

**FY 2021 Comprehensive
Federal Annual Monitoring Evaluation (FAME) Report**

**State of Indiana
Occupational Safety and Health Administration**



INDIANA
DEPARTMENT OF LABOR

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I. Executive Summary

The purpose of this report is to assess the State Plan's performance for Fiscal Year (FY) 2021 and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) reports. This report assesses the current performance of the Indiana Occupational Safety and Health Administration (IOSHA) 23(g) compliance program in the context of the agreed upon monitoring measures.

A detailed explanation of the findings and recommendations of IOSHA's performance evaluation is found in Section III, Assessment of State Plan Progress and Performance. The FY 2020 Follow-up FAME identified 11 findings and four observations. The State Plan made progress to address several of these. In this report, seven findings are completed and four are continued. Three observations are closed and one observation is converted to a finding. The report includes four new findings. These are related to letters not being sent to next-of-kin (NOK) for fatalities, the maximum penalty increase, health lapse time and issues with whistleblower cases. A summary of the new findings is found in Appendix A, New and Continued Findings and Recommendations. Appendix C describes the status of previous findings with the associated completed corrective actions.

After several years of lengthy response times to complaints, IOSHA was successful again at initiating complaint investigations within five days. As shown in this report, they corrected Finding FY 2020-01 and are now ensuring letters to employers and complainants are maintained in the case files and documenting when employers' responses to the complaint inquiries are adequate. In addition, health sampling appears to be conducted when necessary to address complaints alleging exposure to health hazards. This had been a finding on previous FAME reports since FY 2015. However, this finding has now been completed, as demonstrated in this report. However, health in-compliance and lapse times for health investigations are outside the further review levels (FRL) this year. Previously, OSHA had issues with IOSHA citing the general duty clause instead of an OSHA standard, informal settlement agreement documentation, not citing all apparent hazards and not testing the respondent's defense in whistleblower cases. The file review showed improvement with these.

IOSHA completed 3,157 complaint investigations in FY 2021. While this number is quite a bit less than in FY 2020, many of these were COVID-related and the number of complaint investigations is significantly more than in FY 2018 and FY 2019 when there were 1,369 and 1,228 complaint investigations respectively. With the exception of fatality investigations and other inspections approved by the IDOL Commissioner, compliance safety and health officers were not allowed to conduct field work for approximately 11 weeks during FY 2021, from November 18th to February 1st. IOSHA reduced the number of projected inspections for the fiscal year to 925. However, they conducted 835 inspections, one more than in FY 2020.

Four of the nine findings in this year's FY 2021 FAME are related to IOSHA's Whistleblower program. The program has had staffing turnover at the supervisory level almost every year for the last seven years. New staff attends the required training through OSHA's Training Institute (OTI). However, in this report, OSHA identifies four continued and new findings related to Indiana's Whistleblower program during comprehensive evaluations, and this is likely due to the lack of supervisory and staff experience.

Quarterly monitoring meetings were held with OSHA and IOSHA management during FY 2021, at which time the State Activity Mandated Measures (SAMM) reports and the State Indicators Report (SIR) were reviewed and discussed. The FY 2021 SAMM is included as Appendix D of this report.

II. State Plan Background

A. Background

The Indiana Department of Labor, under an agreement with OSHA, administers the Indiana occupational safety and health program in accordance with Section 18 of the Occupational Safety and Health Act of 1970 (OSHA Act). IOSHA's plan was initially approved on March 6, 1974 and certified on October 6, 1981. On September 26, 1986, IOSHA received final approval. The State Plan designee during the period covered by this report was Commissioner of the Indiana Department of Labor, Mr. Joseph Hoage. The director of IOSHA's program is Ms. Michelle Ellison, Deputy Commissioner of Labor. Mr. Jameson Berry is Director of General Industry and the Whistleblower Investigation Unit and Mr. Jeremy Galloway is Director of Construction.

IOSHA adopts all of OSHA's safety and health standards and federal program changes, with some differences when allowed. Indiana state law, IC 22-8-1.1-17.5 does not allow IOSHA's safety and health regulations to be more stringent than those of OSHA. The Indiana Department of Labor's INSafe Division administers the private sector on-site consultation program funded under a 21(d) grant.

The FY 2021 grant included funding totaling \$5,140,200. The federal share was \$2,570,100. Indiana did not deobligate any funds in FY 2021. The State Plan's benchmark staffing level is 47 safety officers and 23 industrial hygienists. IOSHA's allocated staffing level in FY 2021 included 6 supervisors, 29 safety compliance officers, 13 health compliance officers and two whistleblower investigators. The full-time equivalent (FTE) for allocated staffing was 62.47 for FY 2021. During the early months of the pandemic in FY 2020, IOSHA had a hiring freeze.

IOSHA has jurisdiction for private sector and state and local government employees. Federal workers, maritime activities and United State Postal Service (USPS) employees are covered under OSHA's jurisdiction in Indiana. IOSHA's Whistleblower Protection Program covers only Section 11(c) of the OSH Act.

B. New Issues

None

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2021 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A four-person OSHA team, which included a whistleblower investigator, was assembled to conduct a full case file review. The case file review was initially conducted remotely during January 2022. A review of fatality files which were not electronic was conducted at the Indiana State Plan office during the timeframe of February 7 to 9, 2022. A total of 91 safety and health inspection case files were reviewed. An additional 20 whistleblower case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (October 1, 2020, through September 30, 2021). The selected population included:

- Twenty-seven (27) fatality case files

- Eighteen (18) programmed case files
- Thirteen (13) safety case files
- Twelve (12) health case files
- Twelve (12) referral case files
- Five (5) follow-up case files
- Four (4) case files where petitions to modify the abatement dates were issued
- Twenty (20) whistleblower case files

Fifteen non-formal complaint case files were also reviewed. Interviews were conducted with management and enforcement staff by phone and in person.

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

- State Activity Mandated Measures Report (Appendix D)
- State Information Report
- Mandated Activities Report for Consultation
- State OSHA Annual Report
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Full case 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 falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2021 State Activity Mandated Measures Report and includes the FRL for each measure.

B. Review of State Plan Performance

1. PROGRAM ADMINISTRATION

a) Training

IOSHA follows OSHA's policy and guidelines for implementing competency-based training programs for compliance personnel (TED 01-00-019 Mandatory Training Program for OSHA Compliance Personnel). IOSHA safety and health compliance officers attended numerous courses at the OSHA Training Institute (OTI) in FY 2021 and the courses staff attended were based on their duties. In addition, safety and health staff took advantage of the numerous archived training products (webinars, web-based training, and other training) available through OTI's Blackboard which provides access to the training at any time. IOSHA provides internal training periodically throughout the year. OTI courses were attended remotely during FY 2021 due to the COVID-19 pandemic.

b) OSHA Information System

IOSHA currently uses OSHA Express as its database to access and manage enforcement information and data processing. OSHA Express began to interface with OIS in FY 2016. Management reports, equivalent to those available in OIS are used by management to track complaints, assignments, inspections, abatement, debt collection and other program measures. IOSHA made the decision to transition to OIS during early FY 2022. They used OIS training modules and worked with OIS team members to fully transition to OIS beginning April 4, 2022.

c) State Internal Evaluation Program Report

During FYs 2020 and 2021, IOSHA focused on updating their inspection case files from paper to electronic format and created a permanent electronic case file system. During FY 2021, IOSHA continued to build on this system and transitioned from uploading documents into their OSHA Express database to managing files in Microsoft OneNote. This made it easier and faster for peer review of case files and for generating case files in response to Access to Public Records Act (APRA) requests. IOSHA provided files to OSHA for review in OneNote and requested feedback. Some of the OneNote files were reviewed as part of this comprehensive FAME case file review and they were very well organized and easy to navigate for any reviewer.

d) Staffing

In addition to the Director of General Industry and the Whistleblower Unit and the Director of Construction, IOSHA has six supervisors. IOSHA strives to hire the best qualified candidates as timely as possible. In FY 2021, Compliance Safety and Health Officer (CSHO) positions had to be posted multiple times in an effort to generate additional qualified candidates for consideration. To better attract and retain qualified and talented staff, the agency submitted a proposal to their human resources agency for a compensation review of its technical position in FY 2021. The review included IOSHA's CSHOs, VPP leaders, supervisors, and directors as well as the INSafe consultants. The review resulted in a 12.5% increase in the base hire salary for a new CSHO and a 9% increase in the base hire salary for VPP leaders and the INSafe consultants. In addition, the supervisor position was reclassified to allow for a two-step promotional opportunity from the CSHO position. This reclassification netted nearly a 20% increase in the base salary for a supervisor. Staff whose currently salary met or exceeded the new base salaries received a \$1 per hour increase.

At the end of FY 2021, IOSHA had 2 safety CSHO and 2 health CSHO vacancies. There were 27 safety and 11 health CSHOs on board at that time. This number of vacancies at any one time during the year is typical at IOSHA.

2. ENFORCEMENT

IOSHA conducted 835 inspections during FY 2021: 695 safety and 140 health. This is 88% of the projected number of safety inspections and 103.7% of the projected health inspections and 90.3% of their overall projected number of 925 inspections. The slight shortfall in inspections was due to the compliance staff not being in the field between November 18, 2020 to February 2, 2021 due to the COVID-19 pandemic.

a) Complaints

IOSHA's complaint process is detailed in Chapter 9 of their Field Operations Manual (IFOM), Complaint and Referral Processing. This chapter outlines the policies and procedures for processing complaints and referrals. The IFOM used for this review is from 2015. IOSHA revised their IFOM and submitted it for OSHA's review in October 2021.

During FY 2021, IOSHA received 3,157 complaints for investigation and 399 complaints for inspection. The average number of workdays for IOSHA to initiate complaint inspections was 7.9 days in FY 2021, which is below the Further Review Level (FRL) of 10 days (SAMM 1a, Appendix D). The average number of workdays for IOSHA to initiate complaint investigations was 3.2 days, also below the FRL, which is 5 days (SAMM 2a, Appendix D). IOSHA has continued to make responding to complaints a priority. They were able to respond to imminent danger complaints and referrals immediately and there were no times when they were denied entry to conduct an inspection.

OSHA reviewed 15 complaint investigation case files (non-formal inquiries). Complaints were responded to timely with notification letters sent to the employer and acknowledgement letters to the complainant and these were included in the case files. Case files included documentation to indicate when the employer's response was adequate. **Finding FY 2020-01**, related to letters in non-formal complaint case files, is completed. Many of the letters to the employers and complainants were not dated. However, notes in the case files indicated the dates the letters were sent. IOSHA states that the date is included on the letter when it is generated in their database. However, the date does not print out when the letter is printed. They agreed to address this issue. In addition, letters to the complainant with the results of the investigation of the complaint items were sent at times several months after the responses were received from the employers and determined to be satisfactory. IOSHA continues to work on reducing the time to provide these responses.

Indicator number 9 in the end-of-year FY 2021 state information report (SIR) for Indiana shows 1,845 valid complaints handled as phone/fax which have been opened for more than 30 calendar days. Throughout fiscal years 2020 and 2021, IOSHA reduced its backlog of these complaint investigations by more than 27% in one year while continuing to receive an unprecedented number of complaints. IOSHA's CSHOs, administrative assistants and intake duty officers continue to actively work to resolve responding to complainants and closing open complaints.

Twelve health case files were reviewed: eleven complaints and one referral. Four of the 12 health case files described a complaint alleging exposure to contaminants and health sampling was conducted to measure employee exposure. Health sampling was conducted during one of the other complaints when the CSHO determined noise was a potential hazard in plain view. In another case, the employer's abatement following health sampling that IOSHA determined employees were exposed to lead above OSHA's Permissible Exposure Limit (PEL) included a description of engineering controls to increase ventilation. Follow-up health sampling should have been done to determine if these controls reduced employee exposure to lead before this hazard was considered abated. IOSHA agreed to contact this employer to ensure this was done by the employer's consultant or IOSHA would return to conduct the sampling. **Finding FY 2020-02**, regarding lack of proper health sampling, is completed.

b) Fatalities

IOSHA's Five-Year Strategic Management Plan for FYs 2018-2022 outlines a reduction of fatalities by 10% (2% per year) in high-fatality industries (transportation and warehousing, agriculture, manufacturing) and 10% (2% per year) in the construction industry from a baseline. A reduction in fatalities greater than 2% from calendar year baselines occurred in transportation and warehousing and agriculture according to the Bureau of Labor Statistics (BLS) Census of Fatal Occupational Injuries (CFOI) 2020 data. There was an increase in manufacturing and construction fatalities during this time in Indiana.

IOSHA responded to 50 of 55 (91.9%) fatalities within one workday (SAMM 10, Appendix D). This is below the FRL of 100%. Reasons for the delay in opening inspections on each of these five fatalities are as follows:

- One fatality occurred prior to a holiday and IOSHA staff does not work on state holidays
- Fatality was mistakenly reported as a referral. IOSHA's policies do not require a response to referrals within one day.
- An inspection was attempted to be opened within one day and was delayed while staff worked with an attorney to determine the victim's employer. There were multiple subcontractors on site.
- Victim was a security guard at a financial institution which was closed after the guard was shot; staff obtained the victim's employer information after the institution reopened.
- Victim was stabbed in a laundry which closed during the investigation. IOSHA could not contact the employer until the business reopened.

IOSHA strives to open fatality inspections within one day. However, the circumstances described inhibited their efforts in these cases and therefore, these delays do not yet rise to the level of an observation.

In 20 of 27 (74.1%) fatality case files reviewed, letters to the next-of-kin (NOK) were not found in the case files. Most of these did not have either the initial letter notifying the NOK or a follow-up letter when the investigation was completed. Chapter 11 of IOSHA's FOM addresses Imminent Danger, Fatality, Catastrophe, and Emergency Response. Chapter 11, Section II.G.2. says a standard information letter will normally be sent to the emergency contact on the victim's employment record or the otherwise determined NOK within five working days of determining the victim's identity. Chapter 11, Section II.G.4.b. says IOSHA will maintain contact with family members so they can be kept up to date on the status of the investigation. In addition, citations and settlement agreements are to be provided to family members or their legal representatives. In fatality cases, IOSHA should make every effort to contact the NOK by telephone to explain findings, address any questions and give the family an opportunity to provide input. OSHA provided IOSHA with examples of letters that can be used when the investigation is completed and which includes one or two sentences to explain to the NOK if and how the citations issued relate to the fatality.

Finding FY 2021-01 – In 20 of 27 (74.1%) fatality case files reviewed, letters to the next-of-kin (NOK) were not found in the files. Some files had either the initial or final letter and other files had neither.

Recommendation FY 2021-01 – IOSHA should follow Chapter 11, Section II of the IFOM and ensure that both the initial and final letters to the victim’s family for fatality investigations are sent and copies are maintained in the file. Supervisors should use the fatality checklist when reviewing the case files to ensure the NOK letters have been sent and are maintained in the file.

c) Targeting and Programmed Inspections

In late FY 2020 and in FY 2021, IOSHA developed and implemented three local emphasis programs, including fall hazards in general industry and construction; building renovation, rehabilitation and demolition in construction; and residential construction. The goals of the emphasis programs are to reduce fatalities, injuries and illnesses related to falls; and hazards associated with electrical, air contaminants, struck-by/caught between, truss collapse, floor openings, power/pneumatic tools amputations, scaffolds and ladders on work sites in general industry and construction. The local emphasis programs are scheduled to continue for five years each from their effective dates in September 2020 (falls and building renovation, rehabilitation, and demolition in construction) and February 2021 (residential construction).

During FYs 2020 and 2021, IOSHA developed a targeting program that incorporates OSHA’s National Emphasis Programs. These include Combustible Dust, Amputations in Manufacturing Industries, Hexavalent Chromium, Lead, Primary Metals Industries, Process Safety Management Covered Chemical Facilities and Respirable Crystalline Silica. For each of the National Emphasis Programs, they have created inspection establishment lists using software provided by OSHA’s Office of Statistical Analysis. IOSHA will update the targeting program when they develop their new strategic management plan that begins with FY 2023 to include new targeted emphasis industries and activities to reduce injuries, illnesses and fatalities in those industries. **Finding FY 2020-03**, related to IOSHA’s previous lack of a targeting program, is completed.

IOSHA conducted 835 inspections during FY 2021 with approximately 14.5% of these being programmed (SIR, End-of-Year 2021). The majority of these were in construction. IOSHA’s strategic management plan goals aim to reduce injuries and illnesses (Total Recordable Cases, TRC) in eight high hazard industries and construction by 15% over the five-year plan (3% per year). In FY 2021, six of the eight high hazard industries and construction met this goal with at least a 3% reduction in these rates according to BLS. The high hazard industries include food manufacturing, beverage/tobacco product manufacturing, wood product manufacturing, primary metal manufacturing, metalworking machinery manufacturing, nursing and residential care, hospitals, and warehousing/storage. A reduction in injuries and illnesses was not achieved in the nursing and residential care and hospital industries.

IOSHA’s percent in-compliance for safety is 27.9%, which is within the FRL of +/-20% of 31.65%. This equals a range of 25.3% to 38% (SAMM 9a, Appendix D). IOSHA’s percent in-compliance for health is 63.1% which exceeds the FRL of +/-20% of 40.6%, This equals

a range of 32.5% to 48.8% (SAMM 9b, Appendix D). During FY 2021, CSHOs conducted a significant number of inspections which addressed COVID-19 related hazards, and this may have contributed to the high in-compliance rate for health. OSHA's file review indicated health sampling was conducted when it should to address health related complaints. However, CSHOs should continue to investigate hazards in plain view. A video in one health file reviewed (not in-compliance) indicated occupational noise exposure may be a concern. However, the file didn't document whether the employer needed or had an effective hearing conservation program. The file only indicated that employees were wearing hearing protection. Investigation of this possible plain view may have been warranted. **Finding FY 2020-04** continues for health as Finding FY 2021-02. This in-compliance rate for health has been a FAME finding or an observation in all but one year going back to FY 2012.

Finding FY 2021-02 (FY 2020-04) – IOSHA's in-compliance rate for health inspections is 63.1% and is outside the Further Review Level (FRL) of +/-20% of 40.6% (32.5% to 48.8%). (SAMM 9b, Appendix D)

Recommendation FY 2021-02 – IOSHA supervisors should continue to ensure inspection case files with hazards in plain view are thoroughly investigated and all other apparent violations are cited during review of case files. IOSHA should also ensure resources are spent in workplaces that are exposing workers to hazards by implementing corrective action in the most hazardous worksites.

d) Citations and Penalties

Chapter 4 of IOSHA's FOM has their policies for violations and penalties. Supervisors are responsible for reviewing safety orders (citations) and penalties. IOSHA's CSHOs identified 1,316 violations (serious, willful, repeat, nonserious) in FY 2021. IOSHA's average number of violations per inspection (serious, willful, repeat) is 2.3, above the three year national average of 1.78 (SAMM 5, Appendix D).

In the 91 inspection files reviewed, the general duty clause (Indiana Code 22-8-1.1-2) was cited once instead of an OSHA standard. Generally, all apparent hazards were cited based on documents in the case file and the use of OSHA's lockout/tagout standard, 29 CFR 1910.147 was applied correctly. There was one case where application of the training and communication section of the standard, 1910.147(c)(7), should have been specific to the authorized, affected and/or other employees. Another case cited 1910.147(c)(7)(i) for not providing effective training and included a statement in the citation indicating that the employer didn't observe skills to ensure proper isolation of energy. The employer should have been cited for not performing periodic inspections of the energy control procedures at least annually under 1910.147(c)(6). Improvement in these areas should continue. However, **Finding FY 2020-05**, regarding incorrect application of the General Duty Clause, all hazards being cited and incorrect application of the lockout/tagout standard is completed.

IOSHA's average current serious penalty in the private sector is \$1,298 for establishments with from 1 to greater than 250 workers (SAMM 8, Appendix D). This is well below the further review level (FRL) of +/-25% of \$3,100 with an acceptable range of \$2,325 to \$3,875. IOSHA's average serious penalty is 42% of the FRL and is a direct result of the State of Indiana not raising the minimum and maximum penalties for serious hazard

violations. See **Finding FY 2021-05**, relating to IOSHA's failure to implement the required maximum penalties.

Citations were issued in seven of 12 health case files reviewed. The approximate average time from the opening conference date to the issuance date was 103 working days. Four of the seven with citations had health sampling. However, in two of these, health sampling was conducted six weeks and four months after the inspection was opened with no explanation in the case file for the delay. Only one of the seven with citations was related to COVID-19 and three of the seven had only one citation each. IOSHA's average lapse time for health inspections is 115 days, well above the FRL of +/-20% of 66.1 (range of 52.9 to 79.3) (SAMM 11b, Appendix D). IOSHA's average lapse time for safety inspections is 55.4 days, within the FRL of +/-20% of 52.4 (range of 41.9 to 62.9) (SAMM 11a, Appendix D).

Finding FY 2021-03 – IOSHA's average lapse time for health inspections is 115 days, above the FRL of +/- 20% of 66.1 and the acceptable range of 52.9 to 79.3 days.

Recommendation FY 2021-03 – IOSHA should ensure CSHOs are conducting health sampling as soon as possible after opening an inspection. IOSHA should also ensure that in consultation with supervisors, CSHOs determine as soon as possible which citation(s) will be issued after opening an inspection. The citation(s) should be issued soon after making this determination to reduce lapse time.

e) Abatement

Forty-two of 82 (51.2%) inspection case files reviewed (excluding follow-up and PMA case files) had serious hazards cited. Chapters 3 (Inspection Procedures) and seven (Post-Citation Procedures and Abatement Verification) of IOSHA's FOM outline abatement verification procedures. Chapter 3 discusses differences between abatement certification and abatement documentation and CSHOs discuss the differences with employers during the closing conference. Chapter 5, Case File Preparation and Documentation, Section II.C.1.k. states the abatement date shall be the shortest interval within which the employer can reasonably be expected to correct the violation. It continues to say abatement periods exceeding 30 days shall not normally be offered, particularly for simple safety violations. If an initial abatement date is granted more than 30 calendar days, the reason should be documented in the case file. OSHA's file review found abatement dates were reasonable; employers provided abatement within the abatement period and when abatement wasn't adequate, CSHOs requested additional information and documentation from employers.

Five follow-up case files were reviewed to verify IOSHA's corrective action to **Finding FY 2020-06**, which was to ensure these case files include documentation on abatement methods observed that are specific to all identified hazards and follow-up inspections include interviews with employees. All five of the follow-up case files included interviews with employees. However, in two of the five case files (40%), there was insufficient documentation in the files to determine exactly what the CSHOs were following up on. In one case reviewed, the narrative explained that this case was one of three follow-up inspections being opened on the same day to follow-up on three separate IOSHA inspections at the same fixed location. It couldn't be determined from documentation in the file when the original inspections took place and what hazards were being follow-up on. The case file reviewed resulted in failure to abate citations for the original citations. (IOSHA

refers to these as failure to correct.) However, there was no documentation in the file to indicate what the original hazards were, except for copies of the failure to abate citations, or why they were still violations. In another case file reviewed, the narrative only explained that a follow-up inspection was being conducted on a construction site of an employer that received citations several months prior to the date of the follow-up. The CSHO was at the site because IOSHA received a referral and the CSHO noticed the employer was previously inspected and received citations. When the CSHO called the supervisor, it was determined the employer did not submit abatement for the previously cited hazards. The citation issued during the follow-up inspection was for the employer not submitting abatement for previously cited violations, 1903.19(c)(1). The employer also received failure to abate citations on the original inspection. However, the worksheet didn't indicate what the previous violation(s) were, their location(s) or inspection date(s). The information contained in both of these follow-up case files was only for the follow-up inspections and the information was not included with the original case file. It was very difficult to determine the purpose and results of these two follow-up inspections based on the documents in the case files. IOSHA's FOM, Chapter 3, Section IX.A.3. says that follow-up inspection reports shall be included with the original (parent) case file. **Finding FY 2020-06** will continue with modified language as **FY 2021-04**.

Finding FY 2021-04 (FY 2020-06) – In two of five (40%) follow-up case files reviewed, adequate verification of abatement couldn't be determined because information specific to the previously cited hazards was not documented in the case files.

Recommendation FY 2021-04 – IOSHA should ensure that follow-up case files include all documentation related to hazard violations being followed up on during the inspection, including the previous inspection date(s), location(s) and violation(s). IOSHA should also follow their FOM, Chapter 3, Section IX.A.3. and include follow-up inspection reports in the original (parent) case file. To ensure abatement of violations is received timely, IOSHA should use management reports as often as necessary to follow up on corrections that are due.

IOSHA follows OSHA's 29 CFR 1910.14(a) for employers wishing to petition for modification of abatement date (PMA). These procedures are included in IOSHA's FOM, Chapter 7, Section III. Four case files were reviewed to determine if PMA procedures were followed properly and to verify IOSHA's corrective action for **Finding FY 2020-07**, regarding procedures surrounding PMA. OSHA's review determined that in two of the case files reviewed, IOSHA offered the employer an Expedited Informal Settlement Agreement (EISA). According to terms of the EISA, the employer should have had their abatement completed by the original date on the citation and not needed a PMA. In one of these cases, the abatement was submitted by the original due date and was not satisfactory. In the other case, the employer requested more time because he contracted COVID-19. IOSHA's FOM (2015) states that when an employer is granted an EISA, the penalty amount shall be the sole issue for dispute.

Documents provided to the employer with their citations also state this. One of the EISA documents provided to employers titled EISA Description states that the employer must be willing to correct the violations no later than the dates shown on the citations. However, this document also says "What if I run into problems and cannot correct all of the violations by the dates indicated on the citation?" In both cases, IOSHA received adequate

abatement by the modified abatement dates. IOSHA otherwise followed their PMA procedures and Finding **FY 2020-07**, related to PMA procedures, is corrected. IOSHA will modify their letters and documents that are sent to employers with citation and that qualify for EISAs to ensure the language is consistent on when abatement is expected.

f) Worker and Union Involvement

Chapter 3, Inspection Procedures, Section VII of IOSHA's FOM discusses union participation and allows CSHOs to question any employee privately during working hours during an IOSHA inspection. Case files reviewed had worker interviews either in audio or written format. IOSHA should instruct CSHOs to conduct more worker interviews to ensure adequate documentation is obtained to back up violations and to address complaint items. Also, CSHOs should be instructed to conduct interviews as soon as possible after opening an inspection, especially for fatality cases. When workers were represented by a union, this was noted in the case file.

3. REVIEW PROCEDURES

a) Informal Conferences

IOSHA offers a penalty reduction of 35% for qualifying employers when the case is not a fatality and does not include repeat, knowing or failure-to-abate violations. This is referred to as an Expedited Informal Settlement Agreement (EISA) and can be used when the employer accepts all other aspects of the citations, including the abatement dates, classifications, and validity of the violations. In one fatality case reviewed, the employer was offered and accepted the EISA. Because this was a fatality, the EISA shouldn't have been offered.

Finding FY 2020-08 was written because files reviewed with citations had informal settlement agreements (ISA) that were being signed by IOSHA prior to the employer, penalties were reduced greater than 50%, settlement language included inappropriate language and citations were deleted without proper justification in the case file. During OSHA's case file review, 11 inspections with citations had informal conferences. ISA notes were in the files and IOSHA followed their procedures contained in Chapter 7, Section II of IOSHA's FOM. This section discusses the conduct of informal conferences and requires that at its conclusion, all main issues and courses of action be summarized and documented. Only one case file reviewed had a citation deleted without justification. **Finding FY 2020-08 is completed.** Many of the employers signed the EISA agreements in the case files reviewed with citations.

b) Formal Review of Citations

Employers must petition for formal review or contest of cases by submitting a written notice before midnight of the 15th working day after receipt of the citations (safety orders) and IOSHA has five working days to consider it for review. If accepted, a hearing is held initially by an administrative law judge who issues a written decision. The decision may be appealed to the full Indiana Board of Safety Review (BSR). The BSR is made up of five members appointed by the Governor, two from labor, two from industry, and one safety and health professional. At the end of FY 2021, 44 cases were pending before the BSR.

IOSHA retained 76.8% of penalties, which is above the FRL of +/-15% of 69.1% (SAMM 12, Appendix D) of the three-year national average. The State Plan is within the range of 58.7% to 79.4% penalty retained. This is above the percent penalty retained in FY 2020 when it was 73% and well above the percent penalty retained in FY 2019 when it was 54.8% and below the FRL. This is a positive trend.

4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

a) Standards Adoption

IOSHA provided timely responses to OSHA regarding all but one of the federal initiated standard changes in FYs 2020 and 2021. They did not respond to notices regarding the annual adjustment to civil penalties for inflation in either 2020 or 2021 because IOSHA has yet to make the legislative change to allow an increase in maximum penalties and the subsequent annual increases.

Adoption of Maximum and Minimum Penalty Increases

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum and minimum penalties. See [81 FR 43429](#). As required by law, OSHA then increased penalties annually, most recently on January 14, 2022, according to the Consumer Price Index (CPI). See 2022 Annual Adjustments to OSHA Civil Penalties, available at <https://www.osha.gov/memos/2022-01-13/2022-annual-adjustments-osha-civil-penalties>; [87 FR 2328](#) (Jan. 14, 2022).

OSHA-approved State Plans must have penalty levels that are at least as effective as federal OSHA's per Section 18(c)(2) of the Occupational Safety and Health Act; 29 CFR 1902.37(b)(12). State Plans were required to adopt the initial maximum penalty level increase and the subsequent annual increases. State Plans were required to submit their initial intent to adopt by September 1, 2016. The first deadline for adoption of an annual increase was January 1, 2017.

The IOSHA State Plan is required to adopt maximum and minimum penalty increases that are at least as effective as the Agency's most recent increase issued in January 2022, without further delay. OSHA recognizes that Indiana substantially increased both the minimum and maximum penalties associated with workplace fatalities upon issuance of a "knowing" (willful) violation for inspections initiated in response to a workplace fatality during the 2019 legislative session, whereby an employer may be assessed a civil penalty of up to \$132,598 if a violation can be determined to have contributed to an employee fatality. The bill became effective on July 1, 2019. Penalty increases for other types of violations (serious, other-than-serious, posting requirements, failure-to-abate) and the subsequent annual adjustments for inflation were not addressed in the legislation and we are now five years past the initial adoption deadline. A letter to the IOSHA State Plan informing that failure to adopt these increases would very likely result in a FAME finding and requesting that the State Plan respond with an action plan for completing the necessary legislative changes, was sent on

September 3, 2021.

The IOSHA State Plan responded on October 1, 2021. The response stated that the next opportunity for the Indiana General Assembly to review any proposed legislation on this issue will be during the 2023 legislative session which will begin in October 2022. IOSHA will prepare a bill and obtain a sponsor for the 2023 session, as well as work with internal and external stakeholders prior to this.

Until additional concrete steps are taken towards completing the requisite legislative changes and adopting the increases and an at least as effective maximum and minimum penalty levels are adopted the following finding will remain open:

Finding FY 2021-05 – IOSHA State Plan failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

Recommendation FY 2021-05 – IOSHA State Plan 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.

b) Federal Program Change (FPC) Adoption

IOSHA submitted all nine FPC responses timely. IOSHA adopted all but one FPC, the COVID-19 National Emphasis Program (NEP).

Table A
Status of FY 2020 and 2021 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 Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/15/2020)	3/15/2020	-	-	-	1/14/2021	Pending
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	8/3/2020	Yes	Yes	1/14/2021	1/2/2021
Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records (7/30/2020)	9/28/2020	10/28/2020	Yes	Yes	1/26/2021	11/30/2020
Final Rule on the Beryllium Standard for Construction and Shipyards	10/30/2020	10/28/2020	Yes	Yes	2/27/2021	12/30/2020

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
29 CFR 1915, 1926 (8/31/2020)						
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work (9/15/2020)	11/14/2020	11/1/2020	Yes	Yes	3/14/2021	3/9/2021
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	-	-	-	7/14/2021	Pending
Occupational Exposure to COVID-19; Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	7/6/2021	Yes	Yes	7/21/2021	7/21/2021

Table B
Status of FY 2020 and FY 2021 Federal Program Change (FPC) Adoption
(May include any delinquent FPCs from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<i>Adoption Required</i>						
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	2/5/2020	Yes	Yes	6/10/2020	6/10/2020
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	3/16/2020	Yes	Yes	8/4/2020	8/7/2020
<i>Equivalency Required</i>						
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/14/2020	6/9/2020	Yes	No	10/14/2020	10/14/2020
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021	2/12/2021	Yes	No	5/14/2021	5/14/2021
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	4/23/2021	Yes	Yes	9/19/2021	4/23/2021

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Compliance Directive for the Excavation Standard, 29 CFR 1926, Subpart P CPL 02-00-165 (7/1/2021)	8/30/2021	8/23/2021	Yes	Yes	n/a	12/31/2021
<i>Adoption Encouraged</i>						
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	3/30/2020	Yes	Yes	n/a adoption not required	9/30/2020
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	5/12/2021	No	-	n/a adoption not required	-

5. VARIANCES

Pursuant to I.C. 22-8-1.1-20.1, the Indiana Occupational Safety Standards Commission (IOSSC) reviewed and granted a request for one variance during FY 2021 for 29 CFR 1926.754(b)(3) which states that “A fully planked or decked floor or nets shall be maintained within two stories or 30 feet (9.1m) whichever is less directly under any erection work being performed.” The permanent variance permits the applicant to place decks, planks, or nets within 36 feet rather than 30 feet, subject to several terms, including ensuring the applicant requires the use of fall protection equipment by all employees when exposed to unprotected sides or edges at or greater than six feet above a lower level regardless of the type of work occurring on the project.

6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

At 2.87%, IOSHA’s percent of inspections in state and local government workplaces is within the acceptable FRL range of +/-5% of 3.03% or 2.88% to 3.18% (SAMM 6, Appendix D). IOSHA conducted 24 inspections in this sector in FY 2021.

IOSHA issues monetary penalties to state and local government employers for violations. However, these employers receive notice that the penalties associated with violations are deferred pending receipt of evidence of corrective action. Failure to provide documentation of corrective action will result in a follow-up inspection and penalties for unabated conditions.

7. WHISTLEBLOWER PROGRAM

The IOSHA Whistleblower Protection Program adheres to OSHA’s Whistleblower Investigations Manual (WIM), CPL 02-03-007 with an effective date of January 28, 2016, and updated February 17, 2017. In FY 2021, IOSHA’s Whistleblower Protection Program consisted of a director (who

is also director of general industry enforcement), who manages the program, a supervisor, and two investigators. The supervisor transferred from construction enforcement in August 2021.

Although the 120-day statute of limitations for filing whistleblower cases with the Attorney General in Indiana remains unchanged, eligible (private sector) complainant's rights to request a Federal review of the state's investigation is ultimately being protected. In most situations, OSHA will defer to the state for investigations of such retaliation complaints, but dual filing preserves a complainant's right to seek a federal remedy should the state be unable to effect appropriate relief. It is recommended that any new merit cases and status of timely filing be a discussion topic during quarterly monitoring meetings.

During FY 2021, there were 71 complaints docketed for investigation, and 42% (SAMM 14, Appendix D) were completed within 90 days. It took an average of 114 calendar days (SAMM 16, Appendix D) to complete the investigations. The Occupational Safety and Health Act of 1970 (OSH Act) requires the complainant be notified of the case determination within 90 days. IOSHA completed 119 investigations with a total of 120 determinations. Of the 119 completed investigations, 20 (17%) investigation files were reviewed. Of the 20 case files that were reviewed, 14 (70%) were dismissed as non-merit, one (5%) case was a withdrawal by the complainant prior to a decision being rendered and five (25%) were settled (four via standard OSHA agreements and one via a third-party agreement).

IOSHA received 214 whistleblower complaints in FY 2021. One hundred forty-one (66%) of those complaints were administratively closed. There was a total of ten (5%) Administrative Closure records reviewed. Of the ten records reviewed, all were appropriate for administrative closure and files contained memorandums of interviews, closing letters to complainants, and were reviewed by a supervisor.

There were three findings and four observations related to IOSHA's Whistleblower Program on the FY 2020 Follow-up FAME. One of the findings is closed or completed (**Finding FY 2020-09**, related to testing the respondent's defense.) Two remain open. Three of the observations are closed and one other observation, FY 2020 Observation OB-3 is converted to **Finding FY 2021-08**. This finding addresses dates not being entered or being entered inaccurately into the OSHA Information Technology Support System (OITSS) in 11 of the 20 (55%) files reviewed.

Finding FY 2020-09, relating to respondent's defense, is closed because all but two of the 20 reviewed files adequately tested the Respondent's defense. All managers and investigators have attended the basic investigation course (#1420-Basic Whistleblower Investigations). The two findings that remain open are **FY 2020-10** and **FY 2020-11**. **Finding FY 2020-10** remains open because analysis of the elements was nonexistent or incorrect for some or all the elements, including protected activity, knowledge and adverse action.

Finding FY 2020-11 remains open because seven of 20 case files reviewed did not include evidence that the determination letters had been sent and/or did not contain tracking information to confirm receipt. Appropriate determination letters must be issued to the parties via certified U.S. mail return receipt requested (or via a third-party commercial carrier that provides delivery confirmation) according to the WIM Chapter IV, Section B. Proof of receipt must be preserved in the file with copies of the letters to maintain accountability. In seven of the 20 files reviewed, proof of receipt of determination letters was not evident. As a result, there is no evidence to support that the complainant ever received the determination letter and the opportunity to

exercise appeal rights.

Observations OB-01, OB-02 and OB-04 from FY 2020 are closed because, only one of the 20 files reviewed did not have the report of investigations (ROI) signed by the supervisor (**FY 2020-OB-01**); all reviewed files contained complainant interviews and they were reduced to a memorandum of interview (**FY 2020-OB-02**); and three of the 20 case files reviewed did not have documentation that the file was reviewed by the supervisor beyond the initial assignment and prior to docketing. This has improved significantly since the last review (**FY 2020-OB-04**).

There is one new finding related to the whistleblower program. In six of the 20 (30%) files reviewed, the supervisor did not review the file to ensure technical accuracy, thoroughness of the investigation, correct application of the law to the facts, completeness of the Secretary's findings, and merits of the case (WIM, Chapter 4, Section IV.A). Evidence of supervisory review was not evident in that a file that was submitted as meritorious was dismissed in OITSS with no indication of what occurred following submission for review. In another file, the case was indicated as settled in OITSS but did not contain a settlement agreement in the file. The file was prepared as meritorious but there was no indication of what occurred following submission for review. In another file that was settled, there was no indication that final determination or closing letters were sent to the parties. Another case was settled but the settlement amount was not entered into OITSS and there was no evidence that closing letters were sent to the parties. Another case was settled; however, it was entered into OITSS as a dismissal. In another case, there is no evidence of supervisory review prior to docketing and no evidence that the respondent was sent a determination letter.

The ROI must be signed by the investigator, reviewed and approved in writing by the supervisor (WIM Chapter 3, Section IV.L). If the supervisor concurs with the analysis and the recommendation of the investigator, he or she will sign on the signature block on the last page of the ROI and record the date the review was completed (WIM Chapter 4, Section IV.B). The supervisor's signature on the ROI serves as approval of the recommended determination. Two of the 20 case files reviewed did not contain ROIs that were signed by the supervisor.

Finding FY 2021-06 (FY 2020-10) – Appropriate analysis of the elements was nonexistent or incorrect in seven of the 20 (35%) whistleblower files reviewed.

Recommendation FY 2021-06 – IOSHA should provide refresher training for investigators and supervisory staff to include appropriate analysis of elements.

Finding FY 2021-07 (FY 2020-11) - Proof of receipt of whistleblower determination letters must be preserved in the file with copies of the letters to maintain accountability. Proof of receipt of the determination letters was not evident in seven of the 20 (35%) case files reviewed.

Recommendation FY 2021-07 - IOSHA should ensure that proof of receipt is preserved in the file with copies of the Whistleblower determination letters, as required by WIM Chapter 4.IV.B.

Finding FY 2021-08 (FY 2020-OB-03) - In 11 of the 20 (55%) whistleblower case files reviewed, the Report of Investigation (ROI) approval dates were either not entered in OITSS or were entered inaccurately.

Recommendation: FY 2021-08 – IOSHA should ensure that the date the supervisor approves

(signs) the ROI is entered into OITSS.

Finding 2021-09 – In six of the 20 (30%) whistleblower case files reviewed, the supervisor did not review the file to ensure technical accuracy, thoroughness of the investigation, correct application of the law to the facts, completeness of the Secretary’s Findings, and merits of the case (WIM Chapter 4, Section IV.A).

Recommendation: FY 2021-09 – IOSHA should follow the WIM, Chapter 4, Section IV.A to ensure all whistleblower case files submitted for review are thoroughly reviewed by a supervisor to ensure completeness of the file, technical accuracy, thoroughness of the investigation, correct application of the law to the facts, completeness of the Secretary’s findings, and merits of the case.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

OSHA received one CASPA in FY 2021. IOSHA’s response was timely and appropriate and there were no recommendations.

9. VOLUNTARY COMPLIANCE PROGRAM

Indiana follows the Voluntary Protection Program (VPP) Policies and Procedures Manual, CSP 03-01-005. Indiana’s Voluntary Protection Program has four team leaders who report to the Deputy Commissioner of Labor. There are currently 90 Indiana workplaces certified and actively participating in the program. Two new Indiana worksites achieved VPP certification and 17 recertification evaluations were conducted in FY 2021. The VPP team leaders conducted 238 outreach visits in FY 2021, and these included technical assistance for hazard correction, verification of 90-day item hazard correction and program evaluation readiness visits.

Two best practice meetings were held with VPP sites virtually in November 2020 because of COVID-19. In addition, three Special Government Employee (SGE) training events were held to share how virtual VPP evaluations can be conducted using Microsoft Teams. The sessions provided information to SGEs on how they can assist VPP leaders during virtual evaluations.

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

Indiana’s INSafe Division conducts consultation visits to Indiana state and local government worksites. They conducted 15 visits to these sites in FY 2021, whereas nine visits were projected. Only three of the 11 (27.3%) initial visits were coded as high hazard. Ninety percent of consultation visits should be conducted at high hazard worksites. (MARC measure 1) Thirty-three serious hazards were identified during nine of the initial visits.

Appendix A – New and Continued Findings and Recommendations

FY 2021 IOSHA Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-01	In 20 of 27 (74.1%) fatality case files reviewed, letters to the next-of-kin (NOK) were not found in the files. Some files had either the initial or final letter and other files had neither.	IOSHA should follow Chapter 11, Section II of the IFOM and ensure that both the initial and final letters to the victim’s family for fatality investigations are sent and copies are maintained in the file. Supervisors should use the fatality checklist when reviewing the case files to ensure the NOK letters have been sent and are maintained in the file.	New
FY 2021-02	IOSHA’s in-compliance rate for health inspections is 63.1% and is outside the Further Review Level (FRL) of +/-20% of 40.6% (32.5% to 48.8%). (SAMM 9, Appendix D)	IOSHA supervisors should continue to ensure inspection case files with hazards in plain view are thoroughly investigated and all other apparent violations are cited during review of case files. IOSHA should also ensure resources are spent in workplaces that are exposing workers to hazards by implementing corrective action in the most hazardous worksites.	FY 2020-04
FY 2021-03	IOSHA’s average lapse time for health inspections is 115 days, above the FRL of +/- 20% of 66.1 and the acceptable range of 52.9 to 79.3 days.	IOSHA should ensure CSHOs are conducting health sampling as soon as possible after opening an inspection. IOSHA should also ensure that in consultation with supervisors, CSHOs determine as soon as possible which citations will be issued after opening an inspection. The citation(s) should be issued soon after making this determination to reduce lapse time.	New
FY 2021-04	In two of five (40%) follow-up case files reviewed, adequate verification of abatement couldn’t be determined because information specific to the previously cited hazards was not documented in the case files.	IOSHA should ensure that follow-up case files include all documentation related to hazard violations being followed up on during the inspection, including the previous inspection date(s), location(s) and violation(s). IOSHA should also follow their FOM, Chapter 3, Section IX.A.3. and include follow-up inspection reports in the original (parent) case file.	FY 2020-06
FY 2021-05	IOSHA failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.	IOSHA 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.	New
FY 2021-06	Appropriate analysis of the elements was nonexistent or incorrect in seven of the 20 (35%) whistleblower files reviewed.	IOSHA should provide refresher training for investigators and supervisory staff to include appropriate analysis of elements.	FY 2020-10

Appendix A – New and Continued Findings and Recommendations

FY 2021 IOSHA Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-07	Proof of receipt of whistleblower determination letters must be preserved in the file with copies of the letters to maintain accountability. Proof of receipt of the determination letters was not evident in seven of the 20 (35%) case files reviewed.	IOSHA should ensure that proof of receipt is preserved in the file with copies of the Whistleblower determination letters, as required by WIM Chapter 4.IV.B.	FY 2020-11
FY 2021-08	In 11 of the 20 (55%) whistleblower case files reviewed, the Report of Investigation (ROI) approval dates were either not entered in OITSS or were entered inaccurately.	IOSHA should ensure that the date the supervisor approves (signs) the Report of Investigation is entered into OITSS.	FY 2020-OB-3
FY 2021-09	In six of the 20 (30%) whistleblower case files reviewed, the supervisor did not review the file to ensure technical accuracy, thoroughness of the investigation, correct application of the law to the facts, completeness of the Secretary’s Findings, and merits of the case (WIM Chapter 4, Section IV.A).	IOSHA should follow the WIM, Chapter 4, Section IV.A to ensure all whistleblower case files submitted for review are thoroughly reviewed by a supervisor to ensure completeness of the file, technical accuracy, thoroughness of the investigation, correct application of the law to the facts, completeness of the Secretary’s findings, and merits of the case.	New

Appendix B – Observations Subject to New and Continued Monitoring

FY 2021 IOSHA Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB-#	Observation	Federal Monitoring Plan	Current Status
	FY 2020-OB-01	Two of the 20 (10%) Whistleblower investigation files reviewed did not contain Reports of Investigation (ROI) that were signed by the supervisor.		Closed
	FY 2020-OB-02	In eight of the 20 (40%) Whistleblower investigation files reviewed, complainant interviews were not reduced to a memorandum of interview. Additionally, eight of the 12 administratively closed files reviewed did not contain a memorandum of interview.		Closed
	FY 2020-OB-03	The Report of Investigation (ROI) approval date in OSHA’s WebIMIS system was either not entered or inaccurate in nine of the 20 (45%) Whistleblower investigation files reviewed.		Converted to a Finding
	FY 2020-OB-04	Eight of the 20 (40%) Whistleblower investigation files reviewed did not have documentation that the file was reviewed by a supervisor beyond the initial assignment and prior to docketing. Seven of the investigation files were FY 2018 files and one was a FY 2019 file. All but one Indiana FY 2019 investigation files documented supervisory review prior to docketing utilizing the “screening worksheet” or the activity log indicating that supervisory review of complaints prior to docketing or closing is becoming more consistent with the FY 2019 complaints.		Closed

Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 IOSHA Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-01	<p>In the FY 2019 comprehensive FAME, 12 of 15 (80%) complaint investigations (non-formal, inquiries) case files reviewed, letters to employers and complainants were either not sent or maintained in the case files. In nine of 15 (60%) of these case files, a determination was not documented to indicate if the employer's response to the inquiry was adequate. In six of 15 (40%) of the case files, serious injuries were reported and the files were not documented to indicate why no inspection was conducted.</p>	<p>IOSHA should follow Chapter 9 of their FOM to ensure:</p> <ul style="list-style-type: none"> • letters are sent to employers to initiate a complaint inquiry and when an adequate response has been received; • letters are sent to the complainant acknowledging receipt of their complaint and when the employer's response to the inquiry is adequate; • copies of all letters are maintained in the file; • an evaluation is made determining the adequacy of the employer's response to the inquiry and that 	<p>IOSHA has implemented a checklist for all complaint, referral, and fatality activities to ensure that they are addressed appropriately. If an activity is received that is outside of the normal report, the Intake Supervisor will discuss with other General Industry Supervisors and Director for concurrence on appropriate response to the report.</p> <p>IOSHA is fully documenting any decision to not inspect and including it in the file.</p> <p>All RRI's and Non-Formal Complaints are being fully reviewed to ensure adequate response and being assigned for inspection if the employer is not responding or providing inadequate answers.</p> <p>Letters are being sent out to employers as soon as a complaint is coded as Non-Formal or an accident as an RRI.</p> <p>Copies of all letters are being maintained in the file.</p>	January 15, 2021	Completed

Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 IOSHA Comprehensive FAME Report

		<p>it is documented in the file; and</p> <ul style="list-style-type: none"> • if a decision is made not to inspect after a serious injury report, the reasons are documented in the file. 			
FY 2020-02	In seven of 12 (58%) health case files reviewed for the FY 2019 comprehensive FAME, industrial hygiene sampling was not conducted to address potential health hazards and/or health complaint items.	<p>IOSHA should ensure industrial hygienists are following the FOM and properly trained to address all complaint and referral items that allege exposures to health hazards (noise and air contaminants) and conduct industrial hygiene sampling when evidence indicates it should be conducted. Industrial hygienists should investigate health hazards if they are in plain view and if they are covered under National Emphasis Programs (NEP). Complaints with health hazards alleged should be reviewed with a supervisor prior to inspection to discuss sampling strategy.</p>	<p>IOSHA’s General Industry is holding MS Teams meetings and discussing various chapters of the OSHA Tech Manual bi-weekly. All General Industry CSHOs are participating and assisting with the training. Supervisors are discussing sampling strategies with IH CSHOs and making every effort to perform same-day sampling.</p> <p>IOSHA General Industry has just allocated \$30,000 per year towards the procurement of additional equipment and maintenance of current sampling equipment to assist in ensuring that we have the appropriate equipment when and where we need it.</p> <p>IOSHA has a list of common hazards to help with in-compliance rate to assist CSHOs in ensuring that they are addressing commonly overlooked hazards.</p>	August 31, 2021	Completed
FY 2020-03	IOSHA does not have an inspection targeting	IOSHA should develop a targeting system for	IOSHA General Industry has adopted Federal OSHA SST 19 and prepared lists for each	January 10,	Completed

Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 IOSHA Comprehensive FAME Report

	<p>system for identifying sites for inspections with specific hazards and/or high injury and illness rates related to OSHA's NEPs and the SST-16.</p>	<p>identifying sites for inspection where specific hazards related to OSHA's NEPs that IOSHA has adopted are known to exist. The NAICS lists that have been researched and included with the NEPs can be used to identify work sites to target for inspection. The software and databases that include establishments on these lists can be obtained from OSHA's Office of Statistical Analysis.</p>	<p>National Emphasis Program (NEP) as appropriate and will address programmed inspections per IFOM inspection priority.</p> <p>IOSHA General Industry is conducting follow-up (F/U) inspections as appropriate.</p> <p>IOSHA General Industry has submitted summary of programmed inspection plans to Federal OSHA for review.</p>	2022	
FY 2020-04	<p>IOSHA's in-compliance rate for safety inspections is 33.47% and 54.81% for health inspections. The rate for health inspections is outside the Further Review Level (FRL) of +/- 20% of 37.15% (29.72%-44.58%).</p>	<p>IOSHA supervisors should ensure inspection case files with hazards in plain view are thoroughly investigated and all apparent violations are cited during their case file review. IOSHA should also ensure resources are spent in workplaces that are exposing workers to hazards by implementing corrective action in the most hazardous worksites.</p>	<p>IOSHA has expanded Team-Box-Talks to include both General Industry and the Construction Safety Divisions to assist in promoting better hazard recognition across all industries.</p> <p>IOSHA Supervisors are reviewing all case files to check for apparent violations and addressing any "missed" potential violations with the CSHOs for corrective action/coaching and development. If there is an apparent violation or hazard present and does not meet all of the required elements to cite, IOSHA has started addressing these with Hazard Alert Letters to put employers on notice of the hazard.</p> <p>IOSHA also has a list of common hazards to help with in-compliance rate to assist CSHOs in ensuring that they are addressing commonly overlooked hazards.</p>		Open February 1, 2022

Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 IOSHA Comprehensive FAME Report

FY 2020-05	In 18 of 84 (21.4%) inspection case files for the FY 2019 comprehensive FAME, the general duty clause (Indiana Code 22-8-1.1-2) was cited instead of an OSHA standard; all apparent hazards were not cited and, sections of 29 CFR 1910.147 (control of hazardous energy, lockout/tagout) were cited incorrectly.	IOSHA should ensure that when supervisors review case files, they look for OSHA standards that should be cited in lieu of the general duty clause; they review the investigator's file thoroughly so that all apparent hazards are cited and when OSHA's lockout/tagout standard (29 CFR 1910.147) is cited, the correct section is cited appropriately.	All general duty violations are discussed with the appropriate division director for concurrence prior to issuance of a citation.	August 31, 2021	Completed
FY 2020-06	In four of five (80%) follow-up case files reviewed for the FY 2019 comprehensive FAME, adequate verification of abatement or abatement documentation specific to the cited hazards was not included in the case file. In three of five (60%) follow-up case files, worker interviews were not conducted.	IOSHA should ensure that files include documentation on abatement methods observed that are specific to all identified hazards and follow-up inspections include interviews with employees.	Prior to closing a file, IOSHA Supervisors and Lead CSHOs are reviewing all abatement pertaining to violations. Files may only be closed by Supervisors. Follow-up inspections are including employee interviews. Audit was performed on 7/19/21 and case files for all 5 F/U inspections included employee interview.		Open February 1, 2022
FY 2020-07	In four of four (100%) case files reviewed for the FY 2019 comprehensive FAME, procedures to Petition for Modification of Abatement (PMA) were not followed properly.	IOSHA should ensure checklists used to approve PMAs are followed properly. IOSHA should conduct periodic audits to ensure signed agreements are in the case file; letters to the employer approving the PMA are in the case	IOSHA will conduct an annual random audit of PMAs to ensure checklist procedures are appropriately followed. Senior IOSHA staff put together an audit checklist and trained supervisors; supervisors completed the audit. 11 files needed PMAs. Some issues were found during the audit: ER request form not completed sufficiently and documentation of why extension was needed.	December 4, 2020	Completed

Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 IOSHA Comprehensive FAME Report

		file; employers' statements of exceptional circumstances explaining any delay in their request more than one day after the abatement due date are in the case file; and, approval dates on the checklist match dates requested by the employer on the request form.			
FY 2020-08	In 25 of 43 (58%) case files reviewed with citations for the FY 2019 comprehensive FAME, informal settlement agreements (ISA) are signed by IOSHA prior to the employer; penalties are reduced greater than 50%; settlement language includes statements that IOSHA did not prove there was a violation and is not appropriate; and, citations are deleted without proper justification in the file.	IOSHA should audit cases with ISAs on a routine basis to ensure they are executed appropriately: the employer signs the ISA prior to IOSHA; penalties are not reduced to more than 50% of the initial penalty; language included in the ISA does not indicate that IOSHA did not prove there was a violation and citations are not deleted unless proper justification is in the file.	IOSHA will ensure penalties are not reduced more than 50% after all violations have been grouped or deleted, as appropriate. IOSHA will also ensure that proper and complete justification for deleting citations (safety orders) is included in the file. IOSHA will ensure that the employer signs ISAs prior to IOSHA. In both divisions, the directors are composing the ISAs and documenting the reason for any appropriate reductions or reclassifications. A random audit of Informal Conferences was conducted – minor errors were discussed with the appropriate staff members.	August 31, 2021	Completed
FY 2020-09	The respondent's defense was not adequately tested in six of the 20 (30%) Whistleblower investigation files reviewed for the FY 2019 comprehensive FAME. The	IOSHA should train or retrain the Whistleblower investigative staff with regard to adequately testing the respondent's defense and ensuring that all pertinent information and	Aside from internal retraining and coaching, all WB team members and the Director have completed the OSHA 1421 course to date. A new supervisor started on 8/23/2021 and is scheduled to take the OSHA 1421 course in FY 2022.	August 31, 2021	Completed

Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 IOSHA Comprehensive FAME Report

	investigation appeared to conclude following receipt of the respondent's position or the complainant's failure to provide a rebuttal.	documentation are pursued prior to concluding the investigation as required by the WIM (Chapter 3.VI.I, Resolve Discrepancies).			
FY 2020-10	The Whistleblower investigator did not evaluate the evidence and draw conclusions based on the evidence and the law. Analysis was not evident in nine of the 20 (45%) investigation files reviewed for the FY 2019 comprehensive FAME.	The State Plan should retrain Whistleblower staff on preparation of the analysis as well as writing the Report of Investigation (ROI). Attendance at the Writing for WB course #1630 is recommended for investigators when it is available through the OSHA Training Institute.	IOSHA will retrain Whistleblower Investigators on preparation of the analysis as well as writing the Report of Investigation (ROI). Whistleblower Investigators and the Whistleblower supervisor attended the Writing for Whistleblowers #1630/1631 course at the OSHA Training Institute in September 2021.	1/31/2022	Open February 1, 2022
FY 2020-11	Proof of receipt of the determination letters was not evident in ten of the 20 (50%) whistleblower investigation files reviewed for the FY 2019 comprehensive FAME.	IOSHA should ensure that proof of receipt is preserved in the file with copies of the Whistleblower determination letters, as required by WIM Chapter 4.IV.B.	<p>While this finding is tracked back to one specific investigator, IOSHA has added this item to the Whistleblower Supervisor Case Audit Review Checklist and the checklist will remain with the file. The WB Investigator is responsible for ensuring that the certification of delivery is maintained in the file as required by the WIM.</p> <p>Please also note that IOSHA has identified the following: United States Postal Service is not providing proof of delivery for all certified mail as requested.</p> <p>IOSHA has tried another mail carrier (UPS) and they have failed to ensure that all deliveries are signed for as requested. UPS has repetitively left items at facilities without signature.</p>		Open February 1, 2022

Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 IOSHA Comprehensive FAME Report

			When IOSHA receives proof of delivery, it is being maintained in the file. Alternative methods of delivery attempted will be documented in the file.		
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Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 IOSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	7.91	10	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	5.86	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)	3.22	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)	2.38	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)	2.34	+/- 20% of 1.78	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 2.14 for SWRU.
5b	Average number of violations per inspection with violations by violation type (other)	0.30	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
6	Percent of total inspections in state and local government workplaces	2.87%	+/- 5% of 3.03%	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 2.88% to 3.18%.
7a	Planned v. actual inspections (safety)	695	+/- 5% of 790	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 IOSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
				acceptable data not requiring further review is from 750.50 to 829.50 for safety.
7b	Planned v. actual inspections (health)	140	+/- 5% of 135	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 128.25 to 141.75 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,297.97	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
	a. Average current serious penalty in private sector (1-25 workers)	\$655.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,558.71	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.
	c. Average current serious penalty in private sector (101-250 workers)	\$2,105.32	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,990.12 to \$6,650.20.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$3,317.27	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
9a	Percent in compliance (safety)	27.93%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
9b	Percent in compliance (health)	63.10%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
10	Percent of work-related fatalities responded to in one workday	90.91%	100%	The further review level is fixed for all State Plans.

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FY 2021 IOSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
11a	Average lapse time (safety)	55.43	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
11b	Average lapse time (health)	114.97	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
12	Percent penalty retained	76.80%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.
13	Percent of initial inspections with worker walk-around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	42%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	16%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
16	Average number of calendar days to complete an 11(c) investigation	114	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	0.69%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.