

**FY 2019 Comprehensive  
Federal Annual Monitoring and Evaluation (FAME) Report**

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



**Evaluation Period: October 1, 2018 – September 30, 2019**

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

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



## Contents

|             |  |    |
|-------------|--|----|
| <b>I.</b>   | Executive Summary.....   | 3  |
| <b>II.</b>  | State Plan Background.....   | 4  |
|             | A. Background.....   | 4  |
|             | B. New Issues.....   | 6  |
| <b>III.</b> | Assessment of State Plan Performance.....                              | 6  |
|             | A. Data and Methodology.....   | 6  |
|             | B. Review of State Plan Performance .....                              | 7  |
|             | 1. Program Administration.....   | 7  |
|             | 2. Enforcement.....  | 9  |
|             | 3. Review Procedures.....  | 16 |
|             | 4. Standards and Federal Program Changes (FPCs) Adoption.....          | 17 |
|             | 5. Variances.....  | 18 |
|             | 6. State and Local Government Worker Program.....                      | 19 |
|             | 7. Whistleblower Program.....  | 19 |
|             | 8. Complaint About State Program Administration (CASPA).....           | 21 |
|             | 9. Voluntary Compliance Program.....                                   | 21 |
|             | 10. State and Local Government 23(g) On-Site Consultation Program..... | 22 |

## Appendices

|   |     |
|---|-----|
| Appendix A – New and Continued Findings and Recommendations.....            | A-1 |
| Appendix B – Observations and Federal Monitoring Plans.....                 | B-1 |
| Appendix C – Status of FY 2018 Findings and Recommendations.....            | C-1 |
| Appendix D – FY 2019 State Activity Mandated Measures (SAMM)<br>Report..... | D-1 |
| Appendix E – FY 2019 State OSHA Annual Report (SOAR).....                   | E-1 |

## I. Executive Summary

The purpose of this report is to assess Tennessee's Occupational Safety and Health (TOSHA) program for Fiscal Year (FY) 2019 and its progress in resolving outstanding findings from the FY 2018 Follow-Up Federal Annual Monitoring and Evaluation (FAME) Report.

In fiscal year (FY) 2019, TOSHA made progress toward achieving most of its performance goals established in the FY 2019 Strategic Management Plan, as well as in reviewing the effectiveness of areas related to enforcement activities, including a summary of an onsite evaluation. This report is based on the results of quarterly meetings, the State Office Annual Report (SOAR), the State Activity Mandated Measures (SAMM) Report, as well as the OSHA Information System (OIS) reports ending September 30, 2019.

In FY 2019, TOSHA conducted 1,653 workplace inspections, which resulted in 6,992 hazards cited, and created safe working conditions for 2,887,754 employees. TOSHA's enforcement efforts combined with numerous outreach activities contributed to significantly decreasing workplace fatalities in FY 2019. A total of 23 fatalities were reported to TOSHA in FY 2019, down from 42 the previous year. Twenty-two of the reported fatalities were work-related. The State Plan responded to all reported events within one workday.

Employee turnover rate and the loss of experienced compliance safety and health officers continue to contribute to a lower number of safety and health inspections. Actual inspections decreased in FY 2019 from FY 2018. TOSHA conducted 1,342 safety and 311 health inspections, which is 100.1% of the planned inspection goal of 1,652 inspections. Safety inspections exceeded the TOSHA goal by 176, while health inspections were lower than the planned inspections by 14 inspections.

The FY 2018 Follow-up FAME report did not include any new findings or observations. A total of one finding and seven observations were identified in the FY 2019 evaluation. 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 (Status of FY 2018 Findings and Recommendations) does not apply to the FY 2019 FAME report.

## II. State Plan Background

### A. Background

The Tennessee Occupational Safety and Health State Plan received final approval under Section 18(e) of the OSH Act on July 22, 1985. The official designated as responsible for administering the program under the Tennessee Occupational Safety and Health Act of 1972 is the Commissioner of Labor and Workforce Development. The Tennessee Commissioner of Labor and Workforce Development is an appointed executive position in the Tennessee state government appointed by the Governor to oversee the Department of Labor and Workforce Development, whose mission is to promote workforce development and improve workplace safety and health throughout the State. The Commissioner of Labor, currently and during the period covered by this evaluation, is Jeff McCord. Steve Hawkins serves as Deputy Commissioner. Within the Tennessee Department of Labor and Workforce Development, the Tennessee Occupational Safety and Health Administration has responsibility for carrying out the requirements of the State Plan. Wendylee Fisher serves as the Assistant Commissioner and the TOSHA Administrator.

TOSHA has 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 central office is located in Nashville, with seven additional field offices strategically located throughout the State in Knoxville, Memphis, Chattanooga, Kingsport, and Jackson, as well as two in Nashville. Currently, there are 83.75 positions funded under the 23(g) grant. These positions include 22 safety compliance officers and 14 health compliance officers assigned to field offices throughout the State. The worker population in Tennessee consists of approximately 4,887,754 workers, and nearly 153,158 employers.

On October 1, 2019, Tennessee began its first year of the five-year planning cycle, as documented in the Strategic Plan. The five-year Strategic Plan includes three primary outcome goals: 1) Improve workplace safety and health for all employees as evidenced by eliminating hazards, reducing exposures, injuries, illnesses, and fatalities; 2) Increase employer and employee awareness of, commitment to, and involvement in occupational safety and health; and 3) Maximize effectiveness by striving for continuous improvement in the area of service delivery. A detailed review of TOSHA's performance in this area is provided in Appendix E, which is the FY 2019 SOAR.

During FY 2019, TOSHA faced the challenge of meeting their goals despite staffing concerns. Thirty-four percent (34%) of the State's compliance officers have less than one year of experience which means that they are not performing independent inspections. In addition, as of November 22, 2019, there were seven vacant compliance officer positions. Effective November 11, 2018, TOSHA increased the starting salary from \$3,199, per month, to \$3,780, in an attempt to attract qualified candidates.

TOSHA continues its outreach to employers and employees by providing a variety of training and outreach services. In FY 2019, TOSHA participated in events to include speaker’s requests, OSHA 10 & 30-hour courses, workshops, webinars, fairs and conferences. Safety and health training was provided to 8,590 attendees across the state. In addition, a free quarterly newsletter, “Together with TOSHA” was posted on TOSHA’s web site and distributed through the LISTSERV account, which currently contains 1,432 registered users. The newsletter offers information, interpretation, best practices and compliance recommendations on a wide range of occupational safety and health topics. These topics have included the following: Tennessee’s fatality rate and a review of “What Kills In Tennessee”; recommendation for employers regarding hazard prevention and control; OSHA published documents for the National Safety Stand-Down in the Construction industry; Safe & Sound Week; National Ladder Safety Month; National Work Zone Awareness Week; Electronic Reporting OSHA Form 300A; Heat Stress; Cold Stress; Emergency Preparedness; Disaster Response; Crane Operator Certification; the Tennessee Volunteer Star Program; the Safety Health Achievement Recognition Program (SHARP); the State’s Safety Award winners; TOSHA outreach efforts with posting of seminar schedules; Safety and Health educational efforts throughout Tennessee; Trench Safety Stand-Down; and the Tennessee Safety and Health Conference.

The data below was released by the Bureau of Labor Statistics in November 2019. The State’s total recordable case (TRC) rate for Calendar Year (CY) 2018 remained at low levels. The private sector TRC rate was 2.8 and the Days Away Restricted Transfer (DART) rate was 1.6, which are equal to the national rates.

| <b>CY 2018</b>   | <b>Tennessee</b> |      | <b>National Average</b> |      | <b>Comparison</b>             |
|------------------|------------------|------|-------------------------|------|-------------------------------|
| <i>TRC Rate</i>  | 2.8              | 3.0* | 2.8                     | 3.1* | <i>Equal to Federal Data*</i> |
| <i>DART Rate</i> | 1.6              | 1.6* | 1.6                     | 1.7* | <i>Equal to Federal Data*</i> |

*\*All industries, including state and local government*

Worker protection from retaliation related to occupational safety and health is administered by TOSHA through the central office in Nashville. There is one compliance manager, and sufficiently trained safety and health staff may be tasked to conduct retaliation investigations as a collateral duty. The State Attorney General prosecutes retaliation cases found to be meritorious.

The Tennessee Department of Labor and Workforce Development provides 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 2019, hazards were identified during one of the consultative visits. The State Plan equivalent to the OSHA Voluntary Protection Program (VPP) is the Tennessee’s Volunteer Star Program, and it organizationally falls within Education, Training, and Technical Assistance.

The table below shows TOSHA’s funding levels from FY 2015 through FY 2019.

| FY 2015-2019 Funding History |                    |                       |                       |                    |                              |
|------------------------------|--------------------|-----------------------|-----------------------|--------------------|------------------------------|
| Fiscal Year                  | Federal Award (\$) | State Plan Match (\$) | 100% State Funds (\$) | Total Funding (\$) | % of State Plan Contribution |
| 2019                         | 3,850,300          | 3,850,300             | 606,546               | 8,307,146          | 53.46                        |
| 2018                         | 3,850,300          | 3,850,300             | 569,391               | 8,269,991          | 53.44                        |
| 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                        |

[Reference: State Plan Grant]

## B. New Issues

### Maximum Penalty Increase

In accordance with the Bipartisan Budget Bill passed on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum penalties. As required by law, OSHA then increased maximum penalties annually, according to the Consumer Price Index (CPI). The Tennessee State Plan has not completed the legislative changes to increase maximum penalties.

## III. Assessment of State Plan Progress and Performance

### A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2019 is a comprehensive year, and as such, OSHA was required to conduct an on-site evaluation and case file review. A seven-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 State Plan office during the timeframe of December 9-13, 2019. A total of 119 safety and health enforcement inspection, whistleblower, VPP, and state and local government agency consultation case files were reviewed. The safety and health inspection files were randomly selected from closed inspections, conducted during the evaluation period (Oct 1, 2018, through September 30, 2019). The selected population included the following:

- Eleven (11) fatality case files;
- Nineteen (19) complaint case files;
- Thirty (30) programmed planned case files;
- Ten (10) referral case files (including employer reported referrals);
- Five (5) follow-up files;
- Twenty (20) UPA (Phone & Fax) files
- Sixteen (16) closed whistleblower case files;
- Six Volunteer Star Participants files;
- Two State and Local Government Agency Consultation 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 2019 State Activity Mandated Measures Report and includes the FRL for each measure.

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

### **1. PROGRAM ADMINISTRATION**

#### **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 training (OJT).

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. A new compliance officer's basic training is accomplished by the successful completion of three initial OTI training courses. In subsequent years, compliance safety and health officers (CSHOs) will attend another five courses at OTI, in accordance with that CSHO's designated training track. In the first year, concurrent with the three initial OTI training courses, new compliance officers participate in OJT. At the end of the first year, the CSHO is administered an in-house test to evaluate their knowledge of the standards and TOSHA procedures. TOSHA maintains a training database, which enables the State Plan to effectively track the training of all its personnel throughout their career. The database also allows the State Plan to compile several training-related reports.

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 currently has four employees with CSP and CIH certifications.

TOSHA also conducted outreach training, by providing safety and health training to employees and employers throughout the State. A total of 284 training sessions on safety and health topics were conducted, training approximately 8,590 attendees across the State.

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

TOSHA remains the only State Plan in Region IV, that uses OIS directly, rather than through an interface system. The State Plan has consistently utilized OIS reports, and other data to manage the program, and to track OSH program activity. This includes both mandated activity, activity goals, and outcome goals, as per the Strategic Plan. The reports are utilized by all levels of management including the Administrator, Assistant Administrator, Program Managers and Supervisors. The reports are used to track program activity, as well as to assess activity by individual CSHOs. The reports are run at an appropriate frequency, as conditions dictate. By tracking activity, potential outliers are detected, before they become a serious problem.

#### c) State Internal Evaluation Program Report

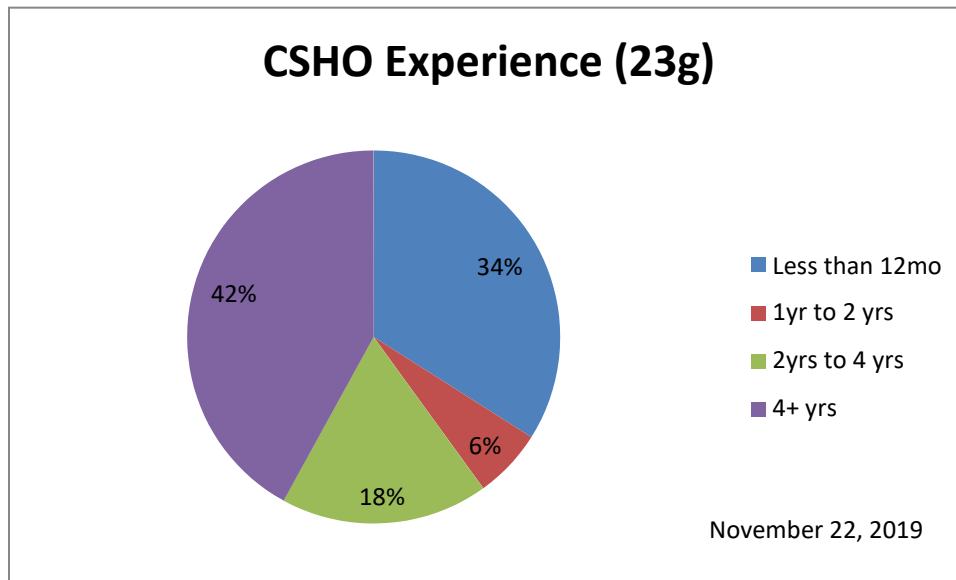
TOSHA has developed and implemented ADM-TN 03-00-011, Audit Program for the Central and Area Offices, to provide guidance regarding the internal evaluation of its program. The procedure evaluates two Area Offices each fiscal year on an ongoing basis. TOSHA's standards and procedures manager serves as the lead auditor. The Jackson and Memphis Area Offices were evaluated, during FY 2019. This document meets the criteria outlined in the State Plan Policies and Procedures Manual.

#### d) Staffing

During this period, TOSHA's staffing levels met or exceeded the established benchmarks for the program, based on the benchmark criteria. The State Plan remains committed to staffing its program at the appropriate level, within the current budgetary constraints.

At the time of this report, TOSHA's compliance staffing included 22 safety compliance officers and 15 health compliance officers. There are currently four vacant safety compliance positions and three vacant health compliance positions. There are also one vacant safety and two vacant health supervisor positions. During this period, the State Plan has worked aggressively to fill all vacant positions. Currently, 40% of the compliance officers have less than two years of experience.





## 2. ENFORCEMENT

### a) Complaints

TOSHA’s procedures for handling complaints and referrals 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 1,496 complaints in FY 2019 of which 421 (28%) were complaint inspections and 1,018 (72%) were complaint investigations. [Reference: OIS Inspection Summary] According to the SAMM Report, TOSHA responds timely to complaints. The average number of days to initiate a complaint inspection in FY 2019 was 6.27, well below the negotiated standard of 15 days. [SAMM 1a] The average number of days to initiate a complaint investigation was 2.77, which is also well below the negotiated standard of five days. OSHA selected 20 complaint investigations, and 19 complaint inspections for review, during this evaluation of the TOSHA program. Approximately 26.4% of the total number of complaint inspections were found to be in-compliance.

TOSHA has a centralized complaint and referral intake procedure, with complaints transferred to the field supervisor having geographic jurisdiction. The State Plan’s emphasis has been on customer service, and assuring that each complaint is given attention, consistent with the severity of the alleged hazards. TOSHA considers electronic complaints obtained through the federal complaint system as a formal complaint. After the receipt of an electronic complaint, a follow-up call to the complainant is usually made to clarify the complaint items and perfect the complaint. The source of the complaint, with those from a current employee having priority, and the severity of the alleged hazards, are primary considerations for supervisors to decide,

whether to handle the complaint by letter, or by inspection.

In FY 2019, 345 referrals were processed by the State. Referrals are alleged hazards or violations of the Act, which are typically received from other federal, state, or local agencies, the media, a compliance officer or an employer reporting an injury or illness. TOSHA follows similar procedures as OSHA for employer reported referrals.

b) Fatalities

Workplace fatalities decreased significantly in FY 2019. A total of 23 fatalities were reported to TOSHA in FY 2019, down from 42 the previous year. Twenty-two of the reported fatalities were work-related. SAMM 10 indicates that the State Plan responded to all reported events within one workday.

Next-of-Kin (NOK) were contacted on all investigations. Tennessee has a procedure for communication with family members of deceased workers. Letters are sent to the NOK at the beginning of the investigation, and when the investigation has concluded. 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. Managers and supervisors indicated that they check to assure that the letters have been sent when they review 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.

According to fatality figures for FY 2019, the State experienced three fatalities in the Service Industry, which is ten less than the same time period last year. The State experienced nine construction and four manufacturing fatalities, which are three less and four less, respectively, compared to the same period the previous year. TOSHA uses all available resources, including the Bureau of Labor Statistics rates to assess trending and appropriate targeting of resources, as well as the State Plan’s 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 tables below detail the industries, where fatalities occurred in FY 2018 and FY 2019.

| <b>Fatalities By Industry</b> | <b>FY 2018</b> | <b>FY 2019</b> |
|-------------------------------|----------------|----------------|
| Construction                  | 12             | 9              |
| Manufacturing                 | 8              | 4              |
| Transportation                | 3              | 2              |
| Wholesale/Retail Trade        | 0              | 0              |
| Services                      | 13             | 3              |

|                                   |           |           |
|-----------------------------------|-----------|-----------|
| Agriculture, Forestry,<br>Fishing | 0         | 0         |
| Government (Public<br>Utilities)  | 2         | 3         |
| Finance: Insurance &<br>Real Est. | 0         | 0         |
| Other                             | 3         | 1         |
| <b>Total Fatalities</b>           | <b>41</b> | <b>22</b> |

TOSHA’s average penalty per inspection for fatality cases was \$2,750. Penalties were reduced an average of 4.2% on citations related to fatalities that were resolved by means of an informal settlement agreement (ISA).

TOSHA’s procedures for investigation of occupational fatalities are effectively the same as those of OSHA. The established TOSHA procedure for fatality investigations: Field Operations Manual (FOM) Chapter 11 – II. Fatality and Catastrophe Investigations is 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 is identified, and a thorough investigation was completed. Depending on the circumstances, the staff attorney may conduct an additional review to ensure that the case documentation is legally sufficient. Ultimately, the TOSHA Administrator makes the determination. 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 Plan exhibited a high level of commitment 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. No problems were noted in the fatality investigation files reviewed. Files included statements, other documentation that supported the violations cited, and the cause of the accident was clearly explained.

### c) Targeting and Programmed Inspection

According to inspection statistics reviewed, TOSHA conducted 1,652 inspections in FY 2019, of which 1,014 were programmed. Twenty-one percent were conducted in the construction industry. Construction work is also considered high hazard, and inspection sites are targeted using several procedures, based on specified criteria. Tennessee conducts a number of programmed inspections in the construction sector, particularly under their Special Emphasis Program (SEP) for fall protection. These are associated with their strategic goal to reduce construction fatalities. According to the SIR, 95.45% of private sector programmed safety inspections and 80.56% of private sector programmed health inspections had violations and of those 81.63% of safety inspections and 89.66% of health inspections currently had a serious, repeat, and/or willful violation

(SRW) [SIR Measure 2c]. This is significantly higher than all state and all federal RIDs.

TOSHA has a variety of Special Emphasis Programs (SEPs) for construction and general industry, some are associated with their strategic goals, and others support National Emphasis Programs (NEPs). Tennessee's strategy for reducing injury, illness, and fatality rates is based on addressing specific areas that have the greatest impact on the overall rates. These goals incorporate targeted inspections employing an inspection scheduling system, the DODGE inspection scheduling system, and local and national emphasis programs. TOSHA'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 National Emphasis Program (NEP). Fall hazards continued to be targeted under the Special Emphasis Program (SEP) for fall protection. 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; Noise and Targeting Initiative for Dental Offices (Blood Borne Pathogens).

Tennessee also participates in the following federal NEP's: the FY2019 Agency Priority Goal for Trenching and Excavation; Amputations; Hexavalent Chromium; PSM Covered Facilities; Primary Metal Industries; Combustible Dust; and Lead.

#### d) Citations and Penalties

In FY 2019, the 1,652 inspections conducted resulted in an average of 3.18 SRWU violations per inspection and 0.68 other-than-serious violations (OTS) per inspection. TOSHA exceeds the three-year national average, and is within range of the FRL for SWRU, which is 1.43 to 2.15 (SAMM 5). The FRL for OTS violations is 0.78 to 1.16, however the State Plan is citing a higher number of violations as serious. Therefore, this is not an issue that would require further review. Serious violations are categorized as high, medium or low severity serious, for penalty calculation purposes. Additionally, 126 repeat violations were issued; and two willful violations were issued. Also, TOSHA has a higher enforcement presence in the workplace at 1.5% compared to the FRL at  $\pm 25\%$  of 1.23%. TOSHA's enforcement presence measure exceeds the FRL measure range. (SAMM 17).

Actual inspections (SAMM 7) decreased in FY 2019 from FY 2018. TOSHA conducted 1,341 safety and 311 health inspections, which was 100.1% of the planned inspection goal of 1,652 inspections. Safety inspections exceeded the TOSHA goal by 176, while health inspections were lower than the planned inspections by 14 inspections. Turnover rate and the loss of experienced compliance safety and health officers continue to contribute to the lower number of safety and health inspections.

TOSHA also maintained a significantly lower average lapse time from opening conference to citation issuance date than the FRL (SAMM 11) as referenced below:

| <b>Average Lapse Time</b> | <b>TOSHA</b> | <b>FRL</b>    |
|---------------------------|--------------|---------------|
| <b>Safety</b>             | 30 days      | 38.08 – 57.13 |
| <b>Health</b>             | 44 days      | 45.78 – 68.68 |

Case files reviewed included adequate documentation to support the violations. The case files that were reviewed were sufficiently documented overall, to support the violations with minor exceptions. The inspection files had very detailed narratives explaining the inspection process, the employer’s business/processes, findings, and any other issues. 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) without sufficient evidence to show how the employer should have known, rather than actual knowledge or providing an adequate explanation for the constructive knowledge in the Violation Worksheet. 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.

It continues to be a practice not to include inspection field notes, including interview notes, in the inspection files. The field notes are not retained at the instruction of the State Attorney, when the compliance officer completes the Violation Worksheet Form. It is 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. This is contrary to the Tennessee FOM, Chapter 5 – Case File Preparation and Documentation – XII. Inspection Records. A. Generally. Which provides 1. Inspections records are any record made by a CSHO that concern relate to, or are part of, any inspection, or are a part of the performance of any official duty. And, 2. All official forms and notes constituting the basic documentation of a case must be part of the case file. Original field notes, if retained by the CSHO, are part of the inspection record and shall be maintained in the file. 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. According to the State’s FOM - Chapter three 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.” Additionally, the State’s FOM – Chapter 5 - Case File Preparation and Documentation – VII. Interview Statements – A. During Management interviews, CSHOs are encouraged to take verbatim, contemporaneous notes whenever possible, as these tend to be more credible than later general recollections.

The total in-compliance rate (SAMM 9) for all safety inspections in FY 2019 was 10.04% and 26.98% for health inspections. The percentage for safety was well below the FRL, and health was well within the FRL.

TOSHA’s average current penalty per serious violation in the private sector (SAMM 8: 1- 250+ workers) was \$1,644.97 in FY 2019. The further review level (FRL) is ± 25% of the three-year national average, \$2,871.96. TOSHA’s penalty per serious violation is 57% lower than the lowest acceptable FRL measure of \$2153.97.

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 the 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%<br>26-100 = 40 %<br>101-250 = 20%<br>>250 = 0% | < 25 = 60%<br>26-100 = 40%<br>101-250 = 20%<br>>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 five years            | 10% = no S, W, R violations in past five years           |

**FY 2019-OB-1:** In 17 of 58 (29.3%) files reviewed that had violations, employer knowledge was not adequately documented.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor by randomly selecting and reviewing a limited number of enforcement files to ensure knowledge is adequately documented.

**FY 2019-OB-2:** Inspection field notes, including interview notes in the inspection files, are transferred to the Violation Worksheet Form and the notes are destroyed.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor by randomly selecting and reviewing a limited number of enforcement files to ensure interview notes are maintained in the casefile.

#### e) Abatement

Available procedures and inspection data indicate that TOSHA obtains adequate and timely abatement information in most case files and has processes in place to track employers who are late in providing abatement information. The Assistant Administrator runs a weekly past due abatement report that is shared with managers and supervisors and is sorted by CSHOs.

Follow-up inspections accounted for 2.2% of the total inspections in Tennessee for FY 2019. Follow-up inspections are useful to ensure abatement, if there is a problem with abatement verification. According to the State Indicator Report (SIR) for FY 2019, the number of private sector inspections that have unabated violations that are greater than 60 calendar days for safety, and 90 calendar days for health, past the issuance date, was 47 for safety and four for health, respectively. In addition, there were 119 valid unprogrammed activities handled as inspections which have been open more than 60 days, and there were 72 valid complaints handled as an investigation (phone/fax) which were open more than 30 days. TOSHA should ensure that the number of complaint investigations open remains low, so that hazards are quickly eliminated.

The majority of case files reviewed contained written documentation, photos, work orders, or employer's certification of abatement. Petitions for Modification of Abatement (PMA) were appropriately provided, when the employer requested an extension for their corrective action timeframe and interim protection information was provided in the case file.

In the files reviewed, where serious hazards were identified, and the abatement was classified as "Corrected During Inspection (CDI)", the files had the specific description outlining the corrective action observed by the compliance officer, as well as photos for evidence. A violation can be considered corrected during the inspection, when the compliance officer witnesses the correction to the specific violation while onsite. TOSHA requires that the worksheet contain information on how the violation was abated.

#### f) Worker and Union Involvement

Tennessee's procedures for employee and union involvement are identical to those of OSHA. Case file review disclosed that employees were included in 99.58% of fatality investigations, and other inspections. This determination was supported by SAMM measure 13.

### 3. REVIEW PROCEDURES

#### a) Informal Conferences

Tennessee has procedures in place for conducting informal conferences and proposing informal settlement agreements. Based on our review, these procedures appear to be followed consistently by the managers and supervisors. According to the State Indicator Report (SIR), 1.62% of violations were vacated, and 1.42% of violations were reclassified, as a result of informal settlement agreements. The percent of penalty retained was 94.03%, which exceeds the national average of 66.38%. Case files reviewed had similar results, with very few violations noted as being vacated or reclassified, and most cases were resolved with some penalty reduction. Supervisors are required to get the employer to agree to workplace safety and health program improvements, training, or other agreements in exchange for citation modifications. Where there were vacated or reclassified violations, or a larger penalty reduction, the files included the rationale for the changes documented in the informal conference memo with the manager's approval. The compliance manager is required to get any changes, modifications, or deletions to citations approved by the administrator. No negative trends or problems with citation documentation have been noted.

#### b) Formal Review of Citations

In FY 2019, 3.3% of inspections with citations were contested. An in-house attorney represents TOSHA from the Tennessee Attorney General's Office (AG). This attorney is assigned exclusively to represent TOSHA. The Attorney participates in organizations, such as the State OSHA Litigators Organization (SOLO), where state and federal high-profile cases, and cases with special legal issues, are shared and discussed. The attorney works closely with the compliance staff, during the preparation of fatality inspections and other high-profile inspections. The attorney is 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.

The Tennessee Occupational Safety and Health Review Commission is an independent body appointed to the part-time positions by the governor, and generally serves a three-year term. The Review Commission hears and issues decisions on appeals, relating to the issuance of citations and assessment of penalties by TOSHA. 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.

During FY 2019, the State Plan did not receive any negative decisions by the Tennessee Occupational Safety and Health Review Commission. All decisions are reviewed by the



TOSHA Administrator and senior management staff to determine if changes in policies and procedures need to be made.

#### 4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

In accordance with 29 CFR 1902, State Plans are required to adopt standards and federal program changes (FPCs) within a six-month timeframe. State Plans that do not adopt identical standards and procedures must establish requirements that are at least as effective (ALAE) as the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, TOSHA adopted all of the OSHA-initiated standards, which required action in a timely manner. The only exceptions were the standards impacting the penalty levels and maritime related federal program changes, which are not under the jurisdiction of the State. The tables below provide a complete list of the federal directives and standards, which required action during this period:

##### Status of FY 2019 Federal Standards Adoption

| Standard:  | Response Due Date: | State Plan Response Date: | Intent to Adopt: | Adopt Identical: | Adoption Due Date: | State Plan Adoption Date: |
|--|--------------------|---------------------------|------------------|------------------|--------------------|---------------------------|
| Final Rule on the Standards Improvement Project - Phase IV 1904,1910,1915,1926 (5/14/2019)                                   | 7/13/2019          | 6/11/2019                 | Yes              | Yes              | 11/14/2019         | 11/14/2019                |
| Final Rule on the Implementation of the 2019 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1902,1903 (1/23/2019) | 3/23/2019          | 1/28/2019                 | No               | No               | 7/23/2019          | On hold                   |
| Final Rule on Crane Operator Certification Requirements 29 CFR Part 1926 (11/9/2018)   | 1/9/2019           | 12/19/2018                | Yes              | Yes              | 5/9/2019           | 1/1/2019                  |
| Final Rule on Maximum Penalty Increases  | 9/12/2016          | On hold                   | On hold          | On hold          | 1/01/2017          | On hold                   |

**Status of FY 2019 Federal Program Change (FPC) Adoption**

| <b>FPC Directive/Subject:</b>   | <b>Response Due Date:</b> | <b>State Plan Response Date:</b> | <b>Intent to Adopt:</b> | <b>Adopt Identical:</b> | <b>Adoption Due Date:</b> | <b>State Plan Adoption Date:</b> |
|---|---------------------------|----------------------------------|-------------------------|-------------------------|---------------------------|----------------------------------|
| <i><b>Adoption Required</b></i>   |                           |                                  |                         |                         |                           |                                  |
| National Emphasis Program on Trenching and Excavation<br>CPL 02-00-161<br>(10/1/2018)                               | 11/30/2018                | 11/8/2018                        | Yes                     | Yes                     | 4/1/2019                  | 11/15/2018                       |
| <i><b>Equivalency Required</b></i>  |                           |                                  |                         |                         |                           |                                  |
| Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment<br>CPL 02-01-061<br>(5/22/2019) | 7/21/2019                 | 6/25/2019                        | No                      | No                      | 11/22/2019                | None                             |
| Shipyard Employment "Tool Bag" Directive<br>CPL 02-00-162<br>(5/22/2019)  | 7/21/2019                 | 6/25/2019                        | No                      | No                      | 11/22/2019                | None                             |
| Enforcement Guidance for Personal Protective Equipment (PPE) in Shipyard Employment<br>CPL 02-01-060<br>(5/22/2019) | 7/21/2019                 | 6/25/2019                        | No                      | No                      | 11/22/2019                | None                             |
| Site-Specific Targeting 2016<br>(SST-16)<br>CPL 02-18-01<br>(10/16/2018)  | 12/15/2018                | 11/8/2018                        | Yes                     | Yes                     | n/a adoption not required | 11/15/2018                       |
| <i><b>Adoption Encouraged</b></i>   |                           |                                  |                         |                         |                           |                                  |
| Alternative Dispute Resolution (ADR) Processes for Whistleblower Protection Programs<br>CPL 02-03-008<br>(2/4/2019) | 4/5/2019                  | 3/1/2019                         | No                      | No                      | n/a adoption not required | None                             |

**3. VARIANCES**

TOSHA currently has two permanent 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. Neither variance is a multi-state agreement requiring approval from OSHA.

Tennessee does not have any temporary variances, and the State Plan appropriately shares variance requests with federal monitors.

#### **4. 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 598 state and local government sector inspections in FY 2019, which accounted for 36.02% of all inspections. [Reference: SAMM 6] The average citation lapse time for state and local government sector enforcement files is 10 days, well below the performance goal of 20 days. The 2018 TCIR for the state and local government sector in Tennessee is 4.0, lower than the national average of 4.8.

#### **5. WHISTLEBLOWER PROGRAM**

TOSHA is responsible for enforcing the 11(c) anti-retaliation provisions under the State Act. This act prohibits retaliation 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 retaliation under Section 11(c) of the OSH Act.

TOSHA's procedures for handling safety and health retaliation 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's case outcomes per the SAMM Report, which uses cases closed during the fiscal year.

| Meritorious Complaints |       | Merit Cases Settled |      |
|------------------------|-------|---------------------|------|
| <b>FY 2019</b>         | 13%   | <b>FY 2019</b>      | 100% |
| <b>FY 2018</b>         | 24%   | <b>FY 2018</b>      | 100% |
| <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% |

| Status                      | Number of Cases | Percentage |
|-----------------------------|-----------------|------------|
| <b>Merit Finding Issued</b> | 0               | 0          |
| <b>Dismissed Non-Merit</b>  | 27              | 71%        |
| <b>Settlement</b>           | 5               | 13%        |
| <b>Withdrawal</b>           | 6               | 16%        |

[Reference: State Data]

During FY 2019, data shows that TOSHA received 74 complaints. Of the complaints received, 73 were docketed and 37 were administratively closed. According to the SAMM Report, 50% of the investigations were completed timely; that is, completed within ninety days, as compared to 30% in FY 2017. The average lapse time for retaliation cases was 107 days. TOSHA has continued to successfully work on improving their completion rate of retaliation investigations. [Reference: SAMMs 14, 15, 16]

A review of 15 electronic 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 retaliation 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.

According to the states FOM the state has adopted Federal OSHA standard 29 CFR 1913.10(a). Under OSHA's standard, OSHA authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Medical information will be retained by OSHA only for so long as needed to accomplish the purpose for access. This will be kept secure while being used and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances.

During this review several items were noted, those observations are as follows:

**FY 2019-OB-3:** Several instances of unlabeled medical documentation without a medical release and/or medical access form were identified.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor case files to ensure that medical documentation is handled in accordance with the applicable regulations.

**FY 2019-OB-4:** Whistleblower files do not clearly document whether the required closing conferences are being provided to complainants. 6 of 15 case files reviewed did not include documentation that the closing conference was conducted.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor to ensure that prior to case closure; Complainants are being contacted, by either telephone or email, and provided with the applicable details regarding case status.

**FY 2019-OB-5:** There is incorrect/inconsistent usage of administrative closure and case withdrawal procedures. Specifically, certain files were administratively closed after docketing, versus being dismissed. Other files were administratively closed after docketing, upon complainant requesting that the matter be withdrawn. Additionally, the administrative closure letters issued advised the parties of appeal rights; however, no appeal rights exist when a complaint is either administratively closed or withdrawn.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor to ensure that investigations are being closed appropriately and recorded properly.

**FY2019-OB-6:** Although policy requires that investigations undergo supervisory review, a single individual screened, investigated, and rendered a final decision on case merit.

**Federal Monitoring Plan:** The OSHA Area Office will confirm that all cases, prior to closure, are reviewed by a supervisor to ensure an adequate investigation and that the investigator's recommendations are factually and legally supported.

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

No CASPAs were filed during this evaluation period.

#### **5. 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 39 participating worksites. During FY 2019, one new site was evaluated for participation in the Volunteer Star Program, and seven sites were recertified for participation in the program. 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; however, applications outside these NAICS codes are considered on a case-by-case basis. TOSHA CSP – TN 03-01-003 directive effectively addresses enforcement activities at VPP sites, such as fatality investigations. A review of selected files revealed that evaluations were conducted in accordance with the TOSHA

CSP – TN 03-01-003, policies and procedures manual. All required documentation was identified in the VPP files with one exception acknowledging receipt of application, acceptance and deferral letter documentation.

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

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. A review of the two files revealed that TOSHA conducts state and local government agency consultation visits using the OIS enforcement module. Subsequently the files did not contain all the required information as outlined in the Consultation Policies and Procedures Manual and are not conducted by consultants.

| Serious Hazards Confirmed Abated |   | Other Hazards Confirmed Abated |   |
|----------------------------------|---|--------------------------------|---|
| Public Safety                    | 2 | Public Safety                  | 0 |
| Public Health                    | 0 | Public Health                  | 0 |
| Total Public                     | 2 | Total Public                   | 0 |

**Finding FY 2019-01:** The state entered consultation visits into the OIS enforcement module instead of the OIS consultation module and the local government consultation case files did not contain all of the required information, as outlined in the Consultation Policies and Procedures Manual.

**Recommendation:** TOSHA should ensure that each consultation visit file includes all of the following documentation, which is outlined in the Consultations Policies and Procedures Manual: the Safety and Health Program Assessment Worksheet (Form 33); recommendation of interim measures; copies of OSHA-300 Logs; comparison of the site’s DART and TRC rates to the national and state averages; description of the workplace and the working conditions at the site in the employer’s report; the filing arrangement outlined in Appendix H; and document dates of importance, actions, date reports are sent, etc.

## Appendix A – New and Continued Findings and Recommendations

### FY 2019 Tennessee Comprehensive FAME Report

| FY 2019-#        | Finding  | Recommendation  | FY 2018-# or<br>FY 2018-OB-# |
|------------------|--|---|------------------------------|
| <b>FY2019-01</b> | The state entered consultation visits into the OIS enforcement module instead of the OIS consultation module and the local government consultation case files did not contain all of the required information, as outlined in the Consultation Policies and Procedures Manual. | TOSHA should ensure that consultation visits are separate from enforcement inspections and each consultation visit file includes all of the required documentation, as outlined in the Consultation Policies and Procedures Manual. |                              |

**Appendix B - Observations and Federal Monitoring Plans**  
 FY 2019 Tennessee Comprehensive FAME Report

| Observation #<br>FY 2019-OB-# | Observation#<br>FY 2018-OB-# or<br>FY 2018-# | Observation   | Federal Monitoring Plan   | Current Status |
|-------------------------------|--|---|---|----------------|
| FY 2015-OB-01                 |  | In 17 of 58 (29%) files reviewed that had violations, employer knowledge was not adequately documented.   | The OSHA Area Office will closely monitor by randomly selecting and reviewing a limited number of enforcement files to ensure knowledge is adequately documented.   | New            |
| FY 2015-OB-02                 |  | Inspection field notes, including interview notes in the inspection files, are transferred to the Violation Worksheet Form, and the notes are destroyed.          | The OSHA Area Office will closely monitor by randomly selecting and reviewing a limited number of enforcement files to ensure field notes and interview notes are included in files.  | New            |
| FY 2015-OB-03                 |  | Several instances of unlabeled medical documentation without a medical release and/or medical access form were identified.  | The OSHA Area Office will closely monitor case files to ensure that medical documentation is handled in accordance with the applicable regulations.   | New            |
| FY 2015-OB-04                 |  | Whistleblower files do not clearly document whether the required closing conferences are being provided to complainants.  | In FY 2020, a limited number of retaliation/whistleblower case files will be selected randomly and reviewed to confirm that files clearly document that closing conferences are being provided to complainants.   | New            |
| FY 2015-OB-05                 |  | There is incorrect/inconsistent usage of cases administratively closed and case withdrawal procedures.  | In FY 2020, a limited number of retaliation/whistleblower case files will be selected randomly and reviewed to confirm cases administratively closed and case withdrawal procedures are correct and consistent.   | New            |
| FY 2015-OB-06                 |  | Although policy requires that investigations undergo supervisory review, a single individual screened, investigated, and rendered a final decision on case merit. | In FY 2020, a limited number of retaliation/whistleblower case files will be selected randomly and reviewed to confirm that all cases, prior to closure, are reviewed by a supervisor to ensure an adequate investigation, and that the investigator's recommendations are factually and legally supported. | New            |



**Appendix C – Status of 2018 Findings and Recommendations**  
FY 2019 Tennessee Comprehensive FAME Report

| <b>FY 2018</b> | <b>Finding</b> | <b>Recommendation</b> | <b>State Plan Response/Corrective Action</b> | <b>Completion Date</b> | <b>Current Status and Date</b> |
|----------------|----------------|-----------------------|--|------------------------|--------------------------------|
| N/A            | <b>None.</b>   | N/A                   | N/A  | N/A                    | N/A                            |

## Appendix D – State Activity Mandated Measure (SAMM) Report

FY 2019 Tennessee Comprehensive FAME Report

| U.S. Department of Labor  |   |                 |                      |  |
|---|---|-----------------|----------------------|--|
| Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs) |   |                 |                      |  |
| State Plan: Tennessee – TOSHA   |   |                 | FY 2019              |  |
| 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)         | 6.27            | 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)       | 3.61            | 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)      | 2.77            | 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)    | 0.99            | 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.                         |

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

### FY 2019 TOSHA Comprehensive FAME Report

|          |   |             |                        |  |
|----------|---|-------------|------------------------|--|
| <b>5</b> | Average number of violations per inspection with violations by violation type               | SWRU: 3.18  | +/- 20% of SWRU: 1.79  | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.43 to 2.15 for SWRU and from 0.78 to 1.16 for OTS.   |
|          |   | Other: 0.68 | +/- 20% of Other: 0.97 |  |
| <b>6</b> | Percent of total inspections in state and local government workplaces                       | 36.02%      | +/- 5% of 38.26%       | 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 36.34% to 40.17%.   |
| <b>7</b> | Planned v. actual inspections – safety/health   | S: 1,341    | +/- 5% of S: 1,165     | 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 1,106.75 to 1,223.25 for safety and from 308.75 to 341.25 for health. |
|          |   | H: 311      | +/- 5% of H: 325       |  |
| <b>8</b> | Average current serious penalty in private sector - total (one to greater than 250 workers) | \$1,644.97  | +/- 25% of \$2,871.96  | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,153.97 to \$3,589.95.  |
|          | a. Average current serious penalty in private sector (1-25 workers)                         | \$1,272.35  | +/- 25% of \$1,915.86  | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,436.89 to \$2,394.82.  |
|          | b. Average current serious penalty in private sector (26-100 workers)                       | \$1,638.64  | +/- 25% of \$3,390.30  | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,542.73 to \$4,237.88.  |
|          | c. Average current serious penalty in private sector (101-250 workers)                      | \$2,055.03  | +/- 25% of \$4,803.09  | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,602.31 to \$6,003.86.  |

## Appendix D – State Activity Mandated Measure (SAMM) Report

FY 2019 Tennessee Comprehensive FAME Report

|           |   |            |                       |   |
|-----------|---|------------|-----------------------|---|
|           |   |            |                       |   |
|           | <b>d.</b> Average current serious penalty in private sector (greater than 250 workers)    | \$2,876.59 | +/- 25% of \$5,938.59 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,453.94 to \$7,423.23.   |
| <b>9</b>  | Percent in compliance   | S: 10.04%  | +/- 20% of S: 30.30%  | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 24.24% to 36.36% for safety and from 28.90% to 43.35% for health. |
|           |   | H: 26.98%  | +/- 20% of H: 36.12%  |   |
| <b>10</b> | Percent of work-related fatalities responded to in one workday                            | 100%       | 100%                  | The further review level is fixed for all State Plans.  |
| <b>11</b> | Average lapse time  | S: 29.89   | +/- 20% of S: 47.61   | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 38.08 to 57.13 for safety and from 45.78 to 68.68 for health.     |
|           |   | H: 43.67   | +/- 20% of H: 57.23   |   |
| <b>12</b> | Percent penalty retained  | 93.31%     | +/- 15% of 66.38%     | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 56.42% to 76.33%.   |
| <b>13</b> | Percent of initial inspections with worker walk around representation or worker interview | 99.58%     | 100%                  | The further review level is fixed for all State Plans.  |
| <b>14</b> | Percent of 11(c) investigations completed within 90 days                                  | 53%        | 100%                  | The further review level is fixed for all State Plans.  |
| <b>15</b> | Percent of 11(c) complaints that are meritorious  | 14%        | +/- 20% of 23%        | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 18.40% to 27.60%.   |

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

### FY 2019 TOSHA Comprehensive FAME Report

|           |  |       |                     |   |
|-----------|--|-------|---------------------|---|
| <b>16</b> | Average number of calendar days to complete an 11(c) investigation | 100   | 90                  | The further review level is fixed for all State Plans.  |
| <b>17</b> | Percent of enforcement presence                                    | 1.50% | +/- 25% of<br>1.23% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.92% to 1.54%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 12, 2019, as part of OSHA's official end-of-year data run.

**Appendix E - FY 2019 State OSHA Annual Report (SOAR)**

FY 2019 TOSHA Comprehensive FAME Report

State of Tennessee  
Department of Labor and Workforce Development  
State Office Annual Report  
October 1, 2018 – September 30, 2019

---

## Table of Contents

|  |    |
|--|----|
| Introduction.....                            | 3  |
| Mandated Activities.....                     | 5  |
| Summary of Annual Performance Plan Goal..... | 14 |
| Significant Inspections.....                 | 19 |
| Special Accomplishments.....                 | 21 |

### *Introduction*

---

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 2,887,754. There are approximately 153,158 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 free online access to Tennessee Department of Labor and Workforce Development rules and OSHA general industry, construction and agriculture standards.
- 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
- Gray - 0454716, 0454726 and 0454736
- Consultation – 0494701



## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

### FY 2019 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 22, 2019, one industrial hygienist supervisor, two industrial hygienists, five occupational safety specialist positions, and one occupational safety specialist manager were vacant (23g). TOSHA intends to fill five of the nine vacancies prior to December 31, 2019.

## ***Mandated Activities***

---

### **Enforcement**

During FY 2019, Tennessee OSHA performed 1,657 workplace inspections (*source: Inspection One Liner*). During these inspections 6,992 hazards (*source: Violation Detail Data Report*) were identified and penalties of \$4,259,656 (*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 the pre-contest period, TOSHA retained 94.03% of the penalties assessed, compared to 71.10% retained by combined federal and state programs nationwide. (*Source: SIR Report*)

### **Complaints**

During FY 2019, complaint inspections were initiated an average of 3.62 days following receipt of the complaint, as indicated in the State Activity Mandated Measures (*Source: SAMM*). Complaint investigations were initiated in an average of 0.99 days. Both were within the goal of 15 days for inspections and 5 days for investigations. During FY 2019 TOSHA processed 1,590 complaints (*Source: UPA One Liner*).

### **Fatalities**

During FY 2019, TOSHA received 23 reports of fatal injury or illness (*source: State Accident Fat/Cat Log*). TOSHA evaluated each report and in response, conducted 22 on site investigations. Of the reported fatalities, 22 were work related. It is agency policy to conduct fatal accident 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**

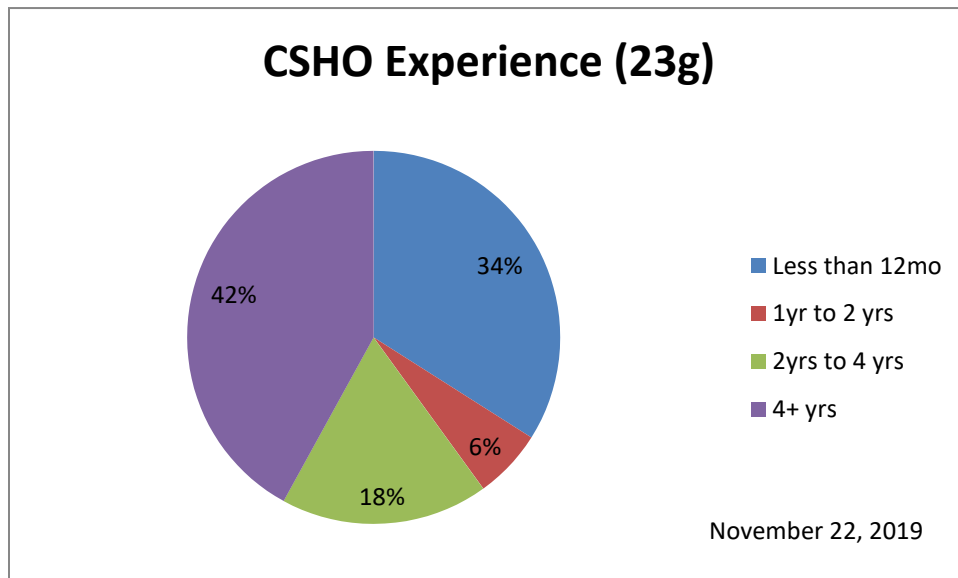
Tennessee OSHA participated in the following national emphasis programs: Trenching and Excavation, Hexavalent Chromium, PSM Covered Facilities, Primary Metal Industries, Combustible Dust, Lead, and Amputations.

In addition, Tennessee OSHA also maintained the following local emphasis programs: carbon monoxide, fall protection, noise, and a targeting initiative for dental offices.

**Evaluation of Mandated Activities**

Tennessee OSHA management reviews the State Activity Mandated Measures (SAMM) as well as other management reports periodically to assure the mandated activities are carried out effectively and efficiently. A review of the SAMM FY 2019, Violation Detail Data Report, Inspection Summary, Inspection One-Liner, and UPA One-Liner reports indicated Tennessee OSHA performed at a high level of competency and productivity. Highlights include the following: serious hazards were identified during 89.9% of safety inspections. Serious hazards were identified during 64.4% of health inspections (*source: Inspection Summary, Inspections with Violations tab*). Tennessee OSHA reclassified 1.42% of violations (*source: SIR Report*) and 95.77% (*source: Inspection Summary, Penalty Metrics tab*) of penalties assessed were retained. The average time to initiate a complaint inspection was 3.62 days (*source: SAMM*). The average time to initiate a complaint investigation was 0.99 days (*source: SAMM*). The average lapse time in days to issue citations for safety and health violations was 29.89 days and 43.67 days, respectively (*source: SAMM*).

As of November 22, 2019, 67% of compliance officers (not including supervisors or managers) have less than four years of experience and 44% of compliance officers have less than one year of experience. As of November 22, 2019 there were seven vacant compliance officer positions. TOSHA intends to fill five of those seven positions prior to December 31, 2019. New personnel are in training and TOSHA will continue to aggressively fill all vacancies. Effective November 11, 2018, TOSHA increased the starting salary from \$3,199, per month, to \$3,780 in an attempt to attract qualified candidates.



### **Public Sector Activity**

During FY 2019, Tennessee OSHA performed 36.0% 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 TOSH Act. All public employers not currently participating in the program are treated as private employers as mandated by state law. The 2018 total case incident rate (TCIR) for state and local government in Tennessee was 4.0 which is significantly lower than the national average of 4.8.

### **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.

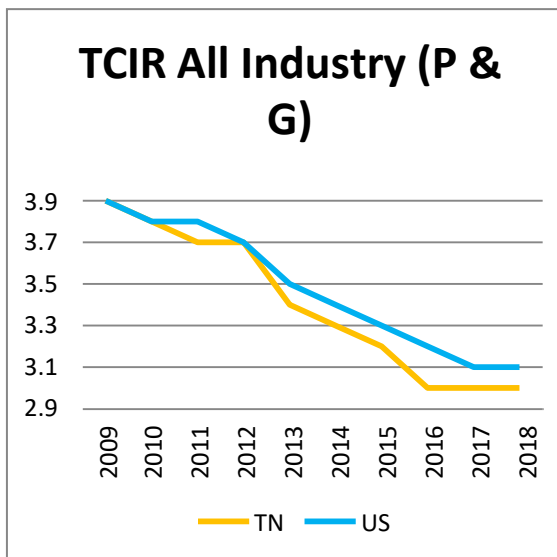
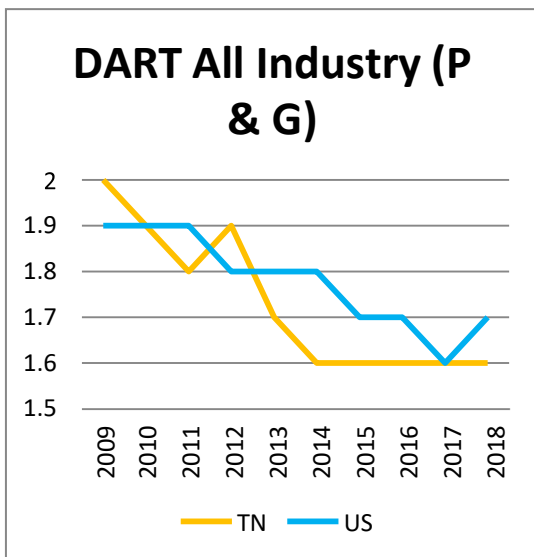
During federal FY 2019 there were 57 contested cases. 15 of those cases settled. A default judgment was granted in 5 of those cases, 2 employers withdrew their notice of contest, and 1 case TOSHA agreed to delete the citation and entered an Order of Dismissal with the Review Commission. As of 9/30/19, of the 34 cases remaining, 6 settlements are in the process of being finalized and 6 settlements are pending approval at the Attorney General's office. The remaining 22 are pending resolution via 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 ten years, reveals a decline in the Days Away, Restricted, Transferred (DART) and the Total Case Incident Rate (TCIR).

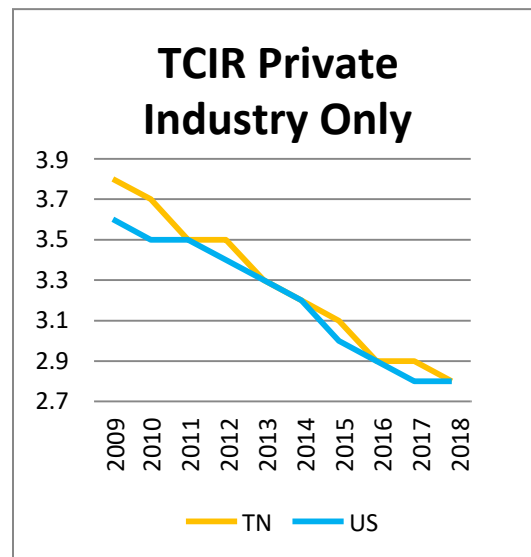
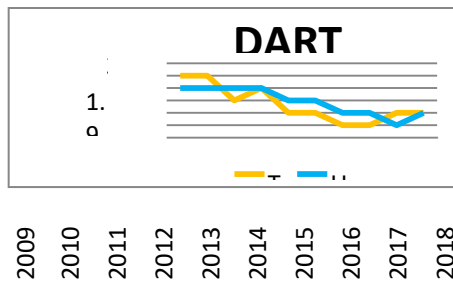
*All Industries Public and Private*

| YEAR | DART |     | TCIR |     |
|------|------|-----|------|-----|
|      | TN   | US  | TN   | US  |
| 2018 | 1.6  | 1.7 | 3.0  | 3.1 |
| 2017 | 1.6  | 1.6 | 3.0  | 3.1 |
| 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 |
| 2011 | 1.8  | 1.9 | 3.7  | 3.8 |
| 2010 | 1.9  | 1.9 | 3.8  | 3.8 |
| 2009 | 2.0  | 1.9 | 3.9  | 3.9 |



### Private Sector Only

| YEAR | DART |     | TCIR |     |
|------|------|-----|------|-----|
|      | TN   | US  | TN   | US  |
| 2018 | 1.6  | 1.6 | 2.8  | 2.8 |
| 2017 | 1.6  | 1.5 | 2.9  | 2.8 |
| 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 |
| 2011 | 1.7  | 1.8 | 3.5  | 3.5 |
| 2010 | 1.9  | 1.8 | 3.7  | 3.5 |
| 2009 | 1.9  | 1.8 | 3.8  | 3.6 |



### **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 consists of the ten courses outlined in Phase 1 and are completed within the first three years of employment. After the three-year period, the training needs of all TOSHA compliance personnel are evaluated annually by the supervisors in conjunction with the section managers, and follow Phase 2 & 3 of the training plan.

In FY 2019, TOSHA employees attended classes at the OSHA Training Institute (OTI), in addition to OTI LIVE webinars and Pre-Recorded webinars; of which all covered various safety & health topics. TOSHA employees also attended training events sponsored by private entities and included instruction on the topics, NFPA 70E and Fall Protection Competent Person.

By virtue of these training opportunities, as well as attendance at the annual Tennessee Safety and Health Conference, Safety Fest, Tennessee Valley Section of AIHA, and TOSHA’s Professional Development Conference; all TOSHA staff received professional development training in FY 2019.

### **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 2019 in a timely manner. No unique state standards were adopted during this period.

The Tennessee OSH Act was amended by the General Assembly to change the definition of "employee" to the criteria established by Internal Revenue Service Ruling 84-41. This amendment is effective January 1, 2020. The Tennessee OSH Act has not been amended by the Tennessee Legislature to increase statutory maximum penalties as enacted by Congress in November 2015.

TOSHA adopted directives CPL 02-00-161, 18-01 (CPL 02), and CPL 02-00-163 posted by federal OSHA for state adoption in FY2019. All directives are listed on the division’s web page.

TOSHA responded to 178 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 2019.

### **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 39 sites and 24,618 employees, participating in the Volunteer STAR program. During FY 2019 one new application was evaluated and approved. A review of the 2018 annual self-evaluation data for Volunteer STAR sites reveal total case incident rates 49% below and days away, restricted, and transfer rates 40% 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 2019, TOSHA presented 14 Governor's Awards and 9 Commissioner's Awards. No exemption or other benefit, with the exception of recognition, is granted to the recipients.

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

TOSHA offered Workplace Safety & Health educational seminars at various locations across the state this year. These seminars are open enrollment and a schedule is published in the spring and fall each year. TOSHA partners with co-sponsors to offer these seminars, including but not limited to, the Tennessee Chamber of Commerce and Industry, Tennessee Association of Utility Districts, Associated Builders and Contractors, State Community Colleges, and other State, County, & City Agencies. The safety & health seminar topics include: new regulations, basic requirements, and current topics of interest.

The TOSHA training staff is comprised of industrial hygienists and occupational safety specialists who conduct the seminars, in addition to their compliance or consultation duties. In FY 2019, TOSHA trainers conducted sessions on several topics including Basic Safety, Maintenance-Related Standards, Recordkeeping, Dock & Warehousing, GHS & Hazard Communication, Silica, Health Hazards, and OSHA 30-Hour Courses, OSHA 10-Hour Courses. Safety and health training was provided to 8,590 attendees across the state.

TOSHA published a free quarterly newsletter, "Together with TOSHA". The newsletter is posted on TOSHA's web site and distributed through the LISTSERV account which currently contains 1,432 registered users. 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 2019 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 Safety Stand Down to prevent Falls in Construction, Safe & Sound Week, National Ladder Safety Month, National Work Zone Awareness Week, Electronic Reporting OSHA Form 300A, Heat Stress, Cold Stress, Emergency Preparedness, Fall Protection, Disaster Response, Crane Operator Certification;
- State VPP and SHARP participant updates, awards, and best practices;
- Recent TOSHA outreach efforts with posting of seminar schedules;
- Safety and Health educational efforts throughout Tennessee, including Safety Fest TN in Oak Ridge, Safe + Sound Week, Trench Safety Stand Down, Stand Down to prevent Falls in Construction, and the Tennessee Safety and Health Conference

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

During FY 2019 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 2019, 71 complaints alleging discrimination in violation of T.C.A. 50-3-409 were filed. Of these, 3 were untimely filed, 8 were settled, 15 were withdrawn by the complainant, 22 were found to lack merit, 11 were closed because the complainant failed to cooperate, 7 were screened and closed, and 1 was outside the jurisdiction of the statute. The remaining 4 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 for additional review. All citations are issued by signature of the TOSHA Administrator, or in their 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 area office to assure policies and procedures are being followed. The Jackson and Memphis area offices were evaluated during FY 2019. The intent of the procedure is to evaluate two area offices each federal fiscal year on an ongoing basis.

*Annual Performance Goals*

**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              | 1,657        | 416          | 2,073         |
| Serious Violations/Hazards      | 5,436        | 3,401        | 8,837         |
| Non-Serious Violations/Hazards  | 1,392        | 414          | 1,806         |
| Repeated Violations             | 97           | n/a          | 97            |
| Willful Violations              | 4            | n/a          | 4             |
| Regulatory Hazards              | n/a          | 544          | 544           |
| <b>Total Violations/Hazards</b> | <b>6,929</b> | <b>4,359</b> | <b>11,288</b> |

**Performance Goal 1.2 - Carbon Monoxide**

Reduce carbon monoxide exposures for 300 employees.

**Summary** – Tennessee OSHA exceeded this goal

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

| FY          | EMPLOYERS | EMPLOYEES  |
|-------------|-----------|------------|
| 2015        | 11        | 1,072      |
| 2016        | 9         | 923        |
| 2017        | 15        | 573        |
| 2018        | 9         | 621        |
| <b>2019</b> | <b>11</b> | <b>319</b> |

**Performance Goal 1.3 – Noise**

Reduce noise exposures for 400 employees.

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

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

| FY          | EMPLOYERS | EMPLOYEES  |
|-------------|-----------|------------|
| 2015        | 13        | 673        |
| 2016        | 20        | 468        |
| 2017        | 12        | 876        |
| 2018        | 12        | 491        |
| <b>2019</b> | <b>17</b> | <b>566</b> |

**Performance Goal 1.4**

Eliminate 500 fall hazards in the workplace.

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

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          | EMPLOYERS  | HAZARDS      |
|-------------|------------|--------------|
| 2015        | 241        | 541          |
| 2016        | 246        | 450          |
| 2017        | 347        | 789          |
| 2018        | 474        | 1,135        |
| <b>2019</b> | <b>472</b> | <b>1,054</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   | 129                | 326                | 1,110        |
| Consultation | 174                | 932                | 2,361        |
| <b>TOTAL</b> | <b>303</b>         | <b>1,258</b>       | <b>3,471</b> |

**Performance Goal 2.1**

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

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

---

|                      | Programs   | Personnel     |
|----------------------|------------|---------------|
| Formal Training      | 284        | 8,590         |
| Consultation On-site | 416        | 5,294         |
| <b>TOTAL</b>         | <b>700</b> | <b>13,884</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   | 740          | 2,065              |
| Consultation | 326          | 2,426              |
| <b>TOTAL</b> | <b>1,066</b> | <b>4,491</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.

|                           | <b>Goal</b>  | <b>Workplaces</b> |
|---------------------------|--------------|-------------------|
| Private Sector Compliance | 1,000        | 1,045             |
| Public Sector Compliance  | 500          | 599               |
| Consultative Services     | 365          | 416               |
| <b>TOTAL</b>              | <b>1,865</b> | <b>2,060</b>      |

**Performance Goal 2.4**

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

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

Tennessee OSHA evaluated one application for participation in the Volunteer STAR program.

The following applications were evaluated:

1. Honeywell 2.

**Performance Goal 2.5**

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

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

Tennessee OSHA consultation services evaluated two applications for participation in SHARP.

The following companies were evaluated:

1. Rowland Safety Supply
2. Wagner-Meinert 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                 | 58.3                             |
| Health Compliance        | 55                 | 54.3                             |
| Public Sector Compliance | 20                 | 14.9                             |
| Consultation             | 25                 | 10.6                             |

**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):

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

|             | <b>Goal (days)</b> | <b>Average Days to Open</b> |
|-------------|--------------------|-----------------------------|
| Inspections | 15                 | 3.68                        |
| Inquiries   | 5                  | 0.99                        |

**Performance Goal 3.3**

Ensure effective service by completing lab analysis within 14 days.

The TOSHA laboratory was decommissioned. This item is no longer applicable.

**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> | <b>Percentage Trained</b> |
|-------------------------------------|--------------------------------------|---------------------------|
| 71                                  | 70                                   | 98.6%                     |

***Significant Inspections***

---

**Dollar Tree Stores, Inc. (\$113,250)**

A complaint inspection was conducted on 11/01/18 at Dollar Tree Stores, Inc. located in Nashville, TN. The facility is a retail store. The inspection resulted in 1 serious citation for a 5 foot fall hazard on a stairway landing, 4 repeat serious citations: the exit route being less than 28 inches wide (2<sup>nd</sup> repeat), blocked exit, blocked fire extinguisher (2<sup>nd</sup> repeat), boxes stacked in an unstable and unsecured manner (2<sup>nd</sup> repeat), and electrical panels blocked. One other-than-serious was also issued concerning the lack of monthly portable fire extinguisher inspections.

**Dollar Tree Stores Inc. (\$62,500)**

On 12/12/18 an inspection was conducted at Dollar Tree Stores Inc., in Jacksboro, TN. The inspection was the result of a complaint that was received in our Knoxville office. The inspection revealed violations in which two were classified as Serious Repeat violations due to Dollar Tree Stores Inc., being previously cited for the same or similar violations in their Springfield store in 2016, Brentwood store in 2017 and twice in 2018, and their Jackson store in 2018 and one serious violation.

**Dollar Tree Stores, Inc. (\$56,600)**

A follow-up inspection was conducted on 11/02/18 at Dollar Tree Stores, Inc. located in Jackson, TN. The facility is a retail store. The inspection resulted in 1 repeat serious citation concerning the exit access to the emergency exit door being less than 28" wide, 1 repeat serious citation concerning merchandise stacked in an unstable condition, 1 repeat other-than-serious citation concerning safety data sheets not being readily accessible to employees, 1 other-than-serious citation for helium cylinders stored without a valve protection cap, 1 other-than-serious citation concerning no initial hazard communication training conducted, and 1 other-than-serious citation concerning the lack of effective annual hazard communication training.

**Chattanooga Tank Wash (\$47,200)**

On 2/12/20 an inspection was conducted at Chattanooga Tank Wash LLC in response to a complaint that had been received in the Chattanooga office. The company cleans over the road truck tanks that haul a variety chemicals and food products. The company employs 7 employees at this location.

**I-JP Contracting Inc. (\$46,600)**

A programmed planned construction inspection was conducted on 05/20/19 at a jobsite of I-JP Contracting Inc. (framing contractor) located in Nashville, TN. The jobsite consisted of the framing of three story, four unit townhouses. The inspection resulted in 4 serious citations ranging from lack of eye protection when using pneumatic nailers, a rough terrain forklift left unattended with the forks raised and the key left in the ignition, no handrail on a stairway, and an employee standing on the top step of a step ladder. Six



(6) repeat serious citations ranging from lack of forklift training and evaluations, poor housekeeping throughout the jobsite, worn extension cords being used, lack of fall protection in three separate instances, lack of fall protection training (2nd repeat), and the lack of ladder & stairway safety training. Eight (8) other-than-serious citations ranging from no written hazard communication program, safety data sheets not available at the jobsite, no hazard communication training, inadequate foot protection, stair treads not installed the full depth of the steps, extension cord 3-way adapter was missing its attachment plug with wire partially wrapped in electrical tape & lying on the ground, and inadequate strain relief on an extension cord.

### **Summers-Taylor Inc. (\$40,800)**

On 7/30/19 an inspection was conducted based on the emphasis program for Trenching and Excavations, at the job site of Summer-Taylor Inc. located at 1009 Lark Street in Johnson City. As a result of this inspection two Serious Willful violations along with three Serious violations were observed.

### **Elite Trucking and Excavating LLC. (\$40,300)**

On 5/21/19 an inspection was conducted at the job site of Elite Trucking and Excavating LLC located at 950 Brittany Park Avenue in Antioch as a result of a complaint that was received. The employer was in the process of installing re-bar in the bottom of two trenches so that the building footers could be poured with concrete. The trenches at the jobsite were in excess of 12 feet deep and adequate protection systems were not utilized. The supervisor on site stated that he knew the trenches were not adequately protected and he therefore instructed the employees to fabricate the re-bar supports outside of the trench so as to limit the amount of time they were exposed to the hazards of a cave-in. With the supervisors knowledge of protective systems and the fact that the trenches were not provided with appropriate protective systems to protect the employees from a possible cave-in, two Serious Willful citations were issued along with one Other Than Serious citation.

### **Spencer Utility Department**

A fatality investigation was conducted at the Spencer Utility Department in Spencer, TN on 4/2/19. An employee was working in a 10-foot deep trench to repair a water line when the trench collapsed on him. The employee was trapped under the dirt and in water that had accumulated in the trench. There was no type of cave-in protection in place. Six serious citations were issued for items related to standards for excavations and PPE.

## *Special Accomplishments*

---

- Tennessee OSHA, with the Tennessee chapters of ASSP, sponsored the 42nd annual Tennessee Safety and Health Conference in July. The event drew more than 546 attendees and over 100 exhibitors.
- TOSHA co-sponsored the Safety Fest TN 2019, presented by the Oak Ridge Business Safety Partnership, on April 30<sup>th</sup> – May 3<sup>rd</sup>, 2019.
- Tennessee OSHA produced and distributed the quarterly newsletter, *Together with TOSHA*.

Tennessee OSHA partnered with the following safety organizations to conduct training:

Tennessee Chamber of Commerce and Industry  
University of Tennessee Center for Industrial Studies  
Tennessee Safety and Health Conference  
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 Department of Environment and Conservation (TDEC)  
Tennessee Health Care Association  
Local Area Dental Associations  
City of Johnson City  
NOVA Medical Center

- TOSHA also partnered with the following institutions of higher learning  
Meharry Medical School  
Meharry Dental School  
Volunteer State Community College  
Walters State Community College  
Motlow State Community College
- TOSHA's Public Sector section partnered with the following for training  
TN Solid Waste Directors' Association  
City of Memphis Workplace Safety Conference  
Metro Nashville Public Works  
TN Department of Environment and Conservation
- The Administrator served on the federal Advisory Committee on Construction Safety and Health (ACCSH).
- The TOSHA Administrator served on the board of directors of the Occupational Safety and Health State Plan Association.

## Appendix D – State Activity Mandated Measure (SAMM) Report

### FY 2019 Tennessee Comprehensive FAME Report

- 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 TOSHA Consultation Program Manager served as the 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 three occupational medicine residents in FY2019.
- 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 FY2019.