# FY 2024 Follow-up Federal Annual Monitoring Evaluation (FAME) Report

**Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health**

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## Executive Summary

The purpose of this report is to assess the activities of the Tennessee Occupational Safety and Health Administration (TOSHA) for Fiscal Year (FY) 2024 regarding activities mandated by the Occupational Safety and Health Administration (OSHA). In addition, this report gauges the State Plan’s progress in resolving any outstanding findings and observations from the previous FY 2023 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report.

TOSHA maintained a high level of program performance during the review period. The State Plan implemented an excellent new CSHO training program for its staff and made progress to maintain current staffing levels. The program hired a new Health Compliance Manager, a new Training Manager, a new Consultation Program Manager, a new Assistant Administrator and a new Assistant Commissioner. In addition, TOSHA implemented a comprehensive system for scheduling programmed inspections and responded timely to all complaints, referrals and fatalities.

TOSHA implemented its first ever partnership with the Tennessee Builders Alliance for the new Titans Stadium. The Training Section had several successes including: continuing the Meharry Medical College Intern program, training over 650 utility workers through the Public Sector staff, training over 700 dentists and hygienists at four Dental Board events and assisting in delivery of training at Safety Fest in Oak Ridge and Tennessee Valley AIHA conferences. TOSHA hosted the winter OSHSPA-SOLO meeting in Nashville. TOSHA was a co-sponsor for the Tennessee Safety and Health Conference. The TOSHA VPP and Awards program recertified four VPP sites, awarded 18 Governor Awards and three Commissioner Awards. For calendar year 2024, TOSHA’s VPP sites had TCIR rates 66% below the industry averages for their respective NAICS.

TOSHA continually worked to make progress on findings and observations from the FY23 Comprehensive FAME. Employee turnover rates and delays in passing legislation to increase penalties were challenges the program continued to face in FY 2024.

The FY 2024 follow-up FAME report contains two findings and zero observations. Two findings were continued, and one observation was closed.

## State Plan Background

The State of Tennessee operates an occupational safety and health program through the Tennessee Department of Labor and Workforce Development, Tennessee Occupational Safety and Health Administration (TOSHA). The Tennessee State Plan received initial approval on July 5, 1973, and final approval on July 22, 1985.

The Commissioner of Labor and Workforce Development, Deniece Thomas, is the State Plan designee. Larry Hunt serves as the Assistant Commissioner and the TOSHA Administrator, and Garrett Rea serves as the Assistant Administrator.

TOSHA’s statutory authority is contained in Title 50 of the Tennessee Code Annotated TCA §§50-3-101 through 50-3-919, the Tennessee Occupational Safety and Health Act of 1972. Under these statutes, TOSHA conducts workplace inspections, issues citations, and penalties, and provides administrative and judicial review processes for employers seeking to contest citations and/or penalties. Title 50-3-409 prohibits employers from retaliating against workers who exercise their rights under TOSHA’s occupational safety and health statutes and authorizes the investigation and prosecution of complaints of workplace retaliation.

TOSHA is comprised of three sections: the Compliance Section, the Consultative Section, and the Training and Education Section. The headquarters is in Nashville, with seven additional field offices located throughout the state in Knoxville, Memphis, Chattanooga, Gray, and Jackson, as well as two additional offices in Nashville. The program managers and compliance supervisors are TOSHA’s first-line supervisors. At full staffing, TOSHA has 26 safety compliance officers, and 20 health compliance officers assigned to field offices throughout the State. TOSHA’s state and local government consultation program consists of two safety and health consultants who commit a portion of their time providing on-site consultation services to state and local government workplaces. Currently, there are 79 positions funded under the 23(g) grant. In FY 2024, TOSHA covered approximately 2,740,104 workers and 197,841 private sector establishments in the state.

The Tennessee State Plan applies to all private-sector workplaces in the state except: Maritime employment (including shipyard employment, marine terminals, and long-shoring, but not including marine construction, which is covered by TOSHA); Contract workers and contractor-operated facilities engaged in United States Postal Service (USPS) mail operations; Railroad employment, not otherwise regulated by another federal agency; Employment at Tennessee Valley Authority facilities and on military bases; and All working conditions of aircraft cabin crewmembers onboard aircraft in operation.

TOSHA has a specific program for the coverage of state and local government workers. All state and local government sector entities are required to be inspected at least every two years. TOSHA also administers the Volunteer Star Recognition Program (VPP) and the Safety and Health Achievement and Recognition Program (SHARP).

In FY 2024, TOSHA’s initial federal funding was $4,341,400. Due to the fund reduction of all OSHA 23(g) programs, the federal award was decreased by $157,000 in July, which resulted in the total federal portion being $4,184,400. TOSHA matched the federal portion and added $886,318 in 100% state funds. TOSHA reported final expenditures to be $9,861,696.80 ($4,184,400 federal, $4,184,400 match, and $1,492,896.80 overmatch – 100% state).

**New Issues**

None.

## Assessment of State Plan Progress and Performance

### Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year, therefore OSHA did not perform an on-site case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

* State Activity Mandated Measures (SAMM) Report
* State Information Report (SIR)
* Mandated Activities Report for Consultation (MARC)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan (APP)
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan

### Findings and Observations

#### Findings and Observations (Status of Previous and New Items)

The State Plan made progress in addressing the previous two findings and one observation from the FY 2023 Comprehensive FAME Report. This follow-up FAME report contains two findings (two continued) and zero observations (one closed). Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2023 finding and recommendation in detail.

**Findings:**

**Closed FY 2023 Findings**

No findings from FY 2023 were closed.

**Continued Findings**

**Finding FY 2024-01 (Formerly FY 2023-01, FY 2022-01, and FY 2021-01):** In 34 of 68 (53%) files reviewed for FY23 with violations, employer knowledge was not adequately documented.

**Status:** TOSHA stated that they document employer knowledge. However, it is not documented in OIS and is documented in a different section of the case file. OSHA did not perform a case file review for this fiscal year. A case file review is necessary to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review for the FY 2025 comprehensive FAME. This finding is continued.

**Finding FY 2024-02 (Formerly FY 2023-02, FY 2022-02, and FY 2021-03):** The Tennessee State Plan has not adopted OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. As a result, for FY 2024, TOSHA’s penalties are less than 25% of the national averages for all sizes of employers (SAMM 8 a,b,c,d) as indicated by Appendix D.

**Status:** This finding is continued. TOSHA has briefed executive leadership on OSHA’s position that increasing penalties is necessary for TOSHA to have a program that is “at least as effective as” Federal OSHA. Correcting this finding requires the state legislature to amend the TOSH Act. Department leadership is working with state leadership to move toward a resolution. The proposal to increase penalties was presented again to the Tennessee General Assembly for a second session.

**New FY 2024 Findings**

There were no new findings for FY 2024.

#### Observations:

**Closed FY 2023 Observations**

**Observation FY 2023-01** (Formerly FY 2022-OB-1, FY 2021-OB-1, and FY 2020-OB-1): Inspection field notes, including interview notes in the inspection files, are transferred to the Violation Worksheet Form and the notes are destroyed following the Tennessee Public Records Act, specifically T.C.A. § 10-7-301(14), which is contrary to Tennessee Field Operations Manual Chapter 5 – Case File Preparation and Documentation – XII. Inspection Records.

**Status:** In FY 2024, TOSHA stated that the Compliance Officer’s written notes taken during inspections are scanned and added to the case file. This observation is closed.

**Continued FY 2023 Observations**

There are no continued observations from FY 2023.

**New FY 2024 Observations**

There are no new observations for FY 2024.

### State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed- upon FRL which can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2024 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure.

The State Plan was outside the FRL on the following SAMMs:

**SAMM 5a-** Average number of violations per inspection with violations by violation type (SWRU)

**Discussion of State Plan Data and FRL:** The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.39 to 2.08 for SWRU. The state plan was at 2.44 average number of violations per inspection which is above the FRL. This is a positive outcome as the state is issuing more violations per inspection than the national average.

**SAMM 5b-** Average number of violations per inspection with violations by violation type (other).

**Discussion of State Plan Data and FRL:** The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.75 to 1.12 for OTS. The state plan was at 0.69, which is slightly below the FRL. This is not a concern for FY 2024.

**SAMM 6**- Percent of total inspections in state and local government workplaces.

**Discussion of State Plan Data and FRL:** 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 34.91% to 38.58%. TOSHA conducted 41.82% of total inspections in state and local government workplaces which is above the FRL, thus they were more effective in this measure for FY 2024.

**Explanation:** TOSHA is required to perform state and local government inspections every two years, which drives this measure up.

**SAMM 7a and 7b**- Number of Safety Inspections/Number of Health Inspections

**Discussion of State Plan Data and FRL:** TOSHA’s negotiated goal for safety inspections was 1425 for FY 2024. TOSHA completed 1,024 safety inspections, which was below the range of acceptable data not requiring further review (1,363 to 1,507 inspections.) TOSHA’s negotiated goal for health inspections was 470 for FY 24. TOSHA conducted 375 health inspections which was below the range of acceptable data not requiring further review (447-494 inspections.

**Explanation:** TOSHA had issues with employee retention and new employees take time to train before they can independently conduct inspections. Thus, fewer inspections are conducted. In addition, OSHA recognizes the potential impact caused by reducing the fiscal year 2024 State Plan 23(g) grant during the last quarter of the fiscal year. Finally, OSHA implemented a new set of SAMMs using a FRL of -20% of the negotiated inspection numbers. Even though these SAMMs were not in effect for FY 2024, it is notable that TOSHA’s 375 health inspections would have been just one inspection short of the FRL (376) under this new set of measures. For these reasons, OSHA will not make this issue a finding or observation and OSHA will continue to monitor during quarterly meetings.

**SAMM 10-** Percent of work-related fatalities responded to in one workday

**Discussion of State Plan Data and FRL:** TOSHA was at 96.55% for this measure. The FRL is 100%. The further review level is fixed for all State Plans. There was one fatality inspection, Big G Metal Works Inc., 1721951, where the CSHO was unable to open the inspection within one day due to inclement weather in the area. This is not a concern for FY 2024.

**SAMM 13-** Percent of initial inspections with worker walk-around representation or worker interview

**Discussion of State Plan Data and FRL:** The further review level is fixed for all State Plans at 100%. The state plan was at 99.57%. This is not a concern for FY 2024.

**SAMM 17-** Percent of enforcement presence

**Discussion of State Plan Data and FRL:** The further review level is based on a three-year national average +/- 25% of 1.00%. The range of acceptable data not requiring further review is from 0.75% to 1.25%. TOSHA was at 0.68%. This is not a concern for FY 2024.

### Appendix A – New and Continued Findings and Recommendations

FY 2024 TOSHA Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 20XX-#** | **Finding** | **Recommendation** | **FY 20XX-# or**  **FY 20XX-OB-#** |
| FY 2024-01 | In 34 of 68 (53%) files reviewed for FY23 with violations, employer knowledge was not adequately documented. | TOSHA should implement strategies to ensure that employer knowledge is documented in all inspection casefiles, as required by the FOM. OSHA did not perform a case file review for this fiscal year. A case file review is necessary to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review for the FY 2025 comprehensive FAME. This finding is continued. Corrective action complete, awaiting verification. | Formerly FY 2023-01, FY 2022-01 and FY 2021-01 |
| FY 2024-02 | The Tennessee State Plan has not adopted OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. As a result, for FY 2024, TOSHA’s penalties are less than 25% of the national averages for all sizes of employer (SAMM 8 a,b,c,d) as indicated by Appendix D. | TOSHA should continue to work with their State authorities to complete the legislative changes necessary to adopt the maximum and minimum penalty increase and subsequent annual increases to be at least as effective as OSHA’s penalty levels. | FY 2023-02, FY 2022-02 and FY 2021-03 |

### Appendix B – Observations Subject to Continued Monitoring

FY 2024 Tennessee Follow-up FAME Report

| **Observation #**  **FY 20XX-OB-#** | **Observation#**  **FY 20XX-OB-# *or* FY 20XX-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| None |  |  |  |  |

### Appendix C - Status of FY 2023 Findings and Recommendations

FY 2024 Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2023-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status**  **and Date** |
| FY 2023-01 | In 34 of 68 (50%) files reviewed that had violations, employer knowledge was not adequately documented. | TOSHA should implement strategies to ensure that adequate actual or constructive knowledge is documented in all inspection casefiles as required by the FOM. | TOSHA will make an effort to divert resources to conduct even more training on documenting employer knowledge. | CSHO training conducted 9/30/24 & 10/1/24 | Awaiting Verification |
| FY 2023-02 | The Tennessee State Plan has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. | TOSHA should work with their State authorities to complete the legislative changes necessary to adopt the maximum and minimum penalty increase and subsequent annual increases to be at least as effective as federal OSHA penalty levels. | TOSHA has briefed executive leadership on OSHA’s position that increasing penalties, while it may or may not have a secondary effect of decreasing the number of workplace injuries and deaths, is considered necessary for TOSHA to have a program that is “at least as effective as” Federal OSHA. Correcting this finding requires the state legislature to amend the TOSH Act. Department leadership is working with state leadership to move toward resolution. | Proposal to increase penalties will be presented again to the Tennessee General Assembly for a second session. | Open |

**Appendix D – FY 2024 State Activity Mandated Measures (SAMM) Report**

FY 2024 TOSHA Comprehensive FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 9.06 | 15 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of work days to initiate complaint inspections (federal formula) | 3.15 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of work days to initiate complaint investigations (state formula) | 2.46 | 5 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | 0.62 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 3 | Percent of complaints and referrals responded to within one workday (imminent danger) | 100% | 100% | The further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 0 | 0 | The further review level is fixed for all State Plans. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 2.44 | +/- 20% of 1.74 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.39 to 2.08 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.69 | +/- 20% of 0.94 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.75 to 1.12 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 41.82% | +/- 5% of  Grant 36.75% | 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 34.91% to 38.58%. |
| 7a | Planned v. actual inspections (safety) | 1024 | +/- 5% of  Grant 1435 | 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 1,363 to 1,507 for safety. |
| 7b | Planned v. actual inspections (health) | 375 | +/- 5% of  Grant 470 | 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 447 to 494 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $1,683.99 | +/- 25% of  $3,793.81 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,845.36 to $4,742.27. |
| 8a | Average current serious penalty in private sector  (1-25 workers) | $1,372.00 | +/- 25% of  $2,498.51 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,873.88 to $3,123.14. |
| 8b | Average current serious penalty in private sector  (26-100 workers**)** | $1,439.77 | +/- 25% of  $4,322.61 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,241.96 to $5,403.26. |
| 8c | Average current serious penalty in private sector  (101-250 workers) | $2,039.49 | +/- 25% of  $6,114.84 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,586.13 to $7,643.55. |
| 8d | Average current serious penalty in private sector  (greater than 250 workers) | $2,793.85 | +/- 25% of  $7,533.58 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,650.19 to $9,416.98. |
| 9a | Percent in compliance (safety) | 17.02% | +/- 20% of  32.83% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 26.27% to 39.40% for safety. |
| 9b | Percent in compliance (health) | 30.40% | +/- 20% of  44.18% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.34% to 53.01% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 96.55% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 26.72 | +/- 20% of 56.02 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.82 to 67.23for safety. |
| 11b | Average lapse time (health) | 45.78 | +/- 20% of 67.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 53.77 to 80.65 for health. |
| 12 | Percent penalty retained | 92.61% | +/- 15% of  70.81% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 60.19% to 81.44%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 99.57% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A | N/A | This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A | N/A | This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A | N/A | This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025. |
| 17 | Percent of enforcement presence | 0.68% | +/- 25% of  1.00% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.75% to 1.25%. |

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, 2024, as part of OSHA’s official end-of-year data run.