



# TOSHA INSTRUCTION

TENNESSEE DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT  
DIVISION OF OCCUPATIONAL SAFETY & HEALTH

**DIRECTIVE NUMBER: CSP-TN 01-03-002** | **EFFECTIVE DATE: May 20, 2009**

**SUBJECT: Jurisdictional Coverage Reference - US DOL/OSHA and TDLWD/TOSHA.**

## ABSTRACT

**SUBJECT:** Jurisdictional Coverage Memorandum of Understanding (MOU) between the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) and the Tennessee Department of Labor Division of Occupational Safety and Health (TOSHA).

**Purpose:** This instruction provides guidelines for implementing the Jurisdictional Coverage Memorandum of Understanding (MOU) between OSHA and TOSHA.

**Scope:** This instruction applies TOSHA-wide.

**References:** Tennessee Code Annotated (T.C.A.) Section 50-3-104 Scope of Chapter.

TOSHA Field Operations Manual (FOM), Tennessee Occupational Safety and Health Plan - Part V.

Memorandum of Understanding (MOU) between the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) and the Tennessee Department of Labor Division of Occupational Safety and Health (TOSHA) revised October 1, 2007.

OSHA Directive CSP 01-03-002 Reference Book on Jurisdictional Issues, November 11, 1977.

**Action:** Section Managers and Area Supervisors shall ensure that the objectives and concepts inherent in the MOU, Appendix A, are effectively implemented in accordance with the guidelines set forth in G. of this instruction.

**Background:** The MOU between OSHA and TOSHA sets forth a working relationship between the two agencies in order to protect the health and well being of the state's work force. It establishes a reference source for jurisdictional coverage issues that may arise between the two agencies. This document will be referenced when there are questions about which agency has enforcement authority over a particular employer, agency, or worksite. Additional

information on jurisdictional issues is contained in OSHA CSP 01-03-002 Reference Book on Jurisdictional Issues dated November 11, 1977.

**Guidelines:** Within the framework of the agreement, TOSHA Managers and Area Supervisors will adhere to the areas of authority delineated in the MOU. The procedural guidelines established in the MOU as follows:

- A.** The Administrator of TOSHA will maintain contact with the OSHA Regional Administrator in order to coordinate the MOU. Contact and coordination is also required at the Area Office level between the respective Area Supervisor and Section Managers. When there is a question about TOSHA jurisdiction, the following references should be consulted:
  - 1. The Tennessee Code Annotated (T.C.A.) Section 50-3-104,
  - 2. The TOSHA FOM, and
  - 3. This instruction.
- B.** When a jurisdictional or coordination question arises which cannot be resolved at the area office level, or guidance is required to make a decision, the Section Manager shall be contacted. In cases where the Manager cannot determine jurisdiction, contact the TOSHA Administrator.
- C.** The Compliance Managers shall ensure that field personnel are provided with a copy of the MOU.
- D.** Whenever potential violations of a site not covered by TOSHA are identified during the period of researching the site (as in a complaint or referral), the compliance officer shall submit a referral form (OSHA-90) through the Supervisor to the Manager with specific information about the potential violation. The Manager will insure this information is communicated to OSHA.
- E.** In order to track activity related to this MOU, the Area Supervisor shall copy the referral to the TOSHA Administrator.
- F.** An evaluation of the MOU shall be made each year by the TOSHA Administrator to insure that it remains current.

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**U.S. DEPARTMENT OF LABOR  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION**

**AND**

**THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH (TOSHA)**

This Memorandum of Understanding (MOU) is intended for the purpose of clarifying the jurisdictional boundaries of the Federal OSHA area office and the TOSHA office(s) within the State of Tennessee, as stated in the Federal Register, regarding the level of Federal and State jurisdiction at 29 CFR 1952.225. Federal OSHA has coverage in those areas of “exclusive federal jurisdiction” and where Tennessee OSHA (TOSHA) has declined or given over coverage. In addition, consistent with Section 18(c)(6) of the OSHAct, TOSHA has jurisdiction over all work performed by employees of the State of Tennessee or of a political subdivision of the State.

This agreement will become effective upon signature by the parties and will remain in effect until superseded or canceled. Cancellation of this agreement may be accomplished by either party by stating the reasons for cancellation and submitting such reasons to the other party in writing.

Attachment A identifies the areas of jurisdiction for the Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health (TOSHA) as specifically detailed in their approved state plan and subsequent Federal Register Notices, and the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). This Agreement and the Attachment is to be utilized by the staff of both agencies “**as general guidance**” in determining jurisdiction over “**issues**” for each office, as well as, additional specific situations that may arise. This agreement also **encourages immediate communication between the OSHA area office and the TOSHA central office** in Nashville regarding those areas where there is any doubt as to jurisdiction.

Cindy A. Cole, Regional Administrator  
Occupational Safety and Health Administration

Michael E. Magill, Commissioner  
Tennessee Department of Labor and  
Workforce Development

**ATTACHMENT A**

**GUIDANCE FOR JURISDICTIONAL COVERAGE – FEDERAL/STATE**

<b><u>AREAS OF JURISDICTION</u></b>	<b><u>COVERAGE</u></b>		<b><u>COMMENTS</u></b>
	<b><u>FEDERAL</u></b>	<b><u>STATE</u></b>	
<b>ALL PRIVATE SECTOR EMPLOYERS</b>	NO	YES	Unless specifically excluded from State coverage under State law.
<b>FEDERAL AGENCIES</b>			
FEDERAL EMPLOYEES	YES	NO	
<b>FEDERAL FACILITIES/OFFICES</b>			
FEDERAL EMPLOYEES	YES	NO	
PRIVATE CONTRACTORS (CEDED PROPERTIES)	YES	NO	Federal Courthouse - Nashville This generally covers all other federal offices in the State.
(NON-CEDED/LEASED PROPERTIES)	NO	YES	
<b>FEDERAL PRISONS</b>	YES	NO	
<b>TENNESSEE VALLEY AUTHORITY</b>			
TVA EMPLOYEES	YES	NO	
PRIVATE CONTRACTORS/ EMPLOYERS ON TVA LAND	YES	NO	
<b>MARITIME INDUSTRY</b>			
MARINE TERMINALS	YES	NO	
EMPLOYEES	YES	NO	
CONTRACTORS	YES	NO	
MANUFACTURING AND PRODUCTION OPERATIONS AT MARINE TERMINALS	NO	YES	TOSHA will cover all production and manufacturing operations and all activities and storage facilities directly associated with those production or manufacturing areas. TOSHA has coverage of all contractors in manufacturing and productions operations.
CONTRACTORS	NO	YES	
LONG SHORING	YES	NO	
SHIP BUILDING	YES	NO	

<b>U.S. PARK SERVICE</b> (Exclusive Federal Jurisdiction)	YES	NO	
FOOTHILLS PARKWAY			
NATCHEZ TRACE PARKWAY			
CHICKAMAUGA NAT. MIL. PARK			
CUMBERLAND GAP NAT. HIST. PK.			
ANDREW JOHNSON NHS			
BIG SOUTH FORK NRRRA			
FORT DONELSON NAT. CEMETERY			
GREAT SMOKEY MTNS. NP			
SHILO NAT. CEMETERY & NMP			
STONES RIVER NAT. MIL. PK. & CEMETERY			
EMPLOYEES	YES	NO	
CONTRACTORS	YES	NO	
<b>RAILROAD EMPLOYMENT</b>	YES	NO	The Tennessee Supreme Court ruled that Tennessee OSHA has no jurisdiction over railroad employees. Tennessee statutes (TCA 50, Chapter 3, Section 103) defines "employee" as "any person performing services for another under a contract for hire". TOSHA interprets this to exempt employees working directly or indirectly for the railroad, including private contractors.
<b>U.S. POSTAL SERVICE</b>			
EMPLOYEES	YES	NO	
CONTRACT EMPLOYEES (employees handling mail, etc.)	YES	NO	
PRIVATE CONTRACTORS	YES	NO	
	Including, but not limited to; construction, maintenance, & janitorial		
Revised 10/01/2007			
<b>GOVERNMENT OWNED/ CONTRACTOR OPERATED FACILITIES (GO/CO)</b>	YES	NO	
MILAN ARSENAL			
HOLSTON ARMY AMMUNITION PLT.			
VOLUNTEER ARMY AMMUNITION PLT.			
MEMPHIS DEFENSE DEPOT			
<b>MILITARY BASES</b>	YES	NO	
Arnold Air Force Base			
NSA Millington			
U.S. Corps of Engineers	YES	NO	

**VETERANS HOSPITALS**

(Federal Employees)	YES	NO	Federal OSHA provides coverage for all facilities and operations at VA Medical Centers by agreement with the State to eliminate shared jurisdiction.
(Private Contractors – construction, maintenance, janitorial, etc.) Alvin C. York VA Med. Ctr. James C. Quillan VA Med. Ctr. VA Med. Ctr. - Nashville VA Med. Ctr. – Memphis	YES	NO	

**TENNESSEE NATIONAL GUARD FACILITIES**

Federal National Guard civilians	YES	NO	These staff persons are considered Federal Employees and would be covered by Federal OSHA
State National Guard civilians	NO	YES	
Uniformed Military Personnel	NO	NO	Neither Federal or State jurisdiction. These staff are covered by Executive Order #12196
Private Employers/contractors	NO (see note)	YES	NOTE: State must attempt to cover, if entry is denied State must contact Federal OSHA. The NG facilities are generally owned by the State.

**RECREATIONAL BOAT BUILDERS  
ON NAVIGABLE WATERWAYS**

	NO – Unless 1915 Standards are applicable.	YES YES	TOSHA will cover all recreational boat building assembly line operations, except where 1915 standards apply.
LAND BASED	NO	YES	

**OAK RIDGE NATIONAL LABORATORIES (ORNL)**

Construction project at ORNL which involves transfer of land from DOE to the State of Tennessee and a private sector company, UT-Batelle Development Corporation (UTBDC)	NO	YES	TOSHA has full safety and health enforcement jurisdiction during the demolition and construction phases of this project.
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**DISCRIMINATION COMPLAINTS UNDER THE OSHA ACT**

Discrimination complaints received from employees which relate to work, and a related protected activity which was violated, while under the jurisdiction of Federal OSHA shall be investigated by Federal OSHA.

**NOTE: ADDITIONAL SPECIFIC PROJECTS THAT WILL FALL WITHIN THE JURISDICTION OF EITHER STATE OR FEDERAL JURISDICTION AS A RESULT OF PRIVATIZATION OR OTHER LEGAL ACTIONS BY THE DEPARTMENT OF ENERGY MAY/WILL BE ADDED TO THIS LISTING AS THOSE SITUATIONS OCCUR.**

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