**Indiana State Plan**

**Formal Response to FY 2022 Follow-up FAME Report**

The Indiana Department of Labor appreciates the opportunity to provide a formal response to the FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) Report. The Indiana Department of Labor is the state agency which houses and oversees the day-today operation of the Indiana Occupational Safety and Health Administration (IOSHA). Indiana received final approval to operate its State Plan from the federal Occupational Safety and Health Administration (OSHA) in 1986. State Plans are required to enforce standards that are at least as effective as federal OSHA. It should also be noted that Indiana Code 22-8-1.1-17.5 does not permit the Department or IOSHA to adopt or enforce any provision that is more stringent than the corresponding federal standard.

According to the most recent data made available by the federal Bureau of Labor Statistics (BLS), the overall nonfatal occupational injury and illness rate is 3.2 per 100 full-time workers. This rate is one of the lowest on record in Indiana. With a series high rate of 11.3 per 100 full-time workers, workplace injuries and illnesses in Indiana have steadily decreased more than 72% since 1994. Nonfatal occupational injury and illness data is collected by the Indiana Department of Labor’s Quality, Metrics, and Statistics Division in partnership with the federal BLS through its Survey of Occupational Injuries and Illnesses (SOII). Each year, more than 5,000 Hoosier employers participate in the BLS SOII by providing occupational injury and illness information from their OSHA recordkeeping forms.

IOSHA appreciates a robust evaluation of its program to learn best practices to further advance the safety, health, and prosperity of Hoosiers in the workplace. IOSHA also appreciates federal OSHA’s recognition of progress the Department has made with respect to its occupational safety and health enforcement program.

IOSHA was successful in addressing all findings identified by federal OSHA in its FY 2021 comprehensive FAME. In fact, two previously identified findings from FY 2021 comprehensive FAME Report were acknowledged as corrected during this Follow-up FAME. Below, please find IOSHA’s response to the continued findings identified in FY 2022 Follow-up FAME Report. These findings are simply awaiting verification during the next FAME process, which will take place next year.

**FY 2022 Follow-up FAME Report Continued Findings**

FY 2022-01 (Finding FY 2021-01): In FY 2021, 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.

OSHA Status: A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open.

State Plan Response: IOSHA has retrained team members to ensure a copy of the next-of-kin letters are placed in the case, and if not filed for one reason or another, that there is adequate justification in the case file for such. IOSHA also conducts random inspection case file reviews of fatality inspection files to ensure a copy of this correspondence is available in the file. IOSHA is confident the case file review performed by OSHA next year will validate the closing of this finding.

FY 2022-02 (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 (SAMM 11b, Appendix D).

OSHA Status: At 92.79 days, the State Plan’s average lapse time for health inspections, while improved in FY 2022, is still above the FY 2022 FRL of +/-20% of 69.03 days and the acceptable range of 55.22 to 82.84 (SAMM 11b, Appendix D). This finding remains open.

State Plan Response: IOSHA does not believe this is an at least as effective as issue (ALAE) and, therefore, does not rise to the level of a finding. However, IOSHA continues to work with its personnel to reduce its overall inspection lapse time. IOSHA’s FY-to-date (October 1, 2022 – May 31, 2023) lapse time for health inspections is 55.54 days.

FY 2022-03 (Finding FY 2021-04): In FY 2021, 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.

OSHA Status: A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open.

State Plan Response: IOSHA is confident the case file review performed by OSHA next year will lead to the closure of this finding.

FY 2022-04 (Finding FY 2021-05): IOSHA failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

OSHA Status: IOSHA submitted language for consideration by the Indiana legislature to increase penalties. However, there has been no action and IOSHA does not expect that the Indiana legislature will take up the annual penalty increase matter during the legislative session. This finding remains open.

State Plan Response: An increase in civil penalties for violations of the Indiana Occupational Safety and Health Act (IOSH Act) requires legislative action by the Indiana General Assembly. IOSHA has provided language and information for such; however, IOSHA cannot make the Indiana General Assembly act. While penalties for all violation types have not been increased, IOSHA was successful in achieving higher minimum and maximum penalties for certain instances of the issuance of a “Knowing” violation. A Knowing violation is equal to federal OSHA’s Willful violation classification. IOSHA may impose an increased civil penalty when citing a Knowing violation where any violation of the IOSH Act can reasonably be determined to have contributed to an employee fatality. In 2019, the “Knowing” violation classification’s penalty was increased by the Indiana General Assembly to not less than $9,472 and not more than $132,598.

FY 2022-05 (Finding FY 2021-06): Appropriate analysis of the elements was nonexistent or incorrect in seven of the 20 (35%) whistleblower files reviewed from FY 2021.

OSHA Status: A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open.

State Plan Response: IOSHA is confident a case file review performed by OSHA next year will validate the closure of this finding.

FY 2022-06 (Finding FY 2021-08): In 11 of the 20 (55%) whistleblower case files reviewed from FY 2022, the Report of Investigation (ROI) approval dates were either not entered in the database or were entered incorrectly.

OSHA Status: The limited review of 11 case files for this Follow-up FAME indicates the Report of Investigation (ROI) approval dates were either not entered in OITSS (6 of 11, 54.5%) or were entered inaccurately (1 of 11, 9.1%). This finding remains open.

State Plan Response: IOSHA retrained its Whistleblower Protection Investigators to ensure this information is accurately documented in the system. IOSHA is confident a case file review performed by OSHA next year will close out this finding.

FY 2022-07 (Finding FY 2021-09): In FY 2021, 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 (Whistleblower Investigation Manual (WIM) Chapter 4, Section IV.A).

OSHA Status: A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open.

State Plan Response: IOSHA is confident a case file review performed by OSHA next year during the enhanced FAME will close out this finding.

In conclusion, IOSHA appreciates the time the federal OSHA Region V evaluation team spent performing this evaluation and providing both positive and constructive feedback. IOSHA will continue delivering a high-quality occupational safety and health enforcement program to its stakeholders.