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**FY 2023 Comprehensive**

**Federal Annual Monitoring Evaluation (FAME) Report**



**Evaluation Period: October 1, 2022 – September 30, 2023**

Initial Approval Date: March 6, 1974

State Plan Certification Date: October 6, 1981

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**Prepared by:**

**U. S. Department of Labor**

**Occupational Safety and Health Administration**

**Region V**

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**Contents**

1. Executive Summary 3
2. State Plan Background 4
3. Background 4
4. New Issues 4
5. Assessment of State Plan Performance **5**
6. Data and Methodology 5
7. Review of State Plan Performance 6
8. Program Administration 6
9. Enforcement 7
10. Review Procedures 11
11. Standards and Federal Program Changes (FPCs) Adoption 11
12. Variances 16
13. State and Local Government Worker Program 17
14. Whistleblower Program 18
15. Complaint About State Program Administration (CASPA) 20
16. Voluntary Compliance Program 21
17. State and Local Government 23(g) On-Site Consultation Program 21

**Appendices**

Appendix A – New and Continued Findings and Recommendations A-1

Appendix B – Observations and Federal Monitoring Plans B-1

Appendix C – Status of FY 2022 Findings and Recommendations C-1

Appendix D – FY 2023 State Activity Mandated Measures (SAMM) Report D-1

1. **Executive Summary**

The purpose of this report is to assess the State Plan’s performance for fiscal year (FY) 2023, and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) reports. The report assesses the current performance of the Indiana Occupational Safety and Health Administration (IOSHA) 23(g) compliance program in the context of 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 State Plan made progress to address the previous seven findings from the FY 2022 Follow-up FAME Report. Four findings were completed*,* and three findings from last year’s FAME remain open*.* The completed findings were related to missing next-of-kin (NOK) letters, State Activity Mandated Measure (SAMM) 11, health lapse time, abatement verification during follow-up inspections, and dates in OSHA’s Information System (OIS) for whistleblower case files. One finding that remains open in this report is related to adoption of OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. The other two findings that remain open are related to Indiana’s Whistleblower Protection Program, specifically to the analysis of elements, and case files being incomplete, technically inaccurate, and/or not thoroughly and adequately investigated. One new finding and five observations related to the Whistleblower Program have been identified.

Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and the related federal monitoring plan for each. Appendix C describes the status of previous findings with associated completed corrective actions.

Three of the four findings in this year’s FY 2023 FAME are again related to IOSHA’s Whistleblower program. This is the same number of whistleblower findings as the FY 2022 FAME and one less than the FY 2021 FAME when there were four whistleblower findings. Two of the findings are continued from the FY 2021 and 2022 FAMEs as it seems IOSHA continues to struggle with the same things. They added one more investigator at the start of FY 2024 and this should help with the workload. With the other staff, including the supervisor in place for several years now, improvement is expected.

IOSHA’s safety and health enforcement divisions continue to improve with respect to case file documentation and thoroughness of inspections. In previous years’ FAME reports, it was noted that IOSHA focused attention on reducing the amount of time to respond to complaint investigations and inspections. They continue to meet the State Activity Mandated Measures (SAMM) measures for complaint processing as well as inspection in-compliance and lapse time rates. OSHA identified some areas for improvement that did not rise to the level of findings or observations, and these were discussed with IOSHA’s management team during the file review and subsequently since. They have reorganized the compliance safety and health officers (CSHOs) into separate safety and health divisions instead of general industry and construction divisions. They have also developed targeting lists for national and local emphasis programs. IOSHA’s staff salaries were evaluated in FY 2022 and were increased as a result. Another salary increase resulted in FY 2023 after a state-wide study comparing positions to other public and private employers. With the two increases, staff saw an approximate 40% increase in salaries which IOSHA hopes will retain current staff and help to recruit well-qualified people in the future.

The FY 2022 Indiana State OSHA Annual Report (SOAR) provided information that outlines IOSHA’s accomplishments toward meeting their Five-Year Strategic Management Plan. The report has been reviewed to assess their progress in meeting performance plan goals. Progress on strategic plan goals is discussed during quarterly monitoring meetings held during the fiscal year. The SAMM report and the State Indicators Report (SIR) are reviewed during the quarterly meetings with IOSHA enforcement staff. The FY 2022 SAMM is Appendix D of this report.

**II. State Plan Background**

1. **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 Mr. David Redden, Commissioner of the Indiana Department of Labor was appointed by the Indiana Governor in July 2022. Deputy Commissioner of the Indiana Department of Labor Ms. Michelle Ellison is Director of IOSHA’s program. Mr. Jameson Berry is Director of Health Compliance, Whistleblower and Intake. Mr. Jeremy Galloway is Director of Safety Compliance. IOSHA’s benchmarks include 47 safety and 23 health compliance officers. At the start of FY 2023, funding was allocated for 28 safety and 13 health compliance officers.

IOSHA adopts all 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 stricter than OSHA. The Indiana Department of Labor’s INSafe Division administers the private sector on-site consultation program funded under the 21(d) cooperative agreement.

IOSHA’s fiscal year (FY) 2023 23(g) grant included funding totaling $5,773,600. This included an increase of $246,800 federal funds when the final appropriations were announced in April 2023. IOSHA requested an additional $32,185 federal funds made available from deobligated state plan funds. With the state plan’s match of $32,185 IOSHA used these additional funds to purchase health sampling equipment.

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

1. **New Issues**

IOSHA had a significant Complaint About State Program Administration (CASPA) in FY 2023. This CASPA was about a whistleblower case and the concerns were related to communication, litigation delays and the settlement process after the case was referred to Indiana’s Office of Attorney General. The State Plan responded timely to the CASPA, and no recommendations were made.

**III. Assessment of State Plan Progress and Performance**

1. **Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2023 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 on-site case file review. The case file review was conducted at the Indiana State Plan office during the timeframe of January 8-11, 2023. A total of 150 safety, health, and whistleblower case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (October 1, 2022 through September 30, 2023). An additional 15 non-formal complaint case files were reviewed. The selected population included:

* Twenty-two (22) fatality case files
* Thirty-four (34) complaint case files
* Twenty-six (26) referral case files
* Sixteen (16) programmed case files
* Two (2) follow-up case files
* Fifty (50) whistleblower case files (thirty (30) investigations; twenty (20) administratively closed)

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
* Fullcase 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 2023 State Activity Mandated Measures Report and includes the FRL for each measure.

1. **Review of State Plan Performance**
2. **PROGRAM Administration**
3. 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 2023 and the courses staff attended were based on their duties. New CSHOs attended the required initial compliance, as well as inspection techniques and legal aspect courses. 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. Staff also attends internal training during staff meetings and otherwise throughout the year.

1. OSHA Information System (OIS)

IOSHA transitioned to using OIS in April 2022, switching from OSHA Express as its database to access and manage enforcement information and data processing. Management reports are run at least monthly and discussed between leadership staff. Data is entered into OIS in a timely manner.

1. State Internal Evaluation Program Report (SIEP)

The State Plan improved operations in two ways in the past two years. On October 1, 2023, they organized staff into the Divisions of Safety and Health. Prior to this, enforcement staff activities were divided into Construction and General Industry teams with the Construction team being made up of 45% of the compliance staff. Since most of the complaints and referrals are in General Industry, this made sense. It has reduced the time between when a complaint or referral (unprogrammed activity, UPA) is assigned for inspection and when the inspection is opened. Previously the General Industry staff was backlogged with responses to complaints and referrals.

The second improvement involved processing of UPAs. IOSHA’s Intake Division staff was responsible for completing the processing of all UPAs and this led to a backlog of complaint investigations beyond 30 days for many years. During the COVID-19 pandemic, IOSHA handled a significant increase in the number of complaints. IOSHA began assigning UPAs to compliance officers to resolve the complaints with the expectation to have them resolved within two weeks. IOSHA’s backlog was reduced significantly. The State Indicator Report (SIR) measure 9 showed IOSHA had approximately 17% of all state plan complaints open more than 30 days at the beginning of FY 2022 and by the end of FY 2023, they had less than 2% of all state plan complaints open more than 30 days. Compliance officers are now assigned UPA’s on a rotational basis.

1. Staffing

In addition to the Director of Health, Whistleblower and Intake and the Director of Safety (General Industry and Construction), IOSHA has seven supervisors. The State Plan’s benchmark staffing level is 47 safety and 23 health compliance officers (CSHOs). In FY 2023, IOSHA allocated funds for 28 safety CSHOs, 13 health CSHOs, two whistleblower investigators and seven supervisors. A total of 62.47 full time equivalent (FTE) positions were funded. A third whistleblower investigator was added in July 2023. During FYs 2022 and 2023, IOSHA had an average of four to five vacant compliance officer positions each month based on organization charts provided by IOSHA. The state plan typically fills these positions within approximately 45 days from when the position is posted.

1. **ENFORCEMENT**

IOSHA conducted 1,020 inspections in FY 2023, 880 safety and 140 health. The number of health inspections was slightly below the further review level (FRL) of 162 (+/- 5% of 162 is 154 and 170) and does not rise to the level of an observation or finding. They conducted 99.3% of the 1,027 total number of projected inspections. Their 1,020 inspections conducted in FY 2023 is a significant increase from the 883 inspections conducted in FY 2022. (State Activity Mandated Measures (SAMM 7a,7b) report, November 2022, and November 2023, Appendix D)

1. Complaints

IOSHA’s complaint process is detailed in Chapter Nine of their Field Operations Manual (IFOM), Complaint and Referral Processing. The process is generally the same as OSHA’s.

In FY 2023, IOSHA received 1,497 complaints, of which 1,108 (74%) were nonformal and 389 (26%) were formal. The average number of days to initiate a complaint inspection was 7.3 days, below the negotiated FRL of 10 days (SAMM 1, November 2023). The average number of days to initiate a complaint investigation was 2 days, below the negotiated FRL of 5 days (SAMM 2, November 2023). IOSHA had no denials of entry (SAMM 4, November 2023). They responded to eight imminent danger reports, each within one day as required (SAMM 3, November 2023, Appendix D).

OSHA reviewed 15 nonformal complaints received in FY 2023. The IFOM (Chapter 9, Section I.H.1.) says they will contact the employer to notify them of the complaint and allegations and then email the confirming letter. It was not always apparent in the file review that the employers were contacted prior to IOSHA sending the letter. In three cases reviewed, IOSHA waited too long to contact the employer when a response was not received and when they contacted the employer, two of the three employers said they did not receive the letter. In addition, it was not always apparent in the files reviewed that the complainant was contacted when necessary to obtain additional details or clarify issues raised in the complaint as described in the IFOM (Chapter 9, Section I.G.1.a.). Previously, IOSHA’s Intake Division handled the processing of nonformal complaints as described in the SIEP section above. Now that compliance officers are also processing nonformal complaints, the supervisor in the Intake Division is working with staff to ensure employers and complainants are contacted in a timely manner.

1. Fatalities

IOSHA’s FY 2023-2027 five-year strategic plan goals outline a reduction in fatalities in the construction industry and general industry by 5% each over the five years.

IOSHA conducted 42 fatality inspections during FY 2023; all were responded to within one work day. This was an improvement from FY 2022 when they conducted 28 fatality inspections, 27 within one day and 55 fatality inspections in FY 2023, 50 of which were conducted within one day (SAMM 10, November 2023, Appendix D).

OSHA reviewed 22 fatality case files for fatalities that occurred in FY 2023. In FY 2021, OSHA identified 74.1% of the case files reviewed (27) did not have next-of-kin (NOK) letters in the files. This resulted in Finding FY 2021-01 which continued in the FY 2022 Follow-up FAME. During our review, one case file was missing the initial NOK letter. Therefore, **Finding FY 2022-01** is completed. OSHA shared several letters OSHA sends to NOK with IOSHA because most of IOSHA’s inspection findings and closure NOK letters do not provide information about what may have contributed to the incident or death. IOSHA’s NOK letters also fail to explain things such as the limitations of a fatality inspection, the results of the final order and any abatement required and, how penalties are calculated.

Three fatality files reviewed indicate the fatality victim was included in the inspection report for the wrong employer on multiemployer worksites. However, this does not rise to the level of an observation or finding.

c) Targeting and Programmed Inspection

 IOSHA developed and implemented three local emphasis programs (LEPs), 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 and injuries related to falls; and hazards associated with

 electrical, air contaminants, struck-by, caught-in-between, truss collapse, floor openings,

 power/pneumatic tool amputations, scaffolds, and ladders on work sites. Compliance

 officers are instructed to conduct inspections at worksites where they observe

 construction projects covered under the LEPs as well as when complaints or referrals are

 received about such construction projects. Compliance officers can also initiate an

 inspection under the fall hazards LEP in general industry while they are engaged in

 programmed or un-programmed inspections. These LEPs are scheduled to continue for five

 years from their effective dates of September 2020 (construction and general industry

 falls; building renovation, rehabilitation, and demolition in construction) and February

 2021 (residential construction).

 IOSHA’s targeting program incorporates OSHA’s National Emphasis Programs (NEPs) and

 includes Combustible Dust, Amputations in Manufacturing Industries, Hexavalent

 Chromium, Lead, Primary Metals Industries, Process Safety Management Covered

 Chemical Facilities and Respirable Crystalline Silica. Inspection establishment lists using

 software provided by OSHA’s Office of Statistical Analysis are created. In their new five-

 year strategic management plan (2023-2027), IOSHA is targeting wood product

 manufacturing, textile product mills, transportation equipment manufacturing, plastics and

 rubber products manufacturing and food processing to reduce injuries and illnesses. They

 plan to update the targeted industries annually after reviewing Bureau of Labor Statistics

 (BLS) data.

 IOSHA conducted 1,020 inspections in FY 2023, 258 (25.3%) of which were programmed

 (SIR 1C, November 2023). This is an increase from 24.8% of all inspections conducted in FY

 2022 and 14.5% of all inspections conducted in FY 2021 (SIR 1C, November 2021, 2022)

 that were programmed.

 IOSHA’s percent in-compliance for safety is 30.4%, which is within the FRL of +/- 20% of

 31.73%. This equals a range of 25.4% to 38.1% (SAMM 9a, Appendix D). IOSHA’s percent in-

 compliance for health is 46.7% which is also within the FRL of +/-20% of 43.8%. This equals

 a range of 35.1% to 52.6% (SAMM 9b, Appendix D) and is a significant improvement from

 FY 2021 when the in-compliance rate for health was outside the FRL at 63.1% and

 FY 2022 when it was 52.2%.

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

 1,211 serious, willful, repeat and nonserious hazards in FY 2023 and the average number of

 violations identified per inspection is 1.79 and is within the FRL of +/- 20% of 1.75 and a

 range of 1.40 to 2.10 (SAMM 5a, Appendix D).

 Of the 100 safety and health case files reviewed, 46 had violations. Generally apparent

 hazards were cited based on documents in the case file. In seven case files, possible

 violations could have been cited. In four case files, violations were issued for IOSHA’s

 equivalent (Indiana Code § 22-8-1.1-2) of OSHA’s general duty clause without all the

 elements necessary to support it documented in the case file. However, these do not rise

 to the level of an observation or finding.

 IOSHA uses the Hazard Alert Letter (HAL) often. IOSHA’s FOM and OSHA’s FOM say

 that if a standard doesn’t apply and all criteria for issuing a general duty clause violation

 are not met, yet the Area Director or Division Director determines the hazard warrants

 some type of notification a HAL shall be sent. Most of the HAL letters sent by IOSHA do not

 meet this rule. OSHA shared a memo with IOSHA that is used by the Region’s enforcement

 offices with IOSHA that provides guidance to ensure a consistent approach to hazard

 notification letters. The memo describes the differences between a HAL and a

 recommendation letter. The memo explains that a recommendation letter applies to

 scenarios where an OSHA standard exists, but a citation is not warranted due to lack of

 employer knowledge, employee exposure, jurisdiction, and in situations for example the

 Permissible Exposure Limit (PEL) is not exceeded, but a non-regulatory exposure limit is.

 IOSHA’s average lapse time for safety inspections is 51.0 days, below the FRL of +/- 20% of

 55.2 days with an acceptable range of 44.2 and 66.3 days. IOSHA’s average lapse time for

 health inspection is 53.3 days, well below the FRL of +/- 20% of 69.7 days with an

 acceptable range of 55.8 to 83.7 days. Finding FY 2022-02 is considered completed.

 IOSHA’s average current serious penalty in the private sector is $1,649 for establishments

 with from one to greater than 250 workers (SAMM 8, Appendix D). This continues to be

 well below the further review level (FRL) of +/- 25% of $3,625 with an acceptable range of

 $2,719 to $4,532. IOSHA’s average serious penalty is 45% of the FRL and is a direct result

 of the State of Indiana not raising the minimum and maximum penalties for serious hazard

 violations. Finding FY 2022-04 relating to IOSHA’s failure to implement the required

 maximum penalties continues as **Finding FY 2023-01.**

1. Abatement

Chapters 3 (Inspection Procedures) and 7 (Post-citation Procedures and Abatement Verification) of IOSHA’s FOM outline abatement verification procedures. Chapter 3 discusses difference between abatement certification and abatement documentation and CSHOs discuss the differences with employers during the closing conference. Chapter 5 (Case File Preparation and Documentation) states the abatement date shall be the shortest interval within which the employer can reasonably be expected to correct the violation. 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 documentation from employers.

Two follow-up case files were reviewed to verify IOSHA’s corrective action to Finding 2022-03 where adequate verification of abatement couldn’t be determined because information specific to the previously cited hazards was not documented in the case file. Only two follow-up case files were reviewed because these were the only two follow-up inspections completed by IOSHA in FYs 2022 and 2023. In one of the cases reviewed, the follow-up was conducted to verify the correction of four violations. During the inspection, three of the violations were verified as being corrected and the employer was given a failure-to-correct (FTC) citation for the fourth violation since it was not corrected. The violation was eventually corrected, and the file was closed. The second follow-up inspection was conducted to verify correction of one of eight violations cited. Corrective action was received for the others prior to the follow-up inspection. Information specific to the previously cited hazards was well documented in both case files. **Finding 2022-03** is completed.

1. Worker and Union Involvement

Chapter 3, Inspection Procedures of IOSHA’s FOM discusses union participation and allows CSHOs to question any employee privately during working hours during an IOSHA inspection. While most case files reviewed included audio recordings of interviews, it is recommended that handwritten interview notes in the files include a date of the interview.

SAMM 13, Appendix D indicates 97.55% of initial inspections had worker walk-around representation or interview. When a union represents employees, it is noted in OIS and the case file. In 25 of the 1,020 inspections conducted, workers were not involved. IOSHA attempts to involve workers in the inspection at least through interviews. When a construction job site is completed, employees are not available or employees decline to be interviewed, this will be noted in the case file. Though this does not meet the 100% FRL for this SAMM measure, it does not rise to the level of a finding or observation.

1. **REVIEW PROCEDURES**
2. Informal Conferences

Like OSHA, Indiana employers, affected employees, or employee representatives may request an informal conference to discuss issues raised by an inspection, citation, penalty or notice of intent to contest. It must be conducted within 15 working days from the date the notice of proposed penalty is received. Division Directors conduct the conferences and enter into Informal Settlement Agreements (ISA). They can amend abatement dates, reclassify violations, and modify or withdraw a penalty, a citation where evidence establishes the changes are justified. It is noted in the SIR for FY 2023 that IOSHA had 4.9% of violations vacated pre-contest compared to 1.2% for all state plans (SIR measure 5A, November 2023). The FRL for percent penalty retained is +/- 15% of 71.8% with a range of 61.1% to 82.6%. At 73.6% penalty retained, IOSHA is within the FRL for SAMM 12.

1. Formal Review of Citations

If an employer files a notice of contest, the Division Director will notify the IDOL Legal Counsel when it appears the negotiations with the employer may produce a settlement. If a settlement is requested by the employer, the Division Director will communicate the proposed terms to the Legal Counsel who will draft and execute the agreement. If a notice of contest is submitted after the 15 working day period but contests only the abatement period, it is treated as a Petition for Modification of Abatement and handled in accordance with PMA procedures.

The Indiana Board of Safety Review (BSR) is an independent board within IDOL to decide contests of citations and penalties resulting from IOSHA inspections. They function with established procedures for conducting hearings, receiving evidence, and rendering decisions, or they may assign an Administrative Law Judge to adjudicate contested matters. A notice of contest and related documents must be sent to the BSR within five working days of receipt of the employer’s notification. BSR rules are found in Title 615 of the Indiana Administrative Code.

1. **Standards and Federal Program Change (FPC) Adoption**
2. Standards Adoption

Indiana Code 22-8-1.1-17.5 does not permit the Commissioner of Labor to adopt or enforce any provision that is more stringent than the corresponding federal standard. IOSHA generally adopts federal OSHA regulations identically. However, IOSHA has not adopted OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases for inflation.

During FYs 2022 and 2023, six applicable standards were required to be adopted, including the annual adjustments to civil penalties, COVID-19 Vaccination and Testing/Emergency Temporary Standards, COVID-19 Log and Reporting Provisions for the Healthcare Emergency Temporary Standard, and the final rule to Improve Tracking of Injuries and Illnesses. IOSHA provided timely responses to OSHA regarding federally initiated standard changes in FYs 2022 and 2023. Table A below is updated to reflect IOSHA’s responses.

**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, including on January 12, 2023, according to the Consumer Price Index (CPI). See 2023 Annual Adjustments to OSHA civil penalties, [Federal Register :: Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2023](https://www.federalregister.gov/documents/2023/01/13/2023-00271/federal-civil-penalties-inflation-adjustment-act-annual-adjustments-for-2023); 88 FR 2210 (January 13, 2023).

OSHA-approved State Plans must have penalty levels that are at least as effective as federal OSHA 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 the 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 2024, 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-correct) and the subsequent annual adjustments for inflation were not addressed in the legislation. We are seven years past the initial adoption deadline. A letter to the IOSHA State Plan informing that failure to adopt these increases would 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 to OSHA’s letter indicating that a bill would be prepared and a legislative sponsor obtained for the 2023 session. During the recent 2024 Indiana legislative session, a bill was introduced to increase penalties; however, the bill did not advance during the session.

**Finding FY 2023-01**: IOSHA State Plan failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

**Recommendation FY 2023-01**: IOSHA State Plan should work with their state authorities to complete the legislative changes necessary to enable it to adopt maximum and minimum penalty amounts that are at least as effective as OSHA’s maximum and minimum penalty levels.

**Table A**

**Status of FY 2022 and FY 2023 Federal Standards Where Adoption Was Required**

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard29 CFR 1910, 15, 17, 18, 26, 28(11/5/2021) | 11/20/2021 | 7/6/2021 | Yes | Yes | 12/5/2021 | N/A |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard29 CFR 1910\*(11/5/2021) | 1/7/2022 | N/A | - | - | 1/24/2022 | - |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 202229 CFR 1903(1/15/2022) | 3/15/2022 | 3/15/2022 | No | - | 7/15/2022 | - |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)(2/14/2022) | 4/14/2022 | 4/15/2022 | Yes | Yes | 8/14/2022 | 8/14/2022 |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 202329 CFR 1903(1/15/2023) | 3/15/2023 | 3/15/2023 | No | - | 7/15/2023 | - |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses29 CFR 1904(7/21/2023) | 9/21/2023 | 9/21/2023 | Yes | Yes | 1/21/2024 | 1/21/2024 |

**\***The Emergency Temporary Standard for COVID-19 Vaccination and Testing was withdrawn.

1. Federal Program Change (FPC) Adoption

IOSHA generally adopts OSHA’s Program Changes identically. Two of IOSHA’s responses for FPCs were submitted late, but the changes were adopted timely. This does not rise to the level of a finding or observation. Responses due are discussed during quarterly meetings. IOSHA has had its own Local Emphasis Program (LEP) on falls in general industry and construction that has been determined to be equivalent to OSHA’s NEP, CPL 03-00-025. Tables B, C and D below are updated to reflect IOSHA’s responses.

**Table B**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPC) Where Adoption Was Required**

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Revised Combustible Dust National Emphasis Program CPL 03-00-008(1/30/2023) | 3/31/2023 | 3/29/2023 | Yes | Yes | 7/30/2023 | 7/30/2023 |
| National Emphasis Program on Warehousing and Distribution Center OperationsCPL 03-00-026(7/13/2023) | 9/11/2023 | 8/31/2023 | Yes | Yes | 1/9/2024 | 1/13/2024 |

**Table C**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Equivalency Was Required**

| **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 Cranes and Derricks in Construction StandardCPL 02-01-063(2/11/2022) | 7/3/2022 | 8/5/2022 | Yes | Yes | 11/3/2022 | 8/11/2022 |
| OSHA Whistleblower Investigations ManualCPL 02-03-011(4/29/2022) | 10/11/2022 | 10/11/2022 | Yes | Yes | 2/11/2023 | 2/11/2023 |
| Severe Violator Enforcement Program (SVEP)CPL 02-00-169(9/15/2022) | 11/15/2022 | 10/13/2023 | Yes | Yes | 3/15/2023 | 3/15/2023 |
| Site-Specific Targeting (SST)CPL 02-01-064(2/7/2023) | 4/8/2023 | 4/14/2023 | Yes | Yes | 8/6/2023 | 8/6/2023 |
| National Emphasis Program – FallsCPL 03-00-025(5/1/2023) | 6/30/2023 | 5/3/2023 | Yes | No\* | 10/28/2023 | 10/28/2023 |
| Consultation Policies and Procedures Manual CSP 02-00-005(9/29/2023)  | 11/28/2023 | 11/29/2023 | Yes | Yes | 3/27/2024 | 3/27/2024 |

**\***IOSHA has their own Local Emphasis Program LEP) for Falls in General Industry and Construction that has been determined to be equivalent. The LEP expires September 4, 2025, and will need to be renewed after its evaluation.

**Table D**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Encouraged**

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- |
| OSHA’s Use of Small Unmanned Aircraft SystemsCPL 02-01-169(12/22/2021) | 2/22/2022 | 5/10/2022 | No | - | - |
| National Emphasis Program – Outdoor and Indoor Heat-Related HazardsCPL 03-00-024(4/8/2022) | 6/8/2022 | 6/8/2022 | No | - | - |

1. **Variances**

IOSHA didn’t received or grant any variance request during FYs 2022 and 2023.

1. **STATE AND LOCAL government WORKER Program**

At 1.57% of all inspections, IOSHA’s percent of inspections in state and local government workplaces is withing the FRL of +/- 5% of 1.66% with a range of 1.57% to 1.74% (SAMM 6, Appendix D).

IOSHA issues monetary penalties to state and local government employers for violations. However, these employers receive notice that the penalties associated with the 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**

IOSHA’s Whistleblower Protection Program adheres to OSHA’s Whistleblower Investigations Manual (WIM), CPL 02-03-011 with an effective date of April 29, 2022. During FYs 2022 and 2023, IOSHA’s Director of Health Compliance and Customer Service was also the Director of the Whistleblower Program. The program has one supervisor and two investigators all of whom have been on board since the beginning of FY 2022.

In the FY 2022 FAME, there were three findings related to IOSHA’s whistleblower program. One of the findings from the FY 2022 FAME is completed and two are continued. There is one additional finding and five observations in the FY 2023 FAME related to the whistleblower program.

Indiana has a 120-day statute of limitations for filing whistleblower cases with the Attorney General in Indiana and this has remained unchanged for many years. The 120 days refers to the amount of time Indiana must investigate, send to the Attorney General and file a complaint in court. Therefore, investigations must be concluded well before 120 days to complete supervisory review and provide enough time for Attorney General consideration. Dual filing preserves a complainant’s right to seek a federal remedy should the state be unable to effect appropriate relief. OSHA continues to recommend that new merit cases and status of timely filing be a topic of discussion during quarterly monitoring meetings.

File Review

IOSHA received 330 whistleblower complaints in FY 2023. There were 100 complaints docketed for investigation, and 94 of 106 (89%) completed cases were completed within 90 days. Cases were completed in an average of 62.75 calendar days. Of the 106 investigations completed, 30 investigation files were reviewed. Of the 30 files reviewed, 24 were dismissed as non-merit, 0 cases were withdrawn and 6 were settled. In addition, 40 of the 235 administratively closed cases were reviewed.

Complaint Intake and Screening

IOSHA’s website includes a complaint form that can be used to file a whistleblower protection complaint online. The supervisor assigns the complaints for screening to the investigators and then reviews and approves for docketing or closing administratively.

Complainant Statement and Witness Interviews

Typically, statements are taken by phone. They are sent to the complainant for review and signature. Statements and interviews are recorded and reduced to writing or via transcript software. Interviews are reduced to a memo to the file.

Docketing and Respondent Notification

When a complaint is determined to be appropriate for investigation, it will be docketed, and a notification letter is sent to the complainant. The docketing date in OIS is the date the letter is sent to the complainant. The notification letter to the respondent is sent after the investigator conducts a complete interview with the complainant and the complainant signs the complaint.

Report of Investigation

IOSHA prepares a Report of Investigation (ROI) when the complaint results in a full field investigation. The supervisor reviews all investigation files, signs, and dates the ROIs and closing letters. Complaints closed for lack of cooperation, settlement, or withdrawal are closed in accordance with procedures. This allows a Case Summary to be used in lieu of the ROI. The ROI used by IOSHA follows OSHA’s ROI in the WIM. In four of 10 (40%) cases that were settled, withdrawn or dismissed for lack of cooperation, the case files did not contain the OIS Whistleblower Case Summary (WIM, Chapter 5, Section III.A).

Program Management

The WIM requires the investigator to evaluate all available relevant evidence and draw conclusions to support a recommended outcome based on evidence and the law and in accordance with the requirements of the statute. **Finding FY 2022-05** remains open as **Finding FY 2023-02** because analysis of the elements was incorrect for some or all the elements in seven of the 30 (23.3%) investigation files and three of 40 (7.5%) administratively closed files reviewed.

When the file is completed by the investigator, they will notify the supervisor. The supervisor reviews the file to ensure technical accuracy, thoroughness and adequacy of investigation, the correct application of law to the facts and completeness of the Secretary’s Findings or other closure letter. This was not found in six of the 30 (20%) whistleblower investigation files and five of the 40 (12.5%) administratively closed files reviewed. **Finding FY 2022-07** remains open as **Finding FY 2023-03.**

Investigators are required to look at any direct evidence of retaliation (such as statements of managers that action is being taken because of Complainant’s protected activity) and the circumstantial evidence that may shed light on what role, if any, the protected activity played in the employer’s decision to take adverse action. Lines of inquiry that will assist the investigator in testing Respondent’s position will vary depending on the facts and circumstances of the case. If witnesses and documents are not available, the investigator should consult with the supervisor. In six of 30 (20%) investigation case files, the Respondent’s defense was not adequately tested, resulting in new **Finding FY 2023-04**.

Lastly, correspondence must be sent (either by mail, third party carrier, or electronic means) in a

way that provides delivery confirmation. Delivery receipts are to be preserved in the case file.

Delivery receipts for Findings/Closing letters sent electronically were not found in six of 30 (20%)

whistleblower investigation files.

OIS

Dates and information in whistleblower case files reviewed were compared to entries made in OIS. IOSHA entries in OIS include investigation information, party information, determination date and adverse action date. For the case files reviewed, two of 30 (6.7%) investigation files reviewed contained ROI approval dates that were inaccurate in OIS. **Finding 2022-06 is completed.** However, in seventeen investigation files out of the 30 (56.7%) reviewed, the determination date in OIS did not match the date on the Findings/Closing letter to the Complainant and/or Respondent (WIM Chapter 5, Section XVI.C). In three of 10 (30%) cases that resulted in settlement, withdrawal, or dismissal for lack of cooperation, the comment section in OIS did not contain the reasons why the case was being closed and it did not reference supporting documents (exhibits) (WIM Chapter 5, Section III.A)

Settlements

Fifteen whistleblower cases were settled during the review period. Six of these were reviewed. Settlements are to be reviewed and approved by IOSHA and included in the case file. Standard language that is referenced in the WIM should be included for agreements that IOSHA is a party to. In all six (100%) reviewed, the agreement was not included in the file, or the agreements contained non-standard language contrary to the WIM, Chapter 7, Section IV.A.1-7. One agreement that IOSHA was a party should have been coded as ‘settled’ instead of ‘settled other.’

**Finding FY 2023-02 (Finding FY 2022-05)**: Appropriate analysis of the elements was incorrect in seven of the 30 (23.3%) whistleblower case files reviewed (WIM, Chapter 4, Section XVI).

**Recommendation FY 2023-02:** IOSHA should provide additional training for investigators and supervisory staff to include analysis of elements.

**Finding FY 2023-03 (FY 2022-07):** Six of 30 (20%) whistleblower investigation case files reviewed, and five of the 40 (12.5%) administratively closed files reviewed were either not complete, technically accurate, and/or were not thoroughly and adequately investigated prior to closing (WIM, Chapter 5, Section IV.A).

**Recommendation FY 2023-03:** IOSHA should ensure whistleblower supervisors follow the WIM, Chapter 5, Section IV.A to ensure when reviewing, they are technically accurate; investigations are thorough; investigators are applying the law correctly to the facts; the Secretary’s Findings are complete, and the case has merits.

**Finding FY 2023-04**: The Respondent’s defense was not adequately tested in six of the 30 (20%) whistleblower investigation files reviewed (WIM, Chapter 2, Section VII).

**Recommendation FY 2023-04:** IOSHA’s whistleblower staff should review the WIM, Chapter 2, Section VII and Chapter 5, Section III.B.4 (Employer Defense/Affirmative Defense and Pretext Testing) to ensure they understand testing Respondent’s defense (pretext testing) and enroll staff in relevant courses and webinars as they become available.

**Observation FY 2023-OB-01**: In seventeen of 30 (56.7%) whistleblower investigation files reviewed, the determination date in OIS did not match the date on the Findings/Closing letter to the Complainant and Respondent (WIM Chapter 5, Section III.A).

**Federal Monitoring Plan FY 2023-OB-O1**: OSHA will discuss and evaluate IOSHA’s internal audits conducted in this area during quarterly monitoring meetings.

**Observation FY 2023-OB-02**: In four of 10 (40%) whistleblower cases reviewed that resulted in settlement, withdrawal, or dismissal for lack of cooperation, the case file did not contain an OIS Whistleblower Case Summary (WIM Chapter 5, Section 5.III.A).

**Federal Monitoring Plan FY 2023-OB-02**: OSHA will discuss and evaluate IOSHA’s internal audits conducted in this area during quarterly monitoring meetings.

**Observation FY 2023-OB-03**: In three of 10 (30%) whistleblower cases reviewed that resulted in settlement, withdrawal, or dismissal for lack of cooperation, the comment section in OIS did not contain the reasons why the case was being closed and it did not reference supporting documents (exhibits) (WIM, Chapter 5, Section III.A).

**Federal Monitoring Plan FY 2023-OB-03**: OSHA will discuss and evaluate IOSHA’s internal audits conducted in this area during quarterly monitoring meetings.

**Observation FY 2023 OB-04**: In six of six (100%) settled whistleblower case files reviewed, IOSHA did not include the settlement agreement in the file (WIM, Chapter 7, Section IV.A.1-7) or the agreement contained non-standard language contrary to the WIM (Chapter 7, Section V.C.1-11).

**Federal Monitoring Plan FY 2023-OB-04:** OSHA will discuss and evaluate IOSHA’s internal audits conducted in this area during quarterly monitoring meetings.

**Observation FY 2023-OB-05:** Delivery receipts for Findings/Closing letters sent electronically were

not found in six of 30 (20%) whistleblower investigation files (WIM, Chapter 4, Section III.D).

**Federal Monitoring Plan FY 2023-OB-05**: OSHA will discuss and evaluate IOSHA’s internal audits

Conducted in this area during quarterly monitoring meetings.

**8. Complaint About State Program Administration (CASPA)**

OSHA received one CASPA in FY 2023. 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, effective date January 30, 2020. Indiana’s Voluntary Protection Program has four team leaders who report to the Deputy Commissioner of Labor. There are currently 88 Indiana workplaces certified in VPP according to IOSHA’s SOAR. Also, according to the SOAR, two sites were awarded VPP in FY 2022 and two in FY 2023 and, 29 sites were recertified in FY 2022 and the same number were recertified in FY 2023. The team leaders also conduct outreach visits, provide onsite assistance and follow-up on 90-day hazard item corrections.

IOSHA has Alliances with the Coalition for Construction Safety and Indiana Safety Partners (Indiana Constructors and the Associated General Contractors of Indiana). They meet with each two times each year.

**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 19 visits to these sites in FY 2023, whereas 12 were projected. These included 13 initial visits, 1 follow-up, and 5 training and education visits. Only three of the 13 (23.1%) initial visits were to high hazard establishments. (Mandated Activity Report for Consultation (MARC, November 2023). The Consultation Policies and Procedures Manual (CPPM, CSP 02-00-005, Chapter 1, Section XII.B and MARC) requires 90% of all consultation visits should be in high hazard establishments. Twenty-six serious hazards were identified during the visits and all were corrected timely, as required.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or** **FY 2022-OB-#** |
| --- | --- | --- | --- |
|  FY 2023-01 | 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.  | FY 2022-04 |
|  FY 2023-02 | Appropriate analysis of the elements was incorrect in seven of the 30 (23.3%) whistleblower case files reviewed. (WIM, Chapter 4, Section XVI). | IOSHA should provide additional training for investigators and supervisory staff to include analysis of elements. |  FY 2022-05 |
|  FY 2023-03 | Six of 30 (20%) whistleblower investigation case files reviewed, and five of the 40 (12.5%) administratively closed files reviewed were either not complete, technically accurate, and/or were not thoroughly and adequately investigated prior to closing (WIM, Chapter 5, Section IV.A). | IOSHA should ensure whistleblower supervisors follow the WIM, Chapter 5, Section IV.A to ensure when reviewing, they are technically accurate; investigations are thorough; investigators are applying the law correctly to the facts; the Secretary’s Findings are complete, and the case has merits. |  FY 2022-07 |
| FY 2023 -04 | The Respondent’s defense was not adequately tested in six of the 30 (20%) whistleblower investigation files reviewed. (WIM, Chapter 2, Section VII). | IOSHA’s whistleblower staff should review the WIM, Chapter 2, Section VII and Chapter 5, Section III.B.4 (Employer Defense/Affirmative Defense and Pretext Testing) to ensure they understand testing Respondent’s defense (pretext testing) and enroll staff in relevant courses and webinars as they become available. | New |

| **Observation #****FY 2023-OB-#** | **Observation#****FY 2022-OB-# *or* FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 | - | In seventeen of 30 (56.7%) whistleblower investigation files reviewed, the determination date in OIS did not match the date on the Findings/Closing letter to the Complainant and Respondent. (WIM Chapter 5, Section III.A). | OSHA will discuss and evaluate IOSHA’s internal audits conducted in this area during quarterly monitoring meetings. | New |
| FY 2023-OB-02 | - | In four of 10 (40%) whistleblower cases reviewed that resulted in settlement, withdrawal, or dismissal for lack of cooperation, the case file did not contain an OIS Whistleblower Case Summary (WIM Chapter 5, Section 5.III.A). | OSHA will discuss and evaluate IOSHA’s internal audits conducted in this area during quarterly monitoring meetings. | New |
| FY 2023-OB-03 | - | In three of 10 (30%) whistleblower cases reviewed that resulted in settlement, withdrawal, or dismissal for lack of cooperation, the comment section in OIS did not contain the reasons why the case was being closed and it did not reference supporting documents (exhibits) (WIM, Chapter 5, Section III.A). | OSHA will discuss and evaluate IOSHA’s internal audits conducted in this area during quarterly monitoring meetings. | New |
| FY 2023-OB-04 | - | In six of six (100%) settled whistleblower case files reviewed, IOSHA did not include the settlement agreement in the file (WIM, Chapter 7, Section IV.A.1-7) or the agreement contained non-standard language contrary to the WIM (Chapter 7, Section V.C.1-11). | OSHA will discuss and evaluate IOSHA’s internal audits conducted in this area during quarterly monitoring meetings. | New |
| FY 2023-OB-05 | - | Delivery receipts for Findings/Closing letters sent electronically were not found in six of 30 (20%) whistleblower investigation files (WIM, Chapter 4, Section III.D). | OSHA will discuss and evaluate IOSHA’s internal audits conducted in this area during quarterly monitoring meetings. | New |

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status** **(and Date if Item is** **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
| FY 2022-01 | 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. | IOSHA has provided retraining for affected personnel. Training was focused on time receipt and notification of NOK information and case status as well as tracking for those engaged in mailing of this correspondence. Fatality inspections have been randomly audited for inclusion of these letters. | 1/12/2024  | Completed |
| FY 2022-02 | IOSHA’s average lapse time for health inspections is 92.79 days, above the FRL of +/- 20% of 69.03 and the acceptable range of 55.22 to 82.84 days. | IOSHA supervisors of health CSHOs should review progress on health case files periodically to ensure safety orders are issued within an acceptable number of days. | IOSHA put an emphasis on health file processing and reviews. Supervisors review health files prior to safety, as time permits. | 11/14/2023 | Completed |
| FY 2022-03 | In two of five (40%) follow-up case files reviewed, adequate verification of abatement could not 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. | IOSHA created and implemented the Abatement Assurance and Follow-up Inspection Procedures (AFIP) to help address this and any other abatement or follow-up related concerns to ensure documentation specific to cited hazards is included in the case files. | 1/12/2024 | Completed |
| FY 2022-04 | IOSHA failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. | IOSHA should continue to work with their state authorities to complete the legislative changes necessary to adopt the maximum and minimum penalty increase and subsequent annual increases to be at least as effective as federal OSHA penalty levels. | IOSHA will continue to work on these matters with the agency’s legislative liaison. | Not Applicable | OpenJanuary 12, 2024 |
| FY 2022-05 | Appropriate analysis of the elements was nonexistent or incorrect in seven of the 20 (35%) whistleblower files reviewed. | IOSHA should provide refresher training for Whistleblower investigators and supervisory staff to include appropriate analysis of elements. | The WB supervisor and the whistleblower investigators have been retrained since the FAME report was discussed with them to understand how to correctly analyze the necessary elements of each case.  The Whistleblower team has successfully completed the following course: #0197 The Whistleblower Investigative Process: Nexus. This course addresses analysis of the elements of a WB case. | Not Applicable | OpenJanuary 12, 2024 |
| FY 2022-06 | In 7 of the 10 files reviewed, the Report of Investigation (ROI) approval dates were either not entered in OITSS/OIS (6 of 10) or were entered inaccurately (1 of 10). | IOSHA should ensure that the date the Whistleblower supervisor approves (signs) the Report of Investigation is entered and entered accurately into OITSS/OIS. | The whistleblower team has received updated training on how to use OIS and enter ROI approval dates consistently and accurately. To ensure that all the information has been accurately put into OIS, the supervisor and investigators are spending extra time analyzing and reviewing cases in greater depth. | 1/12/2024 | Completed |
| FY 2022-07 | 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 5, 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, correctapplication of the law to the facts, completeness of the Secretary’s findings, and merits of the case. | In 2022, IOSHA developed a path for training whistleblower investigators and supervisors for the first time. In the past, IOSHA didn’t have a training program in place to assist in teaching new hires how to become fully trained investigators. Now that a training program is in place, it will take the newly hired employee less time to become a fully qualified Whistleblower investigator/supervisor. Supervisors now review case files to ensure Section IV.A of Chapter 5 of the WIM is followed. | Not Applicable | OpenJanuary 12, 2024 |

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 7.33 | 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) | 5.23 | 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) | 1.96 | 5 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | 0.81 | 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) | 1.79 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU/  |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.26 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS.  |
| 6 | Percent of total inspections in state and local government workplaces | 1.57% | +/- 5% of 1.66 | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1.57% to 1.74%. |
| 7a | Planned v. actual inspections (safety) | 880 | +/- 5% of 865 | 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 821.75 to 908.25 for safety. |
| 7b | Planned v. actual inspections (health) | 140 | +/- 5% of 162 | 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 153.90 to 170.10 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $1,649.38 | +/- 25% of %3,625.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. |
| 8a | Average current serious penalty in private sector (1-25 workers) | $695.00 | +/- 25% of $2,348.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. |
| 8b | Average current serious penalty in private sector (26-100 workers**)** | $2,056.08 | +/- 25% of $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. |
| 8c | Average current serious penalty in private sector(101-250 workers) | $3,164.26 | +/- 25% of $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. |
| 8d | Average current serious penalty in private sector(greater than 250 workers) | $3,752.32 | +/- 25% of $7,331.41 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| 9a | Percent in-compliance (safety) | 30.41% | +/- 20% of 31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in-compliance (health) | 46.73% | +/- 20% of 43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 100% | 100% | The further review level is fixed for all State Plans.  |
| 11a | Average lapse time (safety) | 51.03 | +/- 20% of 55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 53.32 | +/- 20% of 69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | 73.61% | +/- 15% of 71.84% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| 13 | Percent of initial inspections with worker walk around representation or worker interview | 97.55% | 100% | The further review level is fixed for all State Plans.  |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | 0.81% | +/- 25% of 0.93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 14, 2023, as part of OSHA’s official end-of-year data run.