



INDIANA

DEPARTMENT OF LABOR

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Mr. William J. Donovan
Regional Administrator
Occupational Safety and Health Administration
John C. Kluczynski Federal Building
230 South Dearborn Street, Suite 3244
Chicago, Illinois 60604-1694

RE: Indiana Occupational Safety and Health Administration Response to Fiscal Year 2021 Federal Annual Monitoring Evaluation

Dear Regional Administrator Donovan:

Thank you for the opportunity to provide a formal reply to the federal fiscal year 2021 Occupational Safety and Health Administration's Federal Annual Monitoring Evaluation (FAME) of the Indiana Occupational Safety and Health Administration (IOSHA). IOSHA appreciates a robust evaluation of its program and the opportunities to learn best practices to advance the safety, health, and prosperity of Hoosiers in the workplace.

In November 2021, the Indiana Department of Labor released the findings of the most recent Federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses (SOII). The Federal Bureau of Labor Statistics' SOII is the only comprehensive measure of work-related injuries and illnesses in the nation. The measure is also one of the Indiana Department of Labor's key performance indicators. At 3.1 occupational injuries and illnesses per 100 full-time employees, the 2020 nonfatal injury and illness rate for Indiana is the lowest in the State's history. The rate also represents a significant reduction (72.6%) in the series high nonfatal occupational injury and illness rate, recorded at 11.3 per 100 full-time employees in 1994. While the Indiana Department of Labor is proud to showcase the State's historic low nonfatal occupational injury and illness rate, the agency recognizes there is more work to be done by all stakeholders—Hoosier employers and employees, labor unions, trade associations, and IOSHA to continue to reduce and eliminate employee exposures to workplace safety and health hazards.

IOSHA largely agrees with the information presented in the fiscal year 2021 FAME. However, IOSHA does not necessarily agree with the basis of some of the findings contained within the report. Please see the feedback on three of IOSHA's FAME findings below.

Finding FY 2021-02: IOSHA's Health Inspection In-compliance Rate

Firstly, IOSHA agrees that its health inspection in-compliance rate for fiscal year 2021 is 63.1% and therefore above the further review level (FRL) established for the evaluation period of 32.5-48.8%. However, an in-compliance rate outside the FRL does not alone necessitate a FAME finding. The FRL is an indicator that additional follow-up may be necessary with the State Plan. The FAME did not reveal that IOSHA inspectors failed to cite in-plain-view hazards. Therefore, it is not appropriate to identify a deficiency in IOSHA's program that does not exist. Furthermore, OSHA's recommended action to correct the finding will not correct it because a hazard that does not exist cannot be cited. Nonetheless, IOSHA will continue to provide its inspectors and supervisors with excellent health hazard recognition and standards training and will continue to perform a thorough review of inspection case files.

Finding FY 2021-03: IOSHA's Health Inspection Lapse Time

Secondly, IOSHA agrees that its health inspection lapse time for fiscal year 2021 is 115 days and above the FRL of 52.9-79.3 days. The statute of limitations for issuing a violation under the Indiana Occupational Safety and Health Act (IOSH Act) is six months from the last identified exposure to an occupational hazard. IOSHA's inspectors focus their efforts on performing a thorough and timely inspection and less than six months is timely. Nonetheless, IOSHA's Directors will work with its supervisors and inspectors to ensure inspections are conducted the most productive manner possible focusing on the time it takes for sampling and obtaining results, and if appropriate, issuing Safety Orders.

Finding FY 2021-05: Adoption of OSHA's Maximum and Minimum Penalty Increase and Subsequent Annual Increases

Lastly, IOSHA acknowledges that Indiana has not adopted federal OSHA's fiscal year 2016 maximum and minimum penalties. However, IOSHA disagrees that this is an "at least as effective as" issue. The Department is unaware of any research or study that would suggest that higher penalties create safer and healthier work environments for employees. As stated previously, the nonfatal occupational injury and illness rate has steadily decreased over the last five years to the lowest in Indiana's history.

IOSHA's civil penalties are codified in state statute. Therefore, increasing the maximum and minimum penalties requires action of the Indiana General Assembly. IOSHA previously provided this information to legislators and was successful in achieving higher penalty minimums and maximums for issuance of a "knowing" violation and in the event of an occupational fatality where the violative condition could have reasonably contributed to the employee's death. This penalty maximum was increased to \$132,598 and minimum to \$9,472 and was effective on July 1, 2019. In 2022, IOSHA provided a legislative proposal to its legislative liaison regarding OSHA's penalty increase. IOSHA will work with the legislative liaison to stress the importance of this change, but IOSHA cannot unilaterally change the penalties. It is up to the Indiana General Assembly to change the penalties codified in Indiana law.

Again, IOSHA appreciates the time your staff spent performing this evaluation. IOSHA will endeavor to work diligently to deliver exceptional service and results for its stakeholders.

Sincerely,

David Redden
Commissioner