

ARTICLE 9. OCCUPATIONAL SAFETY AND HEALTH

Rule 1. Definitions

610 IAC 9-1-1 Applicability

Authority: IC 22-1-1-8; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1

Sec. 1. The definitions in this rule apply throughout this article. (*Department of Labor; 610 IAC 9-1-1; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA*)

610 IAC 9-1-2 "Act" defined

Authority: IC 22-1-1-8; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1

Sec. 2. "Act" means the Indiana Occupational Safety and Health Act, IC 22-8-1.1. (*Department of Labor; 610 IAC 9-1-2; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA*)

610 IAC 9-1-3 "Commissioner" defined

Authority: IC 22-1-1-8; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1

Sec. 3. "Commissioner" means the commissioner of the department. (*Department of Labor; 610 IAC 9-1-3; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA*)

610 IAC 9-1-4 "Department" defined

Authority: IC 22-1-1-8; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1

Sec. 4. "Department" means the Indiana department of labor. (*Department of Labor; 610 IAC 9-1-4; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA*)

610 IAC 9-1-5 "Employee" defined

Authority: IC 22-1-1-8; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1

Sec. 5. "Employee" means a person permitted to work by an employer in employment. (*Department of Labor; 610 IAC 9-1-5; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA*)

610 IAC 9-1-6 "Employer" defined

Authority: IC 22-1-1-8; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1

Sec. 6. "Employer" means any individual or type of organization, including the state and all its political subdivisions, that has in its employ one (1) or more individuals. (*Department of Labor; 610 IAC 9-1-6; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA*)

610 IAC 9-1-7 "Establishment" defined

Authority: IC 22-1-1-8; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1

Sec. 7. "Establishment" means a single physical location where employees engage in work or conduct business, where business of any kind is conducted, or where services or industrial operations are performed. The term includes, but is not limited to, the

following locations:

- (1) A factory.
- (2) A mill.
- (3) A store.
- (4) A hotel.
- (5) An office or administrative building.
- (6) A restaurant.
- (7) A bank.
- (8) A sales office.
- (9) A warehouse.

(Department of Labor; 610 IAC 9-1-7; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA)

610 IAC 9-1-8 "IOSHA" defined

Authority: IC 22-1-1-8; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1

Sec. 8. "IOSHA" means the Indiana occupational safety and health division of the department. (Department of Labor; 610 IAC 9-1-8; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA)

Rule 2. Inspections, Safety Orders, and Penalties

610 IAC 9-2-1 Purpose and application of article

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1

Sec. 1. (a) The Act requires the following:

- (1) Every employer covered under the Act furnish to its employees a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm.
- (2) Every employer comply with occupational safety and health standards promulgated under the Act.
- (3) Every employee comply with standards, rules, regulations, and orders issued under the Act that are applicable to their own actions and conduct.

(b) The Act authorizes the department to conduct safety inspections and to issue safety orders and proposed penalties for alleged violations. The Act contains provisions for the following:

- (1) The adjudication of violations.
- (2) The abatement of violations.
- (3) The review of contested penalties by the board of safety review.
- (4) Procedures for judicial review.

(c) The purpose of this article is:

- (1) to prescribe rules and to set forth general policies for the conduct of safety inspections; and
- (2) the issuance of safety orders and proposed penalties as required by the Act.

(d) Where this article sets forth general enforcement policies rather than specific processes, procedures, and rules, such general enforcement policies may be interpreted by the commissioner or the commissioner's designee for application to specific facts and circumstances consistent with the spirit and purpose of the Act. (Department of Labor; 610 IAC 9-2-1; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA)

610 IAC 9-2-2 Application of article to public and private employers

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1; IC 36-8-12

Sec. 2. (a) The Act, this article, and all promulgated standards, rules, and regulations contained or referred to in this article are applicable to public sector as well as private sector employers and employees.

(b) When reporting and recording occupational injuries and illnesses as required by 610 IAC 9-3, public employers are not required to use Standard Industrial Classification codes.

(c) For the purpose of the Act, volunteer fire companies that exist under IC 36-8-12 are considered public sector employers. *(Department of Labor; 610 IAC 9-2-2; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA)*

610 IAC 9-2-3 Posting of notices by employers; "establishment" defined; availability to employees of law, regulations, and standards

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-27.1

Sec. 3. (a) Each employer shall post and keep posted at its establishment a notice or notices (hereinafter "the Poster") to be furnished by the department:

(1) informing employees of the protections and obligations provided for in the Act; and

(2) referring employees to appropriate sources for assistance and information.

Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced, or covered by other material.

(b) Reproductions or facsimiles of the Poster shall constitute compliance with the posting requirements of this section. Such reproductions or facsimiles must be at least the same size and as the Poster provided by the department.

(c) Where distinctly separate activities are performed in isolation at a single physical location:

(1) each activity shall be treated as a separate physical establishment; and

(2) a separate notice or notices shall be posted in each such isolated location.

(d) Where employers are engaged in activities that are physically dispersed, such as:

(1) agriculture;

(2) construction;

(3) transportation;

(4) communications; and

(5) electric, gas, and sanitary services;

the notice or notices required by this section shall be posted at the location to which employees report each day.

(e) Where employees do not usually work at, or report to, a single establishment, such as, but without limitation:

(1) longshoremens;

(2) traveling salesmen;

(3) technicians; and

(4) engineers;

such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of this section.

(f) Copies of:

(1) the Act;

(2) all regulations published in this title; and

(3) all applicable standards;

are available at the department's office or its Web site.

(g) Any employer failing to comply with the provisions of this section shall be subject to issuance of a safety order and penalty in accordance with the provisions of IC 22-8-1.1-27.1. *(Department of Labor; 610 IAC 9-2-3; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA)*

610 IAC 9-2-4 Authority of compliance safety and health inspectors; security clearance

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1-23.1

Sec. 4. (a) IOSHA compliance safety and health inspectors are authorized to enter without delay and at reasonable times any:

(1) establishment;

- (2) construction site;
- (3) workplace; or
- (4) environment;

where work is performed by an employee or an employer to inspect and investigate safety and health compliance during regular working hours and at other reasonable times.

(b) IOSHA compliance safety and health inspectors may do the following:

- (1) Inspect, within reasonable limits and in a reasonable manner, any establishment, place of employment, and all pertinent:
 - (A) conditions;
 - (B) structures;
 - (C) machines;
 - (D) apparatus;
 - (E) devices;
 - (F) equipment; and
 - (G) materials;

therein.

(2) Question privately any:

- (A) employee;
- (B) employer;
- (C) officer;
- (D) manager or employer representative;
- (E) owner;
- (F) operator; or
- (G) agent.

(3) Review:

- (A) recordings, both audio and visual;
- (B) pictures;
- (C) papers;
- (D) records;
- (E) documents; and
- (F) any other form of business record or tangible record;

documenting a fact, event, or proceeding required by the Act and rules published by the department and that are directly related to the purpose of the inspection.

(c) Before inspecting areas containing information that is classified by an agency of the United States government in the interest of national security, the compliance safety and health inspectors shall obtain the appropriate security clearance. (*Department of Labor; 610 IAC 9-2-4; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA*)

610 IAC 9-2-5 Refusal to permit inspection; compulsory process

Authority: IC 22-8-1.1-7; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1-15; IC 22-8-1.1-23.1

Sec. 5. (a) Upon a refusal to permit an IOSHA compliance safety and health inspector, in exercise of his or her official duties, to enter and conduct the inspection described in this article, or perform any of the duties or activities described in this article or the Act, the IOSHA compliance safety and health inspector shall:

- (1) terminate the inspection;
- (2) ascertain the reasons for such refusal; and
- (3) immediately report the refusal and the reasons to the commissioner or the commissioner's designee.

(b) The commissioner or the commissioner's designee shall consult with the attorney general or the attorney general's designee, who shall take appropriate action, including compulsory process.

(c) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the commissioner and the attorney general, or their respective designees, circumstances exist that create a reasonable belief that the employer will not cooperate or will refuse entry.

(d) For purposes of this section, "compulsory process" means the institution of any appropriate action, including, but not limited to, ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be:

- (1) the preferred form of compulsory process; and
- (2) used before legal action in a court of competent jurisdiction is taken.

(Department of Labor; 610 IAC 9-2-5; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA)

610 IAC 9-2-6 Permission to enter may not be conditioned on waiver of cause of action

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1

Sec. 6. Permission to enter and to conduct the inspection described in this article, or to perform other duties or activities described in this article or in the Act, shall not imply or be conditioned upon a waiver of any cause of action, safety order, or penalty under the Act. Compliance safety and health inspectors are not authorized to grant any such waiver. *(Department of Labor; 610 IAC 9-2-6; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA)*

610 IAC 9-2-7 Advance notice of inspections prohibited; exceptions; penalty

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1-24.2; IC 22-8-1.1-27.1

Sec. 7. (a) Advance notice of an IOSHA inspection may not be given to any:

- (1) employer or employee who is the target of the inspection;
- (2) agent, officer, manager, or representative thereof; or
- (3) person to whom it would be reasonable to expect that by informing said person the target employer might reasonably be expected to receive advance notice of the inspection.

(b) Notwithstanding the provisions of subsection (a), advance notice of inspection may be given if authorized by the commissioner and only where the commissioner reasonably believes that advance notice would serve to protect employees from an imminent danger. Notice given under this subsection may be given only to the extent that it is absolutely required to protect employees from imminent danger.

(c) Under IC 22-8-1.1-24.2, any person who gives advance notice of any inspection in violation of this section, commits a Class B misdemeanor, which is punishable by up to:

- (1) one hundred eighty (180) days imprisonment; and
- (2) a one thousand dollar (\$1,000) fine.

(Department of Labor; 610 IAC 9-2-7; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA)

610 IAC 9-2-8 Incorporation by reference

Authority: IC 22-1-1-8; IC 22-8-1.1-48.1

Affected: IC 1-1-9; IC 22-8-1.1-1

Sec. 8. (a) The commissioner hereby incorporates by reference Sections 1903.7 through 1903.22 of 29 CFR 1903* (inspections, citations, and proposed penalties) as in effect on January 1, 2006, except as otherwise set out in this rule.

(b) When interpreting this rule, including all matters incorporated by reference, the following shall apply:

- (1) "Occupational Safety and Health Act of 1970", "Occupational Safety and Health Act", "The Act", or "OSH Act" shall refer to the Indiana Occupational Safety and Health Act (IC 22-8-1.1).
- (2) "Occupational Safety and Health Administration", "the Agency", or "OSHA" shall refer to the Indiana occupational safety and health division of the department, also known as IOSHA.
- (3) "Area office" shall refer to the office of the Indiana occupational safety and health division of the department.
- (4) "Assistant Secretary of Labor for Occupational Safety and Health", "Secretary", "Assistant Secretary", "Area Director", or "Assistant Regional Director" shall refer to the commissioner or the commissioner's designee.
- (5) "United States Department of Labor" or "U.S. Department of Labor" shall refer to the department.
- (6) "Occupational Safety and Health Review Commission", "Review Commission", "Commission", or "OSHRC" shall refer to the board of safety review created by IC 22-8-1.1.

- (7) "Federal holidays" shall refer to legal holidays observed by state offices under IC 1-1-9.
- (8) "Citation" shall refer to a safety order as defined in IC 22-8-1.1-1.
- (9) "Regional Solicitor" shall refer to:
- (A) department counsel for functions performed by department counsel; or
 - (B) the Indiana attorney general for functions performed by the attorney general.
- (10) References to specific sections of The Occupational Safety and Health Act of 1970 shall be interpreted to refer to the corresponding section under IC 22-8-1.1 as set out in Table 2.

Table 2

Occupational Safety and Health Act of 1970	Indiana Code section
§5	IC 22-8-1.1-2
§6	IC 22-8-1.1-15 and IC 22-8-1.1-15.1
§8(a)	IC 22-8-1.1-23.1 and IC 22-8-1.1-24.1
§10	IC 22-8-1.1-28.1, IC 22-8-1.1-28.2, IC 22-8-1.1-28.3, and IC 22-8-1.1-35.6
§11(c)	IC 22-8-1.1-38.1
§13(a)	IC 22-8-1.1-39.1
§15	IC 22-8-1.1-48.4
§17	IC 22-8-1.1-27.1

(11) 29 CFR 1903.9(a) and 29 CFR 1903.9(b) are not incorporated by reference, and those subsections are replaced with section 2 of this rule.

(c) Where the provisions of this article conflict with matters incorporated by reference, the express provisions of this article shall control.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Labor, Indiana Government Center-South, First Floor, Indianapolis, Indiana 46204. (*Department of Labor; 610 IAC 9-2-8; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA*)

610 IAC 9-2-9 Trade secrets

Authority: IC 22-1-1-8; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1-48.4

Sec. 9. As required by IC 22-8-1.1-48.4, all information that contains or might reveal a trade secret shall be:

(1) considered confidential; and

(2) disclosed only to such other officers or employees of the department as may be necessary for them to discharge their duties.

In any proceeding, the commissioner, the commission, the board, or a court shall issue such orders as may be appropriate, including the impoundment of files, or portions of files, to protect the confidentiality of trade secrets. (*Department of Labor; 610 IAC 9-2-9; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA*)

Rule 3. Recording and Reporting Occupational Injuries and Illnesses

610 IAC 9-3-1 Incorporation by reference

Authority: IC 22-1-1-8; IC 22-8-1.1-48.1

Affected: IC 22-8-1.1-1; IC 22-8-1.1-38.1

Sec. 1. (a) The commissioner of labor hereby incorporates by reference Sections 1904.0 through 1904.46 of 29 CFR 1904* (recording and reporting occupational injuries and illnesses) as it existed on January 1, 2006.

(b) When interpreting this rule, including all matters incorporated by reference, the following shall apply:

(1) "Occupational Safety and Health Act", "The Act", or "OSH Act" shall refer to the Indiana Occupational Safety and Health Act (IC 22-8-1.1), except as used in 1904.40(b)(1)(ii) and 1904.40(b)(1)(iii), where it shall be given its usual meaning.

(2) "Occupational Safety and Health Administration", "the Agency", or "OSHA" shall refer to the Indiana occupational safety

and health division of the department, also known as IOSHA.

(3) "Section 11(c)" shall refer to IC 22-8-1.1-38.1.

(4) "Area office" shall refer to the office of the Indiana occupational safety and health division of the department, also known as IOSHA.

(5) "Secretary of Labor" shall be read to mean the commissioner.

(6) The following shall be substituted for the corresponding definitions in 29 CFR 1904.46:

(A) "The Act" means the Indiana Occupational Safety and Health Act (IC 22-8-1.1, et seq.). The definitions contained in Section 3 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652) and related interpretations apply to such terms when used in this Part 1904.

(B) "You" means an employer as defined in IC 22-8-1.1-1.

(7) 29 CFR 1904.39(a) shall be replaced to read "Within eight (8) hours after the death of any employee from a work-related incident or the inpatient hospitalization of three (3) or more employees as a result of a work-related incident, the employer must orally report the fatality or multiple hospitalization by telephone or in person to the Indiana occupational safety and health division of the department, also known as IOSHA. The employer shall contact IOSHA by calling 1-317-232-2693. The employer may also use the Federal OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).".

(c) Where the provisions of this article conflict with matters incorporated by reference, the express provisions of this article shall control.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Labor, Indiana Government Center-South, First Floor, Indianapolis, Indiana 46204. (*Department of Labor; 610 IAC 9-3-1; filed Nov 6, 2006, 8:47 a.m.: 20061206-IR-610060159FRA*)

*