# FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) Report

**TENNESSEE**

**DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT,**

**DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

Tennessee State OSHA Plan Logo

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**Prepared by:**

**U. S. Department of Labor**

**Occupational Safety and Health Administration**

**Region IV**

**Atlanta, GA**



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## Executive Summary

This primary purpose of this report is to assess the Tennessee Occupational Safety and Health Administration (TOSHA) State Plan’s progress in Fiscal Year (FY) 2022, in resolving outstanding findings and observations from the FY 2021 Comprehensive FAME Report. In addition, this report assesses TOSHA’s performance, and it is based on the results of quarterly onsite monitoring visits, the FY 2022 State Office Annual Report (SOAR), and the FY 2022 State Activity Mandated Measures (SAMM) Report. A review of the SAMM data indicated that TOSHA’s performance levels have positively exceeded the federal activity results for most of the SAMMs. This data is explained in this report.

TOSHA made progress in addressing the two findings and three observations previously noted in the FY 2021 Comprehensive FAME Report, and no new findings were identified; however, one new observation was identified. The two findings and two of the observations were continued and will be carried over to the FY 2022 FAME. One of the three observations was addressed and closed. The findings concerned documentation of employer knowledge and penalty adoption. The continued observations concern the State Plan’s practice in destroying case file notes; and incorrect/inconsistent usage of cases administratively closed and case withdrawal procedures for whistleblower cases. The new observation concerns the number of health inspections conducted. The closed observation, which was addressed, and corrective action was taken, concerned Tennessee’s issuance of willful violations.

## State Plan Background

TOSHA was created by legislation in 1972 and became operational on July 5, 1973. The program operated as a dual designee with the health functions housed in the Tennessee Department of Health and the safety functions in the Department of Labor until July 1977. At that time, the General Assembly enacted legislation to transfer the health functions to the Department of Labor. The Tennessee Occupational Safety and Health Administration program was certified in May 1978 and received final 18(e) approval on July 22, 1985. During the review period, the Tennessee Department of Labor and Workforce Development, which oversees the Tennessee State Plan was under the leadership of Commissioner Jeff McCord, Deputy Commissioner, Dewayne Scott, and Assistant Commissioner/Program Administrator Wendy Fisher.

TOSHA is comprised of nine sections: Safety Compliance Section, Health Compliance; Public Sector Compliance; Standards and Procedures; Consultation Services; Administration; Training and Education; Voluntary Protection Program (VPP); and Whistleblower Protection. The Safety, Health, and Public Sector Compliance Sections are responsible for the enforcement of the Tennessee Occupational Safety and Health Act of 1972. The Standards and Procedures section are responsible for the adoption and development of standards, guidance, and procedures, as well as providing standard interpretations. The Consultative Services Section offers a free consulting program to smaller employers, who seek safe and healthful working conditions for their workers. The Administration section is responsible for the following: ensuring that TOSHA’s services are provided to employers and employees statewide; ensuring personnel are provided with the training and development necessary to have the essential knowledge and skills to perform their respective duties; and ensuring policy, philosophy, and program information are effectively implemented and communicated to employees and employers throughout the state. The Training and Education Section assists employers, workers, and their representatives in reducing safety and health hazards in their workplaces and in complying with the requirements of TOSHA standards and regulations. The VPP section is responsible for the implementation and duties of the Volunteer STAR (Safety Through Accountability and Recognition) program. The Whistleblower section is responsible for investigating complaints of worker retaliation for exercising their rights under the Act.

Through the Nashville office, TOSHA administers worker protection from workplace retaliation related to occupational safety and health T.C.A. 50‐3‐409. CSHOs are trained to perform whistleblower protection investigations as a collateral duty, under the direction of the Discrimination Manager. The Tennessee State Attorney may prosecute worker retaliation cases that are found to be meritorious.

The initial base FY 2022 award to fund the program was $4,251,200 in federal funds. The State matched the funding and supplemented it with $899,832, bringing the total award to $9,402,232. An amendment increased the federal share of the grant by $11,400. The grant provided funding for 85.5 full-time staff comprised of 7.8 managers, 15 supervisors, 26 safety compliance officers, 17 health compliance officers, 9.45 administrative clerical staff members, and three other positions not elsewhere counted.

TOSHA offers workplace safety and health educational seminars at various locations across the state each year. In FY 2022, TOSHA trainers conducted sessions on several topics including Basic Safety & Health, Maintenance‐Related Standards, Recordkeeping, Forklift Standards, Walking Working Surfaces, Health Hazards, and OSHA 30‐Hour General Industry Courses, OSHA 10- Hour Construction Course. Safety and health training sessions were provided to 6,228 attendees across the state. TOSHA published a newsletter, “Together with TOSHA.” The newsletter is posted on TOSHA’s web site and distributed through the LISTSERV account, which currently contains 1,239 registered users. In addition, many employer and employee associations and other groups forward the newsletter to their members. Tennessee OSHA has a robust VPP program, with 33 sites currently participating in the Volunteer STAR program, and over 25,000 employees impacted.

**New Issues**

An amendment was made to the Tennessee Occupational Safety and Health Act of 1972, Tennessee Code Annotated (TCA) 50-3-109, prohibiting local governments from requiring contractors to adhere to safety and health standards that exceed either TOSHA or OSHA rules and regulations. There was also a revision to Part V of the Tennessee Field Operations Manual (FOM), dated June 8, 2022, and adopted in the State Plan Application on the same date.

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, most recently on January 8, 2021, according to the Consumer Price Index (CPI). State Plans are required to adopt both the initial increase and subsequent annual increases within the corresponding six-month timeframe set by regulation. December 2022 marked six years since the first deadline passed for adoption and the Tennessee State Plan has not yet completed the legislative changes to increase maximum penalties.

## Assessment of State Plan Progress and Performance

### Data and Methodology

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

* State Activity Mandated Measures Report (SAMM, Appendix D, dated 11/14/2022)
* State Information Report (SIR, dated 11/14/2022)
* Mandated Activities Report for Consultation
* Web Integrated Management Information System (WebIMIS)
* State OSHA Annual Report (SOAR, Appendix E)
* TOSHA Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan

### Findings and Observations

**Findings (Status of Previous and New Items)**

The State Plan made progress addressing the previous two findings and three observations reflected in the FY 2021 Comprehensive FAME Report. This Follow-up FAME report contains two continued findings, two continued observations, and one new observation. The one finding was completed and is awaiting verification, one observation was closed, and no observations were converted to findings from the previous FAME. 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 2021 recommendation in detail.

**Continued Findings**

**Finding FY 2021-01**: In FY 2021, in 17 of 43 (39.5%) case files reviewed that had violations, employer knowledge was not adequately documented.

**Status:** TOSHA response to this finding was that the State Plan would conduct additional training on documenting employer knowledge in FY 2022. The CSHO training was completed on September 12th and 29th, 2022. TOSHA leadership has stated that the documentation of knowledge has improved. This finding is awaiting verification during the onsite case file review in the FY 2023 Comprehensive FAME.

**Finding FY 2021-02**: The Tennessee State Plan has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

**Status:** Correcting this finding requires the State legislature to amend the TOSH Act. Department leadership is working with State leadership to move toward resolution. TOSHA has briefed executive leadership on OSHA’s position requiring the increase in maximum and minimum penalties. Proposal to increase penalties was sent to the Governor’s office for approval; however, it had not made it to the legislature. This finding is being continued.

**Observations (Status of previous and new items)**

**Closed FY 2021 Observations**

**FY 2021-OB-2:** TOSHA issued only two willful violations, which were reclassified to serious, following the informal conference. Case file reviews identified seven cases with evidence of intentional disregard or plain indifference and a heightened awareness; however willful violations were not pursued.

**Status:** TOSHA responded that it would continue to apply classifications in accordance with its Field Operations Manual, recognizing that the determination of “intentional disregard” or “ordinarily negligent” can be subjective. In FY 2022, OIS data shows that TOSHA issued 12 willful violations. This observation is being closed.

**Continued Observations**

**FY 2021-01 (FY 2020-OB-02):** Inspection field notes, including interview notes in the inspection files, are transferred to the Violation Worksheet Form and the notes are destroyed in accordance with the Tennessee Public Records act, specifically n T.C.A. § 10-7-301(14), which is contrary to TOSHA’s Field Operations Manual Chapter 5 – Case File Preparation and Documentation – XII. Inspection Records.

**Status:** Tennessee OSHA strongly disagrees with this observation and does not intend to make any changes regarding retention of field notes. This observation is being continued.

**FY 2021-OB-3:** TOSHA incorrectly and inconsistently uses administrative closure and case withdrawal procedures. Specifically, certain cases were listed as agency withdrawals but dismissed because of a lack of cooperation by the complainant.

**Status:** TOSHA responded that it has increased efforts to reduce the clerical errors addressed by this observation. This was corrected during the FY 2021 onsite evaluation; TOSHA changed their procedure and is correctly and consistently using administrative closure and case withdrawal procedures. This observation is awaiting verification in onsite case file review in the FY 2023 Comprehensive FAME.

**New Observations**

**FY 2022-OB-3:** In FY 2022, planned versus actual inspections (SAMM 7b), TOSHA conducted 324 (actual) health inspections which was significantly short of the planned 390 health inspections as well as the minimum FRL.

**Federal Monitoring Plan:** OSHA will monitor the Tennessee State Plan during FY 2023 to ensure the State Plan is withing the FRL.

**Discussion:** The FRL for planned versus actual inspections for health is +/- the negotiated number in the FY 2022 Grant which was 390 health inspections. The acceptable range was 370.5 to 409.5 inspections. TOSHA conducted 324 health inspections which was significantly short of the minimum FRL. Since this is the first year that this State Plan has dipped below the FRL on SAMM 7b, OSHA will monitor the situation as an observation.

### State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon further review level (FRL) that can be either a single number or a range of numbers above and below the three-year national average. 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 2022 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure.

It should be noted that OSHA is in the final stages of transitioning from the Whistleblower Application in the OSHA IT Support System (OITSS), a legacy data system, to the Whistleblower module in OIS, a modern data system. For FY 2022, a portion of the State Plan whistleblower data was recorded OITSS, and a portion was captured in OIS. OSHA encountered challenges in combining the report that generates SAMM 14, 15, and 16 from both systems. As such, OSHA will not be relying on SAMMs 14, 15, or 16 in their evaluation of the State Plans whistleblower programs for FY 2022.

The State Plan’s performance in the following SAMMs was outside the FRLs:

**SAMM 3 - Percent of complaints and referrals responded to within one workday (imminent danger)**

Discussion of State Plan data and FRL: The FRL for the percent of complaints and referrals responded to within one workday (imminent danger) is 100% and is fixed for all State Plans. TOSHA responded to 90% of imminent danger complaints and referrals within one workday in FY 2022.

Explanation: There was one outlier, the CSHO was dispatched to scene same day the complaint was received (4/26/2022) as the allegation of an unprotected trench appeared to be an imminent danger. The CSHO arrived to find no work or workers present. The Complainant was contacted and informed to contact TOSHA when workers were onsite. On 5/2/2022 the complainant contacted TOSHA and the CSHO returned to the worksite. The State Plan met the intent of responding and this is not an issue.

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

Discussion of State Plan data and FRL: The FRL for the percent of total inspections in state and local government workplaces is based on a number negotiated by OSHA and is +/- 5% of 38.26%. The range of acceptable data not requiring further review is from 36.34% to 40.17%. TOSHA’s percent of total inspections in state and local government workplaces was 40.41% and warranted a closer look.

Explanation: Tennessee State law requires all state and local government sector entities to be inspected at least every two years. This results in a higher percent of inspections conducted in state and local government workplaces. TOSHA has a dedicated Public Sector Enforcement section with dedicated staff that perform enforcement inspections for state and local government workplaces.

**SAMM 7b - Planned v. actual inspections (health)**

Discussion of State Plan data and FRL: The FRL for planned versus actual inspections for health is +/- the negotiated number in the FY 2022 Grant, which was 390 health inspections. The acceptable range was 370.5 to 409.5 inspections. TOSHA conducted 324 health inspections which was significantly short of the minimum FRL.

Explanation: This is attributed to the staff turnover which has been and remains an issue for TOSHA. Vacancies are filled as expeditiously as possible but compliance officer training, coupled with the lag time for a compliance officer to develop competence have a major impact. More than 44% of TOSHA’s compliance officers have less than two years of experience.

**SAMM 8 - Average current serious penalty in private sector**

Discussion of State Plan data and FRL: Each FRL in SAMM 8 is the total average current penalty per serious violation for the specific worker range, as shown below. These FRLs are based on three-year national averages.

(1 to greater than 250 workers): The FRL is +/-25% of $3,259.35. The range of acceptable data not requiring further review is from $2,444.51 to $4,079.19. TOSHA’s total average current penalty per serious violation is $1,857.42, which is substantially lower than the FRL.

**a.** (1-25 workers): The FRL is +/-25% of $2,145.46. The range of acceptable data not requiring further review is from $1,609.10 to $2,681.83. The Tennessee State Plan’s total average current penalty per serious violation (1 - 25 workers) is $1,408.00, which is lower than the FRL.

**b.** (26-100 workers): The FRL is +/-25% of $3,818.56. The range of acceptable data not requiring further review is from $2,863.92 to $4,773.20. The Tennessee State Plan’s total average current penalty per serious violation is $1,629.02, which is substantially lower than the FRL.

**c.** (101-250 workers). The FRL is +/-25% of $5,469.60. The range of acceptable data not requiring further review is from $4,102.20 to $6,837.00. The Tennessee State Plan’s total average current penalty per serious violation (101 – 250 workers) is $2,271.20, which is substantially lower than the FRL.

**d.** (Greater than 250 workers): The FRL is +/-25% of $6,725.78. The range of acceptable data not requiring further review is from $5,044.34 to $8,407.23. The Tennessee State Plan’s total average current penalty per serious violation is $3,199.08, which is substantially lower than the FRL.

Explanation: The Tennessee State Plan’s low penalties are attributed to the significant increase in the federal penalties, as a result of the Federal Civil Penalties Inflation Adjustment Improvements Act that was passed in 2015. Tennessee has not yet adopted the corresponding increase to maximum penalty amounts.

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

Discussion of State Plan data and FRL: The FRL for the percent of work-related fatalities responded to in one workday is fixed for all State Plans and is 100%. TOSHA responded to 97.62% of the work-related fatalities within one workday.

Explanation: There was one outlier, the fatality was reported on 1/19/2022 at 3:30pm by representatives of the decedent’s family who contacted TOSHA. The fatality occurred eight days prior on 1/11/2022. The CSHO was assigned the case at 12:19 pm on 1/20/2022, within 24 hours. Efforts to contact the employer were initiated immediately; however, contact was not successful until 1/21/2022. The State Plan met the intent of responding and this is not an issue.

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

Discussion of State Plan data and FRL: The FRL for the percent of initial inspections with worker walk-around representation or worker interview is fixed for all State Plans and is 100%. TOSHA’s percent of initial inspections with worker walk-around representation or worker interview was 98.34%.

Explanation: This was caused by an isolated incident that did not have a negative impact on the program. OSHA has no concern, regarding the State Plan’s percent of initial inspections with worker walk-around representation or worker interview.

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

FY 2022 Tennessee Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 2022-#** | **Finding** | **Recommendation** | **FY 20XX-# or**  **FY 20XX-OB-#** |
| FY 2022-01 | In FY 2021 17 of 43 (39.5%) case 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 Tennessee FOM. | FY 2021-1  FY 2019-OB-1 |
| FY 2022-02 | 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 continue to work with their state authorities to complete the legislative changes necessary to enable it to adopt maximum and minimum penalty amounts that are at least as effective as OSHA’s maximum and minimum penalty levels. | FY 2021-2 |

### Appendix B – Observations Subject to Continued Monitoring

FY 2022 Tennessee Follow-up FAME Report

| **Observation #**  **FY 2022-OB-#** | **Observation#**  **FY 20XX-OB-# *or* FY 20XX-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2022-OB-1 | FY 2021-OB-1  FY 2020-OB-2 | Inspection field notes, including interview notes in the inspection files, are transferred to the Violation Worksheet Form and the notes are destroyed in accordance with the Tennessee Public Records act, specifically n 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. | Federal Monitoring Plan: The OSHA Area Office will closely monitor to ensure TOSHA implements strategies to ensure field notes, including interview notes, are included in all inspection casefiles as required by the Tennessee FOM. | Continued |
|  | FY 2021-OB-2 | TOSHA issued only two willful violations, which were reclassified to serious, following the informal conference. Casefile reviews identified seven cases with evidence of intentional disregard or plain indifference and a heightened awareness, however willful violations were not pursued. |  | Closed |
| FY 2022-OB-2 | FY 2021-OB-3 | TOSHA incorrectly and inconsistently uses administrative closure and case withdrawal procedures. Specifically, certain cases were listed as agency withdrawals but dismissed because of a lack of cooperation by the complainant. | In FY 2023, a limited number of case files will be selected randomly and reviewed to verify this item was addressed. | Continued |
| FY 2022-OB-3 |  | In FY 2022, planned versus actual inspections (SAMM 7b), TOSHA conducted 324 (actual) health inspections, which was significantly short of the planned 390 health inspections as well as the minimum FRL. | OSHA will monitor the Tennessee State Plan during FY 2023 to ensure the State is within the FRL. | New |

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### Appendix C - Status of FY 2021 Findings and Recommendations

FY 2022 Tennessee Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2021-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status**  **and Date** |
| FY 2021-01 | In 17 of 43 (39.5%) 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 Tennessee FOM. | TOSHA will make an effort to divert resources to conduct even more training on documenting employer knowledge. | 9/29/22 | Awaiting Verification |
| FY 2021-02 | 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 enable it to adopt maximum and minimum penalty amounts that are at least as effective as OSHA’s maximum and minimum 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. |  | Open |
|  |  |  |  |  |  |

### Appendix D – FY 2022 State Activity Mandated Measures (SAMM) Report

FY 2022 Tennessee Follow-up 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) | 9.75 | 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) | 4.83 | 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) | 3.98 | 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) | 1.08 | 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) | 90% | 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) | 2.50 | +/- 20% of  1.77 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.12 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.66 | +/- 20% of  0.90 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.72 to 1.08 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 40.41% | +/- 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%. |
| 7a | Planned v. actual inspections (safety) | 1,126 | +/- 5% of  1,100 | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,045 to 1,155 for safety. |
| 7b | Planned v. actual inspections (health) | 324 | +/- 5% of  390 | 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 370.50 to 409.50 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $1,857.42 | +/- 25% of  $3,259.35 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,444.51 to $4,074.19. |
|  | **a**. Average current serious penalty in private sector  (1-25 workers) | $1,408.00 | +/- 25% of  $2,145.46 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,609.10 to $2,681.83. |
|  | **b**. Average current serious penalty in private sector  (26-100 workers**)** | $1,629.02 | +/- 25% of  $3,818.56 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,863.92 to $4,773.20. |
|  | **c**. Average current serious penalty in private sector  (101-250 workers) | $2,271.20 | +/- 25% of  $5,469.60 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,102.20 to $6,837.00. |
|  | **d**. Average current serious penalty in private sector  (greater than 250 workers) | $3,199.08 | +/- 25% of  $6,725.78 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,044.34 to $8,407.23. |
| 9a | Percent in compliance (safety) | 14.06% | +/- 20% of  32.25% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.80% to 38.70% for safety. |
| 9b | Percent in compliance (health) | 29.86% | +/- 20% of  44.42% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.54% to 53.30% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 97.62% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 27.66 | +/- 20% of  54.58 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 43.66 to 65.50 for safety. |
| 11b | Average lapse time (health) | 48.46 | +/- 20% of  69.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.22 to 82.84 for health. |
| 12 | Percent penalty retained | 95.33% | +/- 15% of  69.97% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 59.47% to 80.47%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 98.34% | 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 2022. Please see note below. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 17 | Percent of enforcement presence | 1.28% | +/- 25% of  1.64% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.23% to 2.05%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D are pulled from the State Activity Mandated Measures (SAMM) Report in OIS run on November 14, 2022, as part of OSHA’s official end-of-year data run.

\*Due to the transition of 11(c) data from IMIS to OIS, SAMMs 14, 15, and 16 are not being reported for FY 2022.