield, TN. The company manufactures metal storage racks. The inspection resulted in 2 repeat serious health citation items, 2 serious health citation items, and 1 other than serious health citation item. Citation items were primarily related to respiratory protection and hazard communication violations.

#### **Wilson Sporting Goods Co. (\$26,500)**

An unprogrammed inspection was conducted at Wilson Sporting Goods Co. located in Mt. Juliet, TN. The facility warehouses and ships recreational and sporting goods to retailers. The inspection resulted in 2 serious safety citation items, 1 repeat serious safety citation items, one repeat other safety citation items, and 4 other than serious safety citation items. Citation items were primarily related to powered industrial truck and materials handling violations

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#### **Hankook Tire Manufacturing Tennessee LP (\$39,000)**

An unprogrammed inspection was conducted at Hankook Tire Manufacturing Tennessee LP, located in Clarksville, TN. The facility is a tire manufacturer. The inspection resulted in 9 serious safety citation items and 1 other than serious citation item. Serious citation items included: Walking working surface fall protection, fall protection training, PPE training, testing of electrical equipment, three lockout violations, and two electrical violations.

#### **Robert S Biscan & Company (\$39,800)**

An unprogrammed inspection was conducted at a Nashville construction site where Robert S Biscan was working. Robert S Biscan is a construction general contractor based in Franklin, TN. The inspection resulted in 7 serious citation items and 1 repeat serious citation item, with all citation items related to fall protection violations.

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#### *Special Accomplishments*

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- Tennessee OSHA co-sponsored the 40th annual Tennessee Safety and Health Congress with the American Society of Safety Engineers. The Congress was attended by over 600 delegates and 141 exhibitors.
- TOSHA co-sponsored the Safety Fest TN 2017, presented by the Oak Ridge Business Safety Partnership, on September 11th – 15th, 2017. Nearly 3,000 class seats were reserved at the free safety and health event.
- Tennessee OSHA produced and distributed the quarterly newsletter, *Together with TOSHA*. Several training videos including the 2013 Hazard Communication meeting the GHS requirements were maintained on the department's website.
- Tennessee OSHA partnered with the following safety organizations to conduct training:
  - Tennessee Chamber of Commerce and Industry
  - University of Tennessee Center for Industrial Studies
  - Bristol Chamber of Commerce
  - Tennessee Safety and Health Conference
  - Associated General Contractors
  - Associated Builders and Contractors
  - American Society of Safety Engineers
  - American Industrial Hygiene Association
  - Oak Ridge Safety Fest TN
  - Tennessee Association of Utility Districts (TAUD)
  - Tennessee Valley Public Power Association (TVPPA)
  - Upper Cumberland Safety and Environmental Council (UCSEC)
  - Pigeon Forge and Gatlinburg Hospitality Associations
  - Tennessee Health Care Association
  - Local Area Dental Associations
  - Steel Manufacturing Association
  - Tennessee Employment Relations Research
  - City of Johnson City
  - Oak Ridge Utility
- TOSHA also partnered with the following institutions of higher learning
  - Meharry Medical School
  - Meharry Dental School
  - Volunteer State Community College
  - Walters State Community College
  - Tennessee College of Applied Technology
- The Administrator served on the federal Advisory Committee on Construction Safety and Health (ACCSH).

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- The TOSHA Administrator served on the board of directors of the Occupational Safety and Health State Plan Association.
- The VPP manager attended the Annual Region IV VPPPA Conference and served as an ex-officio member of the Region IV chapter board of directors.
- The Consultative services manager serves as the Vice President of the National Association of Occupational Safety and Health Consultation Programs (OSCHON).
- Tennessee OSHA has supported the training of occupational medicine residents at Meharry Medical College for more than two decades. As the only occupational medicine residency program in Tennessee, Meharry Medical College has played an important role in training qualified professional occupational health practitioners to serve the state and the nation. This partnership provides opportunities for practicum experience. As a result of the Meharry Medical School Residency Program Partnership, TOSHA trained four occupational medicine residents in FY2017.
- The Training and Education Manager serves as the Residency Advisory Committee at Meharry Medical College, the state’s only occupational medicine residency program.
- Tennessee OSHA compliance officers and consultants answered approximately 1,000 technical assistance e-mail inquiries received from the public. In addition, consultants and compliance officers answered technical assistance calls daily.
- The TOSHA Administrator attended all OSHSPA meetings held during FY2017.