

Tennessee
FY 2009 Enhanced FAME Report – Corrective Action Plan
Prepared by Region IV
Finding 1 of 9

Finding #1: Field notes are destroyed at the instruction of the state’s attorney when the compliance officer completes the violation form and worksheet. Except for fatality case files, many of the case files reviewed did not contain witness or management statements.

Recommendation #1: All field notes, diagrams, photos, the company’s injury and illness experiences and any other documentation obtained or produced during inspections should be maintained with the case file until its destruction, in accordance with existing records management guidelines.

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

Corrective Action Plan: NA

Documentation to be submitted w. due date: NA

Anticipated Completion Date:

Outcome Measure/Expectation: Enhanced documentation of inspection case files and validating of citations.

Status: Pending further discussion. As the State attorney’s only requirement was a consistent State practice regarding preservation or destruction of field notes, further discussion is needed regarding the value of field notes to the effective prosecution of contested cases. OSHA believes that all field notes should be retained with the case file, in order to assure effective prosecution and to establish employer history for future violations.

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Finding #2: Most case files did not contain a case file diary sheet or log to document significant actions associated with that particular file.

Recommendation #2: Tennessee's case file should include a diary to document significant actions, communication between management and the CSHO, communication between TOSHA and the employer.

State Response: TOSHA has developed a standard case file diary to be used in all case files and implemented it on 7/16/2010. An Activity Log was previously included in the case files.

Corrective Action Plan: A standard case file diary was developed and implemented on 07/16/2010.

Documentation to be submitted w. due date: A copy of the diary sheet will be provided to the Nashville Area Office no later than December 31, 2010.

Anticipated Completion Date: Recommendation was implemented and actions were completed on 07/16/2010.

Outcome Measure/Expectation: The use of the diary sheet will memorialize case related actions and support dates and times of actions such as correspondence, case modifications, meetings, etc. This will assist with reviews, internal audits, and tracking of actions.

Status: Pending further Federal monitoring.

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Finding #3: Current employees are encouraged to formalize their complaints and TOSHA conducts inspections for all formalized complaints regardless of the nature of the hazard. 30% of the 31 complaint inspection case files reviewed were in-compliance inspections.

Recommendation #3: Management should evaluate complaints including formal complaints to determine when an investigation would be more appropriate to allow a more effective use of their resources.

State Response: TOSHA previously interpreted the FOM to require inspections of valid formal complaints. Recommendation was implemented at the end of the EFAME visit on 2/15/10. This allowed some valid formal complaints to be investigated by the phone/fax procedure. TOSHA has instructed all supervisors to thoroughly evaluate all complaints to efficiently utilize the resources that they have.

Corrective Action Plan: All complaints are being evaluated to determine the seriousness of the hazard(s) and determine the most appropriate action to ensure the most efficient use of resources.

Documentation to be submitted w. due date: NA

Anticipated Completion Date: 02/15/2010

Outcome Measure/Expectation: It is expected that evaluating complaints and addressing hazards that are not serious in nature by investigation would reduce the percentage of complaint inspections that are in-compliance and provide additional resources to address hazards in high hazard industries through programmed inspection activity, which would protect employees that are at greater risk.

Status: Subject to further Federal monitoring.

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Finding #4: Letters are sent to the next of kin at the beginning of fatality investigations informing them of the investigation and that “the results will be made available upon their request without charge.” However, TOSHA does not contact the next of kin after the inspection is complete unless it is initiated by the next of kin.

Recommendation #4: At the conclusion of a fatality investigation the state should send the next of kin a letter and a copy of any citation issued, or a letter advising them that no violations were found. The next of kin should be informed of informal conferences and hearings, as well as any changes in the citations as a result of a settlement or hearing. A copy of the letter should be maintained in the file.

State Response: TOSHA has always sent a letter to the next-of-kin at the beginning of an investigation providing the family with the contact information. Tennessee OSHA has always taken communication with family members of fatality victims seriously and always communicates openly and honestly when requested. TOSHA implemented this recommendation on 10/1/2010 by adopting the letters recommended by OSHA and will send the letters at the appropriate times.

Corrective Action Plan: TOSHA implemented this recommendation on 10/1/2010 by adopting the letters recommended by OSHA and will send the letters at the appropriate times.

Documentation to be submitted w. due date: Document will be provided no later than December 31, 2010.

Anticipated Completion Date: Recommendation was implemented and actions were completed on 10/01/2010.

Outcome Measure/Expectation: Families are fully informed of the findings of the investigation, citations that are issued, and any and all activity following the completion of the investigation such as informal conferences, contests, hearings, as well as any changes in citations resulting from this activity.

Status: Pending further Federal monitoring.

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Finding #5: A number of the case files reviewed did not include injury or illness data from the OSHA 300 logs or an explanation for the lack of the data.

Recommendation #5: Tennessee should assure that each case file includes documentation of the company's injury and illness experiences and that the data is entered into IMIS.

State Response: All compliance officers, supervisors, and managers have been instructed to include copies of the 300 logs in all case files and enter the data into the IMIS system. The files are reviewed by the supervisor, manager, and the Assistant Administrator or Administrator to assure this requirement is being complied with.

Corrective Action Plan: This recommendation was implemented on 2/15/2010 at the conclusion of the EFAME onsite. The 300 logs are maintained in all case files and the data is being entered into the IMIS system as required.

Documentation to be submitted w. due date: NA

Anticipated Completion Date: 02/15/2010

Outcome Measure/Expectation: Injury and Illness data is reviewed during inspections to identify trends and ensure recordkeeping requirements are complied with.

Status: Subject to further Federal monitoring.

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Finding #6: Although, TOSHA follows the same procedures as Federal OSHA for determining the classification of violations, the State classifies a lower percentage as serious. In addition, the Regions review of case files indicated that Federal OSHA may have classified some of the State's non-serious violations as serious and some of the low or medium severity as high severity.

Recommendation #6: Tennessee should assure that each violation is documented accurately for severity and probability and reviewed for proper classification.

State Response: All violations are reviewed by the AO supervisor, section manager, and the TOSHA Administrator for proper classification. Proper classification of alleged violations is an issue Tennessee OSHA takes seriously.

Corrective Action Plan: Tennessee OSHA will place an emphasis on classification and continue to evaluate and ensure that all violations are properly classified and documented according to the guidelines contained in the Field Operations Manual. The recommendation was implemented on 9/15/2010 following the receipt of the EFAME report.

Documentation to be submitted w. due date: IMIS Inspection Summary Reports will be provided to the Nashville Area Office by December 31, 2010.

Anticipated Completion Date: 09/15/2010

Outcome Measure/Expectation: Increase in the percent of violations that are classified as serious and higher average penalties resulting in a stronger deterrent effect.

Status: Pending further Federal monitoring. Proper violation classification is an essential component of an effective program and should be relatively consistent nationwide.

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Finding #7: Many case files did not establish adequate knowledge, noting only reasonable diligence and/or plain view. The Region notes that this may contribute to the relatively low number of willful violations.

Recommendation #7: Tennessee should require compliance officers to establish and document specific knowledge to support violations.

State Response: TOSHA has not experienced difficulty in defending citations.

Corrective Action Plan: A staff meeting was held with all compliance managers following the EFAME visit to assure supervisors reiterate the importance of documenting actual employer knowledge. Supervisors have instructed the compliance staff regarding the importance of documenting actual knowledge and documenting constructive knowledge with sufficient support to show how they should have known.

Documentation to be submitted w. due date: NA

Anticipated Completion Date: 02/15/2010

Outcome Measure/Expectation: Violations that are properly documented and meet the requirements contained in the FOM for legal sufficiency.

Status: Subject to further Federal monitoring.

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Finding #8: TOSHA's VPP performance is demonstrated by reductions in TCIR and DART rates of its participating worksites, but the State has not established a system to continually monitor the program's overall performance.

Recommendation #8: TOSHA should develop and effectively implement an internal self-evaluation program to assess overall performance of the VPP Program and ensure that proper controls are in place.

State Response: TOSHA believes the current oversight of the program is adequate. However, on 12/07/10, the TOSHA Administrator indicated that a review of the Tennessee Volunteer Star Program will be incorporated into the state's self-internal evaluation program.

Corrective Action Plan: NA

Documentation to be submitted w. due date: NA

Anticipated Completion Date: NA

Outcome Measure/Expectation: Enhanced effectiveness of the Tennessee Volunteer Star Program.

Status: Subject to further Federal monitoring.

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Finding #9: TOSHA does not have an internal evaluation program as required by the State Plan Policies and Procedures Manual.

Recommendation #9: Tennessee should develop and implement a formal internal self-evaluation program. The procedure should assure that internal evaluations possess integrity and independence. Resulting report from these evaluations should be made available to federal OSHA.

State Response: TOSHA will establish audit teams consisting of supervisors and managers and will audit 2 field officers per FY. Each field office will be audited every 3 years.

Corrective Action Plan: TOSHA is developing and will implement an internal evaluation/audit program. This recommendation will be implemented during the current fiscal year.

Documentation to be submitted w. due date: The “formal internal self-evaluation program” the completed evaluation will be provided to the Nashville Area Office.

Anticipated Completion Date: A copy of TOSHA’s internal evaluation program will be provided to the Nashville Area Office by March 31, 2011.

Outcome Measure/Expectation:

Tennessee identifies weaknesses in their program, need for additional training and/or procedures, etc., through their internal program resulting in Federal OSHA finding few problems during evaluations and a more efficient and effective program.

Status: Pending further Federal monitoring and review of TOSHA’s internal evaluation program.