TITLE 610 DEPARTMENT OF LABOR

NOTE: Originally adopted by the Division of Labor. Name changed by P.L.37-1985, SECTION 16 (IC 22-1-1-1), effective July 1, 1985.

ARTICLE 1. HEALTH AND SAFETY (REPEALED)

(Repealed by Department of Labor; filed Jan 15, 1988, 1:54 pm: 11 IR 1784)

ARTICLE 2. BUILDING AND FACTORY INSPECTION–INDUSTRIAL HEALTH AND SAFETY (REPEALED)

(Repealed by Department of Labor; filed Jan 15, 1988, 1:54 pm: 11 IR 1784)

ARTICLE 3. MINES AND MINING (REPEALED)

(Repealed by Department of Labor; filed Jan 15, 1988, 1:54 pm: 11 IR 1784)

ARTICLE 4. SAFETY EDUCATION AND TRAINING–OCCUPATIONAL SAFETY

Rule 1. On-Site Consultations

610 IAC 4-1-1 On-site consultation services; personnel

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 1. On-site consultation services will be provided to requesting employers, by personnel from the Bureau of Safety Education and Training.

(a) These services will be provided insofar as the limitations on time and personnel will permit.

(b) The personnel providing the consultation will be qualified employees by reason of training, experience or professional attainment.

(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 1; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 462; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-1-2 Consultation service not to reduce enforcement

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 2. IOSHA enforcement personnel will not be temporarily assigned or "loaned" to provide the consultation service.

The intent of this statement is to preclude the possibility that there may be a reduction in or detraction from the enforcement activity. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 2; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 462; filed Sep 9, 1981, 10:15 am: 4 IR 2004; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-3 Board of health expert may be present if condition requires

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 3. However, if in the considered judgment of the consultant from the Bureau of Safety Education and Training, he determines that the specific condition described by the requesting employer is one which may require expert opinion or judgment from an Industrial Hygienist, he may request that such a person from the Indiana State Board of Health accompany him and be present during the consultation. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 3; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 462; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-4 Intention not to compete with private services

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 4. It is not the intent of the on-site consultation service offered by the Bureau of Safety Education and Training to intrude into or compete with those consultation services provided by legitimate engineering firms, insurance companies or professional consultants. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 4; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 462; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-5 Priorities for consultation

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 5. On-site consultation will be provided on a "first-come-first-served" basis consistent with the limitations of personnel and time available. First priority will be given to small employers in high hazard industries. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 5; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 462; filed Sep 9, 1981, 10:15 am: 4 IR 2004; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-6 Request from employer

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 6. The request from the employer shall be written, dated, and insofar as possible, specifically describe the particular condition, situation or equipment about which advice is sought. This degree of specificity will allow the consultant, who will be assigned to meet the request, to prepare himself in terms of:

(a) Applicable, up-to-date standards; and/or,

(b) The need for expert assistance of an Industrial Hygienist;

The smaller the employer, the less specific the request would have to be pertaining to consultations. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 6; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 462; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-7 Prior arrangements with employer; participation of employees

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 7. (a) Prior to the consultative visit, arrangements will be made with the requesting employer to insure that qualified members of management or employees will be available at the time of the actual consultation in order to explain the problems or conditions that exist.

(b) The consultant shall retain the right to confer with individual employees during the course of the visit in order to identify and judge the nature and extent of particular hazards.

(c) In addition, employees, their representatives, and members of a workplace joint safety and health committee may participate in the on-site consultative visit, to the extent desired by the employer. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 7; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 463; filed Sep 9, 1981, 10:15 am: 4 IR 2004; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-8 Consultation free to employers

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 8. There will be no charges, fees, or expenses chargeable to the employer for the consultation. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 8; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 463; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-9 Location of consultation; separation from enforcement

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 9. Only in rare instances will the consultative service be provided in the office of the Bureau of Safety Education and Training. In the event such a consultation does take place, measures will be taken to insure the complete separation of those engaging in the discussion from the employees in the enforcement program. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 9; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 463; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-10 Representative to indicate purpose and extent of visit

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 10. Upon arrival at the site of the consultation, the Bureau of Safety Education and Training representative will indicate the purpose and extent of his visit, and that he is there in response to an inquiry relative to specific areas and Indiana Occupational Safety and Health standards; and that he is not empowered to make a complete inspection of the facilities unless it is requested by the employer. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 10; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 463; filed Sep 9, 1981, 10:15 am: 4 IR 2005; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-10.5 Alleged violations recorded; abatement dates binding

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 10.5. The consultant will also inform the employer that he will record all alleged violations noted during the consultation and will set a reasonable abatement date for each alleged violation. He will also explain that these abatement dates are binding on the employer and that a follow-up visit will be made to insure the abatement of all serious violations. If an employer fails to abate any alleged serious violations, the matter shall be referred to the Bureau of Building and Factory Inspection for appropriate enforcement action. *(Department of Labor; 610 IAC 4-1-10.5; filed Sep 9, 1981, 10:15 am: 4 IR 2005; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-11 "Imminent danger" defined; procedure

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 11. At the outset of the consultation the employer will have thoroughly explained to him, the course of action that will be taken by the Bureau of Safety Education and Training representative if he notes a situation of alleged "Imminent Danger".

Definition–"Imminent Danger"

Imminent Danger is defined as any condition or practice in any place of employment which is such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such dnager *[sic.]* can be eliminated.

(a) In the case of an alleged Imminent Danger the consultant will:

(1) Immediately call the employer's attention to the condition;

(2) Immediately notify the affected employees of the alleged Imminent Danger;

(3) Request that action be taken immediately to abate the alleged Imminent Danger;

(4) Secure an agreement from the employer that employees will not be exposed to the hazard;

(5) Notify the Director of the Bureau of Safety Education and Training of the alleged Imminent Danger. If the employer refuses to immediately abate the Imminent Danger, the Director shall immediately notify the Bureau of Building and Factory Inspection for appropriate enforcement action.

(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 11; filed Oct 11, 1977, 9:30 am: Rules

and Regs. 1978, p. 463; filed Sep 9, 1981, 10:15 am: 4 IR 2005; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-1-11.5 Agreement of employer

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 11.5. If the employer does not agree to the provisions listed in 610 IAC 4-1-7(b), 610 IAC 4-1-10.5 and 610 IAC 4-1-12, the consultant will not proceed with the consultation visit. *(Department of Labor; 610 IAC 4-1-11.5; filed Sep 9, 1981, 10:15 am: 4 IR 2006; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-12 Representative's advice not binding on IOSHA inspector

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 12. During the consultation, the employer must have explained to him that such advice, opinions, recommendations or suggestions that may be offered by the Bureau of Safety Education and Training representative are not binding on an IOSHA Inspection Officer and will not preclude the finding of alleged violations or the proposing of penalties found by an IOSHA Inspector at the time an inspection takes place at his place of operation. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 12; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 463; filed Sep 9, 1981, 10:15 am: 4 IR 2006; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-13 Consultation services separate from enforcement activities

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 13. Employers requesting consultation services shall be advised that the actions of a consultant from the Bureau of Safety Education and Training are completely separate, distinct and apart from the enforcement activities of an Inspection Officer from the Bureau of Building and Factory Inspection, and that:

(1) A consultative visit does not provide immunity from a future regularly scheduled inspection or an inspection resulting from a complaint, and neither;

(2) Does it serve as an indicator to the Bureau of Building and Factory Inspection that a complete inspection of the premises is to be made promptly, and;

(3) The employer who has requested an on-site consultation and has been placed on a "waiting list" is still subject to any inspection during that "waiting" period that would normally be scheduled or that would result from a complaint.

(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 13; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 463; filed Sep 9, 1981, 10:15 am: 4 IR 2006; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-1-14 Consultation visit after IOSHA inspection; restrictions

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 14. Employers may request on-site consultation to assist in the abatement of hazards cited during an IOSHA enforcement inspection. However, an on-site consultation visit may not take place after an IOSHA inspection until the employer has been notified that no Safety Order will be issued or, if a Safety Order is issued, until those items for which consultation is requested have become final orders. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 14; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 464; filed Sep 9, 1981, 10:15 am: 4 IR 2006; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-15 Written report

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 15. (a) A written report shall be prepared for each visit and sent to the employer. The report shall restate the employer's request and describe the working conditions examined by the consultant; shall identify specific hazards; shall describe their nature, including reference to applicable standards or codes; shall identify the seriousness of the hazard; and, to the extent possible, shall include suggested means or approaches to their elimination or control. Additional sources of assistance should be indicated, if known, including the possible need to procure specific engineering consultation, medical advice and assistance, etc. The report shall include references to the completion dates for violative conditions described in Rule 10.5 (610 IAC 4-1-10.5).

(b) The written report shall not be forwarded to the Bureau of Building and Factory Inspection for use in any compliance inspection or scheduling activities except insofar as that may be necessary pursuant to Rules 10.5 and 11 *[610 IAC 4-1-10.5 and 610 IAC 4-1-11]*.

(c) The consultant shall preserve the confidentiality of information obtained as the result of an on-site consultative visit which contains or might reveal a trade secret of the employer. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 15; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 464; filed Sep 9, 1981, 10:15 am: 4 IR 2006; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-16 Employee participation (Repealed)

Sec. 16. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 16; filed Sep 9, 1981, 10:15 am: 4 IR 2007)*

610 IAC 4-1-17 Procedure for on-site consultation visit

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 17. The on-site consultation visit will consist of an opening conference, viewing of the problem areas, and closing conference with a subsequent written report. During the discussion with the employer the consultant shall:

(1) Discuss the overall accident prevention program with the employer;
(2) Explain to the employer which IOSHA Standards or rules and regulations apply to his workplace;
(3) Explain the technical language and application of the standards when necessary;
(4) Advise if and how the employer is not in compliance with IOSHA Standards or rules and regulations; and,
(5) Make recommendations to the employer on how alleged violations may be abated.

(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 17; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 464; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-1-18 Sources to confirm alleged violation (Repealed)

Sec. 18. *(Repealed by Department of Labor; Indiana Occupational Safety and Health; On-Site Consultations Rule 18; filed Sep 9, 1981, 10:15 am: 4 IR 2007)*

610 IAC 4-1-19 Written report following visit (Repealed)

Sec. 19. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 19; filed Sep 9, 1981, 10:15 am: 4 IR 2007)*

610 IAC 4-1-20 Assistance to employers in voluntary compliance

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 20. Summary. In summary, the on-site consultation service offered by the Bureau of Safety Education and Training is one of assisting employers in the State of Indiana in their progress toward voluntary compliance. Those employers who accept and agree with the objections of IOSHA and who are earnestly working to secure a safer, more healthful workplace, should receive assistance in their efforts to abate prior to inspection, rather than receive citations or monetary penalties for alleged violations after

an inspection. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Summary; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 464; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

Rule 2. Public Sector-Public Employee Safety Program

610 IAC 4-2-1 IOSHA applicable to public sector employers; volunteer fire companies

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1; IC 36-8-12

Sec. 1. (a) The Indiana occupational safety and health act, IC 22-8-1.1, pertains to and concerns public employment as well as private employment. IC 22-8-1.1 defines employer as, "any individual or type of organization, including the state and all its political subdivisions, which has in its employ one (1) or more individuals." Employee is defined as, "a person permitted to work by an employer in employment."

(b) Therefore, the statute and all promulgated standards, rules and regulations are applicable to public sector as well as private sector employers. Provided, however, that the requirements for reporting and recording occupational injuries and illnesses applicable in the public sector are found in 610 IAC 4-2-11 and not in 610 IAC 4-4.

(c) For the purposes of the Indiana occupational safety and health act, "Volunteer fire companies", which exist pursuant to IC 36-8-12, shall be deemed public sector employers. *(Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Purpose; filed Apr 5, 1977, 10:16 am: Rules and Regs. 1978, p. 467; filed Sep 9, 1981, 10:15 am: 4 IR 1986; filed Jun 21, 1982, 3:00 pm: 5 IR 1607; filed Jan 8, 1986, 2:18 pm: 9 IR 999; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-2-2 Applicable law (Repealed)

Sec. 2. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Applicable Law; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-3 Purpose and scope (Repealed)

Sec. 3. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 1; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-4 Posting of notices; access to information by employees (Repealed)

Sec. 4. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 2; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-5 Compliance order (Repealed)

Sec. 5. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 3; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-6 Inspections (Repealed)

Sec. 6. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 4; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-7 Notice by employee of alleged violation (Repealed)

Sec. 7. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 5; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-8 Determination that inspection not warranted (Repealed)

Sec. 8. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 6; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-9 Imminent danger (Repealed)

Sec. 9. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 7; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-10 Posting of compliance order (Repealed)

Sec. 10. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 8; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-11 Record keeping and reporting requirements of public employers

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

Sec. 11. Reporting and Recording of Occupational Injuries and Illnesses. (a) Purpose and Scope. This section provides for recordkeeping and reporting by employers with eleven (11) or more employees as necessary or appropriate for enforcement of the Law, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. This section will apply to employers of the Public Sector only.

(b) Log of Occupational Injuries and Illnesses.

(1) Each employer shall maintain in each establishment a log of all recordable occupational injuries and illnesses for that establishment, except that under the circumstances described in paragraph (2) of this section an employer may maintain the log of occupational injuries and illnesses at a place other than the establishment. Each employer shall enter each recordable occupational injury and illness on the log as early as practicable but not later than six (6) working days after receiving information that a recordable case has occurred. For this purpose, Occupational Safety and Health Administration OSHA Form No. 200 (610 IAC 4-4-15) or any private equivalent may be used. OSHA Form No. 200 *[610 IAC 4-4-15]* or its equivalent shall be completed in the detail provided in the form and the instruction contained in OSHA Form No. 200 (610 IAC 4-4-15). If an equivalent to OSHA Form No. 200 (610 IAC 4-4-15) is used, such as a print out from data-processing equipment, the information shall be as readable and comprehensible to a person not familiar with the data-processing equipment as the OSHA Form No. 200 (610 IAC 4-4-15) itself.

(2) Any employer may maintain the log of occupational injuries and illnesses at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

(A) There is available at the place where the log is maintained sufficient information to complete the log to a date within six (6) working days after receiving information that a recordable case has occurred, as required by paragraph (1) of this section.

(B) At each of the employer's establishments, there is available a copy of the log which reflects separately the injury and illness experience of that establishment complete and current to a date within forty-five-calendar days.

(c) Period Covered. Logs shall be established on a calendar year basis. The initial log shall include recordable occupational injuries and illnesses occurring on or after January 1, 1977.

(d) Supplementary Record. In addition to the log of occupational injuries and illnesses provided for under Section B (subsection (b) of this section), each employer shall have available for inspection at each establishment within six (6) working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. The record shall be completed in the detail prescribed in the instructions accompaning *[sic.]* Occupational Safety and Health Administration Form No. OSHA 101 (610 IAC 4-4-16). The Indiana Workmen's Compensation Form No. 24 (revised) is an acceptable substitute for those employers covered by the Workmen's Compensation Act.

(e) Annual Summary.

(1) Each employer shall compile an annual summary of occupational injuries and illnesses for each establishment. Each annual summary shall be based on the information contained in the log of occupational injuries and illnesses for the particular establishment. Form OSHA No. 200 610 IAC 4-4-15 shall be used for this purpose, and shall be completed in the form and detail as provided in the instructions contained therein.

(2) The summary shall be completed no later than one (1) month after the close of each calendar year.

(3) Each employer, or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary, or by appending a separate statement to the log and summary certifying that the annual summary is true and complete.

(4)(A) Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under 610 IAC 4-4-5. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishment during the calendar year, it will not be necessary to post summaries for those establishments.

(B) A failure to post a copy of the establishment's annual summary may result in the issuance of safety orders pursuant to IC 22-8-1.1.

(f) Retention of Records. Records provided for in paragraph *[sic.]* B, D, and E *[subsections (b), (d) and (e) of this section]* shall be retained in each establishment for five (5) years following the end of the year to which they relate.

(g) Access to Records.

(1) Records provided for in paragraph *[sic.]* B, D, and E *[subsections (b), (d) and (e) of this section]* shall be available for inspection and copying by Compliance Safety and Health Officers during any occupational safety and health inspection, or for statistical compilations, provided for under IC 22-8-1.1.

(2)(A) The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (610 IAC 4-4-15) (the log) shall, upon request, be made available to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times.

(B) Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

(h) Reporting of Fatality of Multiple Hospitalization Accidents. Within forty-eight (48) hours after the occurrence of an employment accident, which is fatal to one (1) or more employees or which results in hospitalization of five (5) or more employees, the employer of any employees so injuried *[sic.]* or killed shall report the accident either orally or in writing to the Commissioner of Labor. The reporting may be by telephone or telegraph. The report shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. The Commissioner may require such additional reports in writing or otherwise, as he deems necessary, concerning the accident. This section will apply to any and all establishments regardless of size.

(i) Falsification, or Failure to Keep Records or Reports.

(1) “Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained, shall be considered in violation of the Law (IC 22-8-1.1).

(2) Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of safety orders.

(j) Change of Administration. Where an establishment has changed administration, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he or she administers such establishment. However, in the case of any change in administration, the employer shall preserve those records, if any, of the prior administration which are required to be kept under this part. Those records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under paragraph F *[subsection (f) of this section]*.

(k) Definitions. (1) “Act” means the Indiana Occupational Safety and Health Act (IOSHA) IC 22-8-1.1.

(2) The definitions and interpretations contained in IC 22-8-1.1 shall be applicable to such terms when used in this regulation. (610 IAC 4)

(3) “Recordable occupational injuries and illnesses” are any occupational injuries or illnesses which result in:

(A) Fatalities, regardless of the time between the injury and death, or the length of the illness; or

(B) Lost workday cases, other than fatalities, that result in lost workdays; or

(C) Non-fatal cases without lost workdays which result in transfer to another job or termination of employment, or required medical treatment (other than first aid) or involve: loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(4) “Medical treatment” includes treatment administered by a physician or by registered professional personnel under the standard orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.

(5) “First aid” is any one-time treatment, and any follow-up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and any follow-up visits for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(6) “Lost workdays”: The number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday shift, because of occupational injury or illness.

(7)(A) “ 'Establishment' for public agencies is either (a) a single physical location where a specific governmental function is performed; or (b) that location which is the lowest level where attendance or payroll records are kept for a group of employees who perform the same governmental function, or who are in the same specific organizational unit, even though the activities are carried on at more than a single physical location.”

(B) For agencies engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place which employees report each day.

(C) Records for personnel who do not primarily report or work at a single establishment, and who are generally not supervised in their daily work, such as technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

(l) Petitions for Recordkeeping Exceptions.

(1) Any employer who wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in paragraph (4) of this section to the Commissioner of Labor.

(2) Submission of Petition. Any employer who wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in paragraph (d) of this section to the Commissioner of Labor.

(3) Opportunity for Comment. Affected employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the Commissioner within ten (10) working days following the receipt of notice under paragraph (4)(E) of this section.

(4) Contents of Petition. A petition filed under paragraph (2) of this section shall include:

(A) The name and address of the applicant;

(B) The address of the place or places of employment involved;

(C) Specification of the reasons for seeking relief;

(D) Description of the different recordkeeping procedures which are proposed by the applicant;

(E) A statement that the applicant has informed his affected employees of the petition by giving a copy thereof to them or to their authorized representative and by posting a statement giving a summary of the petition and by other appropriate means. A statement posted pursuant to this subparagraph shall be posted in each establishment in the same manner that notices are required to be posted under 610 IAC 4-4-12. The applicant shall also state in his statement that he has informed his affected employees of their rights under this paragraph (5) of this section.

(5) Additional Notice, Conferences

(A) In addition to the actual notice provided for in paragraph (4)(E) of this section, the Commissioner may provide, or cause to be provided, such additional notice of the petition as he may deem appropriate.

(B) The Commissioner may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.

(6) Action. After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the Commissioner finds that the alternative recordkeeping procedure proposed will not hamper or interfere with the purposes of the Law and will provide equivalent information, he

may grant the petition subject to such conditions as he may determine appropriate, and subject to revocation for cause.

(7) Publication. Whenever any relief under this section is sought to be revoked for any failure to comply with the conditions thereof, an opportunity for informal hearing or conference shall be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall:

(A) Be notified in writing of the facts or conduct which may warrant the action; and

(B) Be given an opportunity to demonstrate or achieve compliance.

(8) Compliance After Submission of Petitions. The submission of a petition shall not relieve any employer from any obligation to comply with this part. However, the Commissioner shall give notice of the denial of any petition within a reasonable time.

(9) Consultation. There shall be consultation between the appropriate representatives of the Indiana Occupational Safety and Health Administration and the U. S. Department of Labor–OSHA Department in order to insure the effective implementation of this section.

(m) Employees Not in Fixed Establishments. Employer of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of paragraph *[sic.]* B, D, and F *[subsections (b), (d) and (f) of this section]* of this seciton with respect to such employees by:

(1) Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

(2) Having the address and telephone number of the central place available at each worksite; and,

(3) Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail

(n) Duties of Employer. Upon receipt of an Occupational Injuries and Illnesses Survey Form, OSHA No. 200-S, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions. *(Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 9; filed Apr 5, 1977, 10:16 am: Rules and Regs. 1978, p. 472; filed Sep 9, 1981, 10:15 am: 4 IR 1986; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-2-12 On-site consultation; training of inspectors (Repealed)

Sec. 12. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 10; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-13 Administrative action for non-compliance and non-abatement (Repealed)

Sec. 13. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 11; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

Rule 3. Inspections, Safety Orders and Penalties

610 IAC 4-3-1 Purpose and scope of rule

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

Sec. 1. The Indiana occupational safety and health act, IC 22-8-1.1 requires, in part, that every employer covered under the act furnish to its employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees. The act also requires that employers comply with occupational safety and health standards promulgated under the act, and that employees comply with standards, rules, regulations and orders issued under the act which are applicable to their own actions and conduct. The act authorizes the department to conduct inspections, and to issue safety orders and proposed penalties for alleged violations. The act contains provisions for adjudication of violations, periods prescribed, for the abatement of violations, and proposed penalties by the board of safety review, if contested by an employer or by an employee or authorized representative of employees, and for judicial review. The purpose of 610 IAC 4-3 is to prescribe rules

and to set forth general policies for enforcement of the inspection, safety order, and proposed penalty provisions of the act. In situations where 610 IAC 4-3 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the commissioner or his designee determines that an alternative course of action would better serve the objectives of the act. *(Department of Labor; PT 1903, 1903.1; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 481; filed Jan 8, 1986, 2:18 pm: 9 IR 999; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-2 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. 2. (a)(1) Each employer shall post and keep posted a notice or notices to be furnished by the department, informing employees of the protections and obligations provided for in the act and that for assistance and information, including copies of the act and of specific safety and health standards, employees should contact the employer or the office of the department. 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 insure that such notices are not altered, defaced, or covered by other material.

(2) Reproductions or facsimiles of the state poster shall constitute compliance with the posting requirements. Such reproductions or facsimiles must be at least 8 1/2 inches by 14 inches, and the printing size is at least 10 pt. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, generally not less than 36 pt.

(b) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the department. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and 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. Where employees do not usually work at, or report to, a single establishment, such as longshoremen, traveling salesmen, technicians, engineers, etc., 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 subsection (a) of this section.

(c) Copies of the act, all regulations published in 610 IAC 4, and all applicable standards will be available at the department of labor–IOSHA office. If any employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.

(d) 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; PT 1903, 1903.2; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 481; filed Jan 8, 1986, 2:18 pm: 9 IR 1000; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-3 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. 3. (a) Compliance safety and health inspectors are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee or an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the act and rules published in 610 IAC 4, and other records which are directly related to the purpose of the inspection.

(b) Prior to inspecting areas containing information which is classified by an agency of the United States government in the interest of national security, the compliance safety and health inspectors shall have obtained the appropriate security clearance.

(Department of Labor; PT 1903, 1903.3; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 482; filed Jan 8, 1986, 2:18 pm: 9 IR 1000; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-3-4 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. 4. (a) Upon a refusal to permit the compliance safety and health inspector, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with 610 IAC 4-3-3, or to permit a representative of employees to accompany the compliance safety and health inspector during the physical inspection of any workplace in accordance with 610 IAC 4-3-8, the compliance safety and health inspector shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The compliance safety and health inspector shall endeavor to ascertain the reason for such refusal, and he shall immediately report the refusal and the reason therefor to the commissioner. The commissioner shall consult with the attorney general, who shall take appropriate action, including compulsory process, if necessary.

(b) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the commissioner and the attorney general circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

(1) when the employer's past practice either implicitly or explicitly puts the commissioner on notice that a warrantless inspection will not be allowed;

(2) when an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

(c) For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section. *(Department of Labor; PT 1903, 1903.4; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 483; filed May 12, 1981, 3:07 pm: 4 IR 915; filed Sep 9, 1981, 10:15 am: 4 IR 1999; filed Jan 8, 1986, 2:18 pm: 9 IR 1001; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-5 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. 5. Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, safety order, or penalty under the act *[IC 22-8-1.1]*. Compliance safety and health inspectors are not authorized to grant any such waiver. *(Department of Labor; PT 1903, 1903.5; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 483; filed Jan 8, 1986, 2:18 pm: 9 IR 1001; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-6 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. 6. (a) Advance notice of inspection may not be given, except in the following situations:

(1) in cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

(2) in circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

(3) where necessary to assure the presence of representation of the employer and employees or the appropriate personnel needed to aid in the inspection; and

(4) in other circumstances where the commissioner determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(b) In the situations described in subsection (a) of this section, advance notice of inspections may be given only if authorized by the commissioner, except that in cases of apparent imminent danger, advance notice may be given by the compliance safety and health inspector with such authorization if the commissioner is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See 610 IAC 4-3-8(b) as to situations where there is no authorized representative of employees.) Upon the request of the employer, the compliance safety and health inspector will inform the authorized representative of employees of the inspection, provided that the employer furnishes the compliance safety and health inspector with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this section promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the compliance safety and health inspector promptly to inform such representative of the inspection, may be subject to a safety order and penalty under IC 22-8-1.1-27.1(a). Advance notice in any of the situations, described in subsection (a) of this section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

(c) The act provides in IC 22-8-1.1-24.2 that any persons who give advance notice of any inspection to be conducted under the act, without authority from the commissioner or his duly authorized representative, commits a Class B misdemeanor, which is punishable by up to one hundred eighty (180) days imprisonment and a one thousand dollar ($1,000) fine. *(Department of Labor; PT 1903, 1903.6; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 483; filed Jan 8, 1986, 2:18 pm: 9 IR 1001; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-7 Conduct of inspection; authority of inspectors; precautions

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-23.1

Sec. 7. (a) Subject to the provisions of 610 IAC 4-3-3, inspections shall take place at such times and in such places of employment as the commissioner may direct. At beginning of an inspection, compliance safety and health inspectors shall present their credentials to the owner, operator, or agent in charge at the establishment; and indicate generally the scope of the inspection and the records specified in 610 IAC 4-3-3 which they wish to review. However, such designation of records shall not preclude access to additional records specified in 610 IAC 4-3-3.

(b) Compliance safety and health inspectors shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See 610 IAC 4-3-9 on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposure.

(c) In taking photographs and samples, compliance safety and health inspectors shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Compliance safety and health inspectors shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

(d) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

(e) At the conclusion of an inspection, the inspector shall confer with the employer or his representative and informally advise him of any apparant *[sic.]* safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the compliance safety and health inspector any pertinent information regarding conditions in the workplace.

(f) Inspections shall be conducted in accordance with the requirements of 610 IAC 4-3. *(Department of Labor; PT 1903, 1903.7; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 484; filed Jul 13, 1983, 2:37 pm: 6 IR 1728; filed Jan 8, 1986, 2:18 pm: 9 IR 1002; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-8 Employer and employee representatives may accompany inspector

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-24.3

Sec. 8. (a) Compliance safety and health inspectors shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the compliance safety and health inspector during the physical inspection of any workplace for the purpose of aiding such inspection. A compliance safety and health inspector may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the compliance safety and health inspector during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) Compliance safety and health inspectors shall have the authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this section. If there is no authorized representative of employees, or if the compliance safety and health inspector is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(c) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the compliance safety and health inspector, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the compliance safety and health inspector during the inspection.

(d) Compliance safety and health inspectors are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of 610 IAC 4-3-9(d). With regard to information classified by an agency of the U.S. government in the interest of national security, only persons authorized to have access to such information may accompany a compliance safety and health inspector in areas containing such information. *(Department of Labor; PT 1903, 1903.8; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 485; filed Jan 8, 1986, 2:18 pm: 9 IR 1003; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-9 Confidentiality of trade secrets; penalty

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 5-14-3; IC 22-8-1.1-48.4; IC 22-8-1.1-49

Sec. 9. (a) IC 22-8-1.1-48.4 provides: "All information reported to or otherwise obtained by the commissioner, his designated representatives, the department of labor, the occupational safety standards commission, the board of safety review, the bureau of safety education and training, and the agents and employees of any of them, that contains or might reveal a trade secret, shall be considered confidential, and shall be disclosed only to such other officers or employees concerned with the functions set forth in this chapter as may be necessary for them to discharge their duties under this chapter. 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."

(b) IC 22-8-1.1-48.4 further provides: "No person may violate the confidentiality of trade secrets". Pursuant to IC 22-8-1.1-49 any person who knowingly does so commits a Class B misdemeanor. The maximum punishment would be one hundred eighty (180) days imprisonment and a one thousand dollar ($1,000) fine. Any information which would be protected by IC 22-8-1.1-48.4 would not be subject to the disclosure provisions of the Indiana access to public records law (IC 5-14-3).

(c) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the compliance safety and health inspector has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential–trade secret" and shall not be disclosed except in accordance with the provisions of IC 22-8-1.1-48.4.

(d) Upon the request of an employer, an authorized representative of employees under 610 IAC 4-3-8 in an area containing trade secrets shall be an employee in that area. Where there is no such representative or employee, the compliance safety and health inspector shall consult with a reasonable number of employees who work in that area concerning matters of safety and health. *(Department of Labor; PT 1903, 1903.9; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 486; filed Jan 8, 1986, 2:18 pm: 9 IR 1003; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-10 Inspectors may consult with employees

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

Sec. 10. Compliance safety and health inspectors may consult with employee concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the act which he has reason to believe exists in the workplace to the attention of the compliance safety and health inspector. *(Department of Labor; PT 1903, 1903.10; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 487; filed Jan 8, 1986, 2:18 pm: 9 IR 1004; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-11 Notice by employee of alleged violation

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-24.1; IC 22-8-1.1-38.1

Sec. 11. (a) Any employee or representative of employees who believe that a violation of the act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the commissioner or to a compliance safety and health inspector. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the commissioner or the compliance safety and health inspector no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the department.

(b) If upon receipt of such notification, the commissioner determines that the complaint meets the requirements set forth in subsection (a) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the complaint.

(c) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the compliance safety and health inspector in writing, of any violation of the act which they have reason to believe exists in such workplace. Any such notice shall comply with the requirements of subsection (a) of this section.

(d) IC 22-8-1.1-38.1 provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter." *(Department of Labor; PT 1903, 1903.11; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 487; filed Sep 9, 1981, 10:15 am: 4 IR 2000; filed Jan 8, 1986, 2:18 pm: 9 IR 1004; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-12 Determination that inspection not warranted; informal conference

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-24.1

Sec. 12. (a) If the commissioner determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under 610 IAC 4-3-11, he shall notify the complaining party in writing within twenty (20) days of such determination giving the reasons why he is not making the requested inspection. The complaining party may obtain review of such determination by submitting a written statement of position with the commissioner and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the commissioner and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the commissioner, within twenty (20) days after the receipt of such a request, will hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the commissioner, within ten (10) days thereafter, shall affirm, modify, or reverse the determination and furnish the complaining party and the employer and *[sic.]* written notification of his decision and the reasons therefor. The decision of the commissioner shall be final and not subject to further review.

(b) If the commissioner determines that an inspection is not warranted because the requirements of 610 IAC 4-3-11(a) have not been met, he shall notify the complaining party in writing within twenty (20) days of such determination giving the reason why he is not making the requested inspection. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of 610 IAC 4-3-11(a). *(Department of Labor; PT 1903, 1903.12; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 488; filed Sep 9, 1981, 10:15 am: 4 IR 2001; filed Jan 8, 1986, 2:18 pm: 9 IR 1005; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-13 Imminent danger

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-39.1

Sec. 13. Whenever and as soon as a compliance safety and health inspector concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the act *[IC 22-8-1.1]*, he shall inform the affected employees and employers of the danger and that he is recommending a civil action to restrain such conditions or practices and for other appropriate relief in accordance with the provisions of IC 22-8-1.1-39.1. Appropriate safety orders and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of such danger by the compliance safety and health inspector, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger. *(Department of Labor; PT 1903, 1903.13; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 488; filed Jan 8, 1986, 2:18 pm: 9 IR 1005; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-14 Safety order; notice of violation; review procedures

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

Sec. 14. (a) The commissioner shall review the inspection report of the compliance safety and health inspector. If, on the basis of the report, the commissioner believes that the employer has violated a requirement of IC 22-8-1.1-2 or of any standard, rule or order promulgated pursuant to IC 22-8-1.1-13.1, IC 22-8-1.1-15 and IC 22-8-1.1-15.1 or of any substantive rule published in 610 IAC 4, he shall, if appropriate, consult with the attorney general, and he shall issue to the employer either a safety order or a notice of de minimis violations which have no direct or immediate relationship to safety or health. An appropriate safety order or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the compliance safety and health inspector, the employer immediately abates, or initiates steps to abate, such alleged violation. Any safety order or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No safety order may be issued under this section after the expiration of six (6) months following the occurrence of any alleged violation.

(b) Any safety order shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the act, standard, rule, regulations, or order alleged to have been violated. Any safety order shall also fix a reasonable time or times for the abatement of alleged violation.

(c) If a safety order or notice of de minimis violations is issued for a violation alleged in a request for inspection under 610 IAC 4-3-11(a) or a notification of violation under 610 IAC 4-3-11(c), a copy of the safety order or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

(d) After an inspection, if the commissioner determines that a safety order is not warranted with respect to a danger or violation alleged to exist in a request for inspection under 610 IAC 4-3-11(a) or a notification of violation under 610 IAC 4-3-11(c), the informal review procedures prescribed in 610 IAC 4-3-12(a) shall be applicable. After considering all views presented, the commissioner shall affirm the determination not to issue a safety order, order a reinspection, or issue a safety order if he believes that the inspection disclosed a violation. The commissioner shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor. The determination of the commissioner shall be final and not subject to review.

(e) Every safety order shall state that the issuance of a safety order does not constitute a finding that a violation of the act *[IC 22-8-1.1]* has occurred unless there is a failure to contest as provided for in the act *[IC 22-8-1.1]* or, if contested, unless the safety order is affirmed by the board of safety review. *(Department of Labor; PT 1903, 1903.14; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 488; filed Jan 8, 1986, 2:18 pm: 9 IR 1005; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-15 Petition for modification of abatement date; information required; filing

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1
Affected: IC 4-21.5-3-5; IC 4-21.5-3-7; IC 22-8-1.1

Sec. 15. (a) An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of a safety order, but such abatement has not been completed because of factors beyond his reasonable control.

(b) A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(5) A certification that a copy of the petition has been posted, and if appropriate, served on the authorized representative of affected employees, in accordance with subsection (c)(2) of this section and a certification of the date upon which such posting and service was made.

(c)(1) A petition for modification of abatement date shall be filed with the commissioner no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(2) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted until the time period for the filing of a petition for review of the commissioner's granting or denying the petition expires. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

(3) Subsequent to the receipt of a petition, the commissioner shall issue an order under the provisions of IC 4-21.5-3-5 granting or denying the petition. The commissioner shall give such notice to the employer and any person who has requested it under IC 4-21.5-3-5(b)(4). Upon receipt, the employer shall immediately serve it on any authorized representative of affected employees and post it with the petition. It shall remain posted until the time period for the filing of a petition for review expires.

(4) The employer and affected employees or their authorized representatives may file a petition for review of the order described in subsection (c)(3) of this section within fifteen (15) days of its issuance (plus three (3) days if the notice is served by mail). If the fifteenth day would be a Saturday, Sunday, legal holiday under a state statute, or a day on which the department's offices are closed during regular business hours, the fifteen (15) day period shall run until the end of the next day which is not a Saturday, Sunday, legal holiday under a state statute, or a day on which the department's offices are closed during regular working hours.

(5) If a petition for review is filed, the commissioner shall grant or deny it under the provisions of IC 4-21.5-3-7. If he grants the petition for review, he shall immediately certify the dispute to the board of safety review. *(Department of Labor; PT 1903, 1903.14a; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 489; filed Jan 8, 1986, 2:18 pm: 9 IR 1006; filed May 22, 1987, 12:30 pm: 10 IR 2290, eff Jul 1, 1987; errata, 10 IR 2501; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-16 Notice of proposed penalty; factors; de minimis violations

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1
Affected: IC 4-21.5-3-6; IC 22-8-1.1-27.1

Sec. 16. (a) Concurrent with, the issuance of a safety order, or within five (5) working days after the issuance of a safety order, the commissioner shall notify the employer by certified mail or by personal service by the compliance safety and health inspector of the proposed penalty under IC 22-8-1.1-27.1, or that no penalty is being proposed. A notice accompanying the proposed penalty shall comply with IC 4-21.5-3-6 and inform the employer that the proposed penalty shall be deemed to be the final order of the board of safety review and not subject to review by any court or agency unless, within fifteen (15) working days from the receipt of such notice, the employer files with the commissioner a written petition for review.

(b) The commissioner shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violations, the good faith

of the employer, and the history of previous violations, in accordance with the provisions of IC 22-8-1.1-27.1.

(c) Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the compliance safety and health inspector, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health. *(Department of Labor; PT 1903, 1903.15; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 491; filed Sep 9, 1981, 10:15 am: 4 IR 2001; filed Jan 8, 1986, 2:18 pm: 9 IR 1007; filed May 22, 1987, 12:30 pm: 10 IR 2291, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305) NOTE: The text of 610 IAC 4-3-16(b) and (c) in LSA Document #1-88(F) printed at 4 IR 2001, SECTION 4, was omitted from the final rule filed with the Secretary of State but has been editorially combined to eliminate conflicting Indiana Administrative Code sections.*

610 IAC 4-3-17 Posting of safety order; penalty

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-25.2; IC 22-8-1.1-27.1; IC 22-8-1.1-28.1

Sec. 17. (a) Upon receipt of any safety order under the act *[IC 22-8-1.1]*, the employer shall immediately post such safety order, or a copy thereof, unedited, at or near each place an alleged violation referred to in the safety order occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the safety order at or near each place of alleged violation, such safety order shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed (see 610 IAC 4-3-2(b)), the safety order may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the safety order is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.

(b) Each safety order, or a copy thereof, shall remain posted until the violation has been abated, or for three (3) working days whichever is later. The filing by the employer of a petition for review under 610 IAC 4-3-18 shall not affect its posting responsibility under this section unless and until the board of safety review issues a final order vacating this safety order.

(c) An employer to whom a safety order has been issued may post a notice in the same location where such safety order is posted indicating that the safety order is being contested before the board of safety review, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

(d) Any employer failing to comply with the provisions of subsections (a) and (b) of this section shall be subject to the issuance of safety order and penalty in accordance with the provisions of IC 22-8-1.1-27.1. *(Department of Labor; PT 1903, 1903.16; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 491; filed Jan 8, 1986, 2:18 pm: 9 IR 1007; filed May 22, 1987, 12:30 pm: 10 IR 2292, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-18 Notice of intention to contest safety order or proposed penalty

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1
Affected: IC 4-21.5-3-7; IC 22-8-1.1-25.1; IC 22-8-1.1-28.1; IC 22-8-1.1-28.2

Sec. 18. (a) Any employer to whom a safety order or notice of proposed penalty has been issued, may, under IC 22-8-1.1-28.1 file with the commissioner a written petition for review stating that he intends to contest such safety order or proposed penalty. Such petition for review shall be postmarked within fifteen (15) working days of receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. Every petition for review shall specify whether it is directed to the safety order or to the proposed penalty, or both.

(b) Any employee or representative of employees of an employer to whom a safety order has been issued may file a written petition for review with the commissioner alleging that the period of time fixed in the safety order for the abatement of the violation is unreasonable. Such petition for review shall be postmarked within fifteen (15) working days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed.

(c) Upon receipt of a petition for review filed pursuant to subsection (a) or (b) of this section, the commissioner shall have five (5) working days in which to affirm, amend (modify or alter) or dismiss the safety order, or notice of proposed penalty. Notice of his action shall be served on the employer and upon any employee, or representative of employees, who has filed a petition for review, and said notice shall be posted at or near the place of the alleged violation in such a manner affected employees may become aware of it.

(d) If the commissioner affirms the safety order or proposed penalty, he shall also grant or deny the petition for review under the provisions of IC 4-21.5-3-7. If the commissioner amends the safety order or proposed penalty, the petition for review shall be deemed moot.

(e) However, an employer then desiring to contest an amended safety order or proposed penalty, or representative of employees desiring to contest the period of time fixed for abatement, shall file a petition for review which must be postmarked within fifteen (15) working days of issuance of the commissioner's action undertaken pursuant to subsection (c) of this section. The commissioner shall then grant or deny the petition for review under the provisions of IC 4-21.5-3-7.

(f) Upon the granting of a petition for review, the commissioner shall immediately certify the dispute to the board. *(Department of Labor; PT 1903, 1903.17; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 492; filed Sep 9, 1981, 10:15 am: 4 IR 2002; filed Jan 8, 1986, 2:18 pm: 9 IR 1008; filed May 22, 1987, 12:30 pm: 10 IR 2292, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-19 Failure to correct violation; additional penalty

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1
Affected: IC 4-21.5-3-7; IC 22-8-1.1-26.1; IC 22-8-1.1-27.1; IC 22-8-1.1-30.1

Sec. 19. (a) If an inspection discloses that an employer has failed to correct an alleged violation for which a safety order has been issued within the period permitted for its correction, the commissioner shall, if appropriate, consult with the attorney general, and he shall notify the employer by certified mail or by personal service by the compliance safety and health inspector of such failure and of the additional penalty proposed under IC 22-8-1.1-27.1(a)(3) by reason of such failure. The period for the correction of a violation for which a safety order has been issued shall not begin to run until the entry of a final order of the board of safety review in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

(b) Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may file with the commissioner a written petition for review stating that he intends to contest such notification or proposed additional penalty. Such petition for review shall be postmarked within fifteen (15) working days of the receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty.

(c) Upon receipt of a petition for review filed pursuant to subsection (b) of this section, the commissioner shall have five (5) working days in which to affirm, amend (modify or alter) or dismiss the notification of failure to correct violations and of proposed additional penalty. Notice of his action shall be served upon the employer and said notice shall be posted at or near the place of the alleged violation in such a manner that affected employees may become aware of it.

(d) If the commissioner affirms the notification of failure to correct violation and of proposed additional penalty, he shall also grant or deny the petition for review under the provisions of IC 4-21.5-3-7. If the commissioner amends the notification of failure to correct violation and of proposed additional penalty, the petition for review shall be deemed moot.

(e) However, an employer desiring to further contest an amended notification of failure to correct violation or proposed additional penalty shall file a petition for review which must be postmarked within fifteen (15) working days of receipt of the commissioner's action undertaken pursuant to subsection (c) of this section. The commissioner shall then grant or deny the petition for review under the provisions of IC 4-21.5-3-7.

(f) Upon the granting of a petition for review the commissioner shall immediately certify the dispute to the board.

(g) Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the board of safety review unless, within fifteen (15) working days from the date of receipt of such notification, the employer files with the commissioner a written petition for review. *(Department of Labor; PT 1903, 1903.18; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 492; filed Sep 9, 1981, 10:15 am: 4 IR 2002; filed Jan 8, 1986, 2:18 pm: 9 IR 1008; filed May 22, 1987, 12:30 pm: 10 IR 2293, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-19.1 Abatement verification

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-28.1

Sec. 19.1. (a) Inspections conducted by the department of labor (department) are intended to result in the abatement of violations of the Indiana Occupational Safety and Health Act (IOSHA). This section sets forth the procedures the department will use to ensure abatement. These procedures are tailored to the nature of the safety order and the employer's abatement actions. This

section applies to employers who receive a safety order for a violation of IOSHA.

(b) The following definitions apply throughout this section:

(1) "Abatement" means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by the department during an inspection.

(2) "Abatement date" means the following:

(A) For an uncontested safety order item, the later of:

(i) the date in the safety order for abatement of the violation;

(ii) the date approved by the department or established in litigation as a result of a petition for modification of abatement date; or

(iii) the date established in a safety order by an informal settlement agreement.

(B) For a contested safety order item for which the board of safety review has issued a final order affirming the violation, the later of:

(i) the date identified in the final order for abatement;

(ii) the date computed by adding the period allowed in the safety order for abatement to the final order date; or

(iii) the date established by a formal settlement agreement.

(3) "Affected employees" means those employees who are exposed to the hazard identified as a violation in a safety order.

(4) "Contested safety order" means a safety order which is the subject of a petition for review filed pursuant to IC 22-8-1.1-28.1.

(5) "Final order date" means the following:

(A) For an uncontested safety order item, the fifteenth working day after the employer's receipt of the safety order.

(B) For a contested safety order item:

(i) the date on which the board of safety review issues its decision or order disposing of all or pertinent part of a case; or

(ii) the date on which a court issues a decision affirming the violation in a case in which a final order of the board of safety review has been stayed.

(6) "Movable equipment" means a hand-held or nonhand-held machine or device, powered or unpowered, that is used to do work and is moved within or between worksites.

(7) "Uncontested safety order" means a safety order for which a petition for review has not been filed pursuant to IC 22-8-1.1-28.1.

(c) Requirements for abatement certification shall be as follows:

(1) Within ten (10) calendar days after the abatement date, the employer must certify to the department that each violation cited in the safety order has been abated, except as provided in subdivision (2).

(2) The employer is not required to certify abatement if the compliance safety and health inspector, during the on-site portion of the inspection:

(A) observes, within twenty-four (24) hours after a violation is identified, that abatement has occurred; and

(B) notes in the safety order that abatement has occurred.

(3) The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required by subsection (h), the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

(d) Requirements for abatement documentation shall be as follows:

(1) The employer must submit to the department, along with the information on abatement certification required by subsection (c)(3), documents demonstrating that abatement is complete for each knowing or repeat violation and for any serious violation for which the department indicates in the safety order that such abatement documentation is required.

(2) Documents demonstrating that abatement is complete may include, but are not limited to:

(A) evidence of the purchase or repair of equipment;

(B) photographic or video evidence of abatement; or

(C) other written records.

(e) Requirements for abatement plans shall be as follows:

(1) The department may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than ninety (90) calendar days. If an abatement plan is required, the safety order must so indicate.

(2) The employer must submit an abatement plan for each cited violation within twenty-five (25) calendar days from the final order date when the safety order indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete.

(f) Requirements for progress reports shall be as follows:

(1) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The safety order must indicate:

(A) that periodic progress reports are required and the safety order items for which they are required;

(B) the date on which an initial progress report must be submitted, which may be no sooner than thirty (30) calendar days after submission of an abatement plan;

(C) whether additional progress reports are required; and

(D) the date on which additional progress reports must be submitted.

(2) For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken.

(g) Requirements for employee notification shall be as follows:

(1) The employer must inform affected employees and their representative about abatement activities covered by this section by posting a copy of each document submitted to the department or a summary of the document near the place where the violation occurred.

(2) Where such posting does not effectively inform employees and their representatives about abatement activities, for example, for employers who have mobile work operations, the employer must:

(A) post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or

(B) take other steps to communicate fully to affected employees and their representatives about abatement activities.

(3) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the department as follows:

(A) an employee or an employee representative must submit a request to examine and copy abatement documents within three (3) working days of receiving notice that the documents have been submitted; and

(B) the employer must comply with an employee's or employee representative's request to examine and copy abatement documents within five (5) working days of receiving the request.

(4) The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the department and that abatement documents are:

(A) not altered, defaced, or covered by other material; and

(B) remain posted for three (3) working days after submission to the department.

(h) Requirements for transmitting abatement documents shall be as follows:

(1) The employer must include, in each submission required by this section, the following information:

(A) The employer's name and address.

(B) The inspection number to which the submission relates.

(C) The safety order and item numbers to which the submission relates.

(D) A statement that the information submitted is accurate.

(E) The signature of the employer or the employer's authorized representative.

(2) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the department receives the document is the date of submission.

(i) Requirements for movable equipment shall be as follows:

(1) For serious, repeat, and knowing violations involving movable equipment, the employer must attach a warning tag or a copy of the safety order to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites.

(2) Attaching a copy of the safety order to the equipment is deemed by the department to meet the tagging requirement of subdivision (1), as well as the posting requirement of section 17 of this rule.

(3) The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the safety order issued.

(4) If the violation has not already been abated, a warning tag or copy of the safety order must be attached to the equipment:

(A) for hand-held equipment, immediately after the employer receives the safety order; or

(B) for nonhand-held equipment, prior to moving the equipment within or between worksites.

(5) For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by the department to meet the requirements of this section when the information required by subdivision (3) is included on the tag.

(6) The employer must assure that the tag or copy of the safety order attached to movable equipment is not altered, defaced, or covered by other material.

(7) The employer must assure that the tag or copy of the safety order attached to movable equipment remains attached until:

(A) the violation has been abated and all abatement verification documents required by this section have been submitted to the department;

(B) the cited equipment has been permanently removed from service or is no longer within the employer's control; or

(C) the board of safety review or a court issues a final order vacating the safety order.

(Department of Labor; 610 IAC 4-3-19.1; filed Jun 11, 1998, 5:00 p.m.: 21 IR 4206; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-3-19.5 Denial of petition for review

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1
Affected: IC 4-21.5-3; IC 22-8-1.1-28.1; IC 22-8-1.1-28.3

Sec. 19.5. (a) If the commissioner denies a petition for review filed under 610 IAC 4-3-15, 610 IAC 4-3-18, or 610 IAC 4-3-19, he shall notify the petitioner in writing that the petition for review is denied and that the petitioner may seek administrative review of the denial by filing a written request for reconsideration following the provisions of IC 4-21.5-3-7(c). The time period for seeking such administrative review is computed following the provisions of IC 4-21.5-3-2.

(b) If such a request for reconsideration of denial of a petition for review is filed, the resulting preliminary hearing remains in the jurisdiction of the commissioner and thus the matter is not certified to the board of safety review. It shall be conducted under the applicable provisions of IC 4-21.5-3.

(c) If the final result of such preliminary hearing results in the granting of the petition for review which had previously been denied, the commissioner shall immediately certify the matter to the board. *(Department of Labor; 610 IAC 4-3-19.5; filed May 22, 1987, 12:30 pm: 10 IR 2294, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-20 Informal review of safety order, penalty, or notice of failure to correct violation

Authority: IC 4-21.5-3-34; IC 4-21.5-3-35; IC 22-8-1.1-28.4; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 20. (a) This section is adopted pursuant to IC 22-8-1.1-28.4 to permit informal review of safety orders, assessments of penalties, or notices to correct violations issued pursuant to the act *[IC 22-8-1.1]*.

(b) At the request of an affected employer, employee, or representative of employees, the commissioner may hold an informal conference for the purpose of discussing any issues raised by an inspection, safety order, notice of proposed penalty, notice of failure to correct violation, or a petition for review. Provided, however, that no such conference or request for such conference shall operate as a stay of the fifteen (15) working day period for filing a petition for review as prescribed in 610 IAC 4-3-18 and 610 IAC 4-3-19.

(c) The informal conference may be held within the fifteen (15) working day period to file a petition for review provided for in 610 IAC 4-3-18 and 610 IAC 4-3-19, or within the five (5) working day period the commissioner has to respond to a petition for review also provided for in 610 IAC 4-3-18 and 610 IAC 4-3-19. Conferences shall be scheduled at the discretion of the commissioner as time permits. In order to facilitate scheduling, those desiring an informal conference are urged to contact the commissioner as soon as possible after receipt of the safety order, notice of proposed penalty, or notice of failure to correct violation.

(d) If the informal conference is requested by the employer, an affected employee or his representative shall be given an opportunity to participate, at the discretion of the commissioner. If the conference is requested by an employee or representative of employee, the employer shall be afforded an opportunity to participate at the discretion of the commissioner. Any party may be represented by counsel at such conference.

(e) During the informal conference any matter in dispute among the parties will be discussed in an informal manner. As a result of the informal conference the commissioner may issue an amended safety order, notice of proposed penalty or notice of

failure to correct violation. The amended safety order shall be posted in the same manner as the original safety order as required by 610 IAC 4-3-17.

(f) An employer dissatisfied with the results of an informal conference may file a petition for review concerning the safety order, notice of proposed penalty, or notice of failure to correct violation as provided for in 610 IAC 4-3-18 and 610 IAC 4-3-19. If the informal conference is held within the five (5) working day period the commissioner has to respond to a petition for review and the commissioner's subsequent action is to affirm the safety order and penalty or notification of failure to correct, no further petition for review is necessary and the commissioner shall grant or deny the petition for review.

(g) An employee or representative of employee dissatisfied with the results in an informal conference may file a petition for review concerning the time fixed for abatement of a violation as provided for in 610 IAC 4-3-18. If the informal conference is held within the five (5) working day period the commissioner has to respond to a petition for review and the commissioner's subsequent action is to affirm the safety order and penalty, no further petition for review is necessary and the commissioner shall grant or deny the petition for review. *(Department of Labor; PT 1903, 1903.19; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 493; filed Sep 9, 1981, 10:15 am: 4 IR 2003; filed Jan 8, 1986, 2:18 pm: 9 IR 1009; filed May 22, 1987, 12:30 pm: 10 IR 2294, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-21 Definitions

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 21. As used in this rule (610 IAC 4-3):

(a) "Act" means the Indiana occupational safety and health act (IC 22-8-1.1).

(b) The definitions and interpretations contained in IC 22-8-1.1-1 shall be applicable to such terms when used in 610 IAC 4-3.

(c) "Working days" means Mondays through Fridays, but shall not include Saturdays, Sundays, or legal holidays under a state statute, or days on which the department's offices are closed during regular business hours. In computing working days, the day of receipt of any notice shall not be included, and the last day of the working days shall be included.

(d) "Compliance safety and health inspector" means a person authorized by the commissioner to conduct inspections.

(e) "Department" means the Indiana department of labor.

(f) "Commissioner" means the commissioner of the department or his duly designated representative.

(g) "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under 610 IAC 4-3-11(a) and (c), any reinspection, followup inspection, accident investigation or other inspection conducted under IC 22-8-1.1. *(Department of Labor; PT 1903, 1903.21; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 493; filed Jan 8, 1986, 2:18 pm: 9 IR 1009; filed May 22, 1987, 12:30 pm: 10 IR 2295, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-22 Action by United States department of labor on request for variance

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-25.1

Sec. 22. Where action has been taken by the United States Department of Labor, pursuant to the Federal Occupational Safety and Health Act of 1970, on any temporary or permanent variance request to a federal standard which is identical to an Indiana occupational health and safety standard, the commissioner shall consider such action as an authoritative interpretation of the employer(s) compliance obligation with regard to the state standard, or portion thereof, identical to the federal standard or portion thereof, affected by the action in the employment or places of employment covered by the variance application. *(Department of Labor; 610 IAC 4-3-22; filed Sep 9, 1981, 10:15 am: 4 IR 2004; filed Jan 8, 1986, 2:18 pm: 9 IR 1010; filed May 22, 1987, 12:30 pm: 10 IR 2295, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-23 Department access to employee medical information; policies, procedures, and safeguards

Authority: IC 22-8-1.1-48.1
Affected: IC 4-1-6-2; IC 4-1-6-7; IC 22-8-1.1-17.1

Sec. 23. (a) General policy. Department access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, department authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, department examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by department only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

(b) Scope and application.

(1) Except as provided in subsections (b)(3)–(b)(6) below, this section applies to all requests by department personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provisions of 29 CFR 1910.20(e).

(2) For the purpose of this section, "personally identifiable employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g. exact age, height, weight, race, sex, date of initial employment, job title, etc.).

(3) This section does not apply to department access to, or the use of, aggregate employee medical information or medical records on individual employees which is not in a personally identifiable form. This section does not apply to records required by 610 IAC 4-4, to death certificates, or to employee exposure records, including biological monitoring records treated by 29 CFR 1910.20(c)(5) or by specific occupational safety and health standards as exposure records.

(4) This section does not apply where department compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational safety and health standard, or with 29 CFR 1910.20. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the recordholder. The compliance safety and health inspectors shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

(5) This section does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

(6) This section does not apply where a written directive by the commissioner of labor authorized appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

(7) Even if not covered by the terms of this section, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care benefitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

(c) Responsible persons.

(1) The commissioner of labor shall be responsible for the overall administration and implementation of the procedures contained in this section and shall be responsible for:

(A) department access to personally identifiable employee medical information (subsection (d));

(B) assuring that written access orders meet the requirements of subsections (d)(2) and (d)(3) of this section;

(C) responding to employee, collective bargaining agent, and employer objections concerning written access orders (subsection (f) of this section);

(D) regulating the use of direct personal identifiers (subsection (g) of this section);

(E) regulating internal agency use and security of personally identifiable employee medical information (subsections (h)–(j) of this section);

(F) assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees (subsection (k) of this section);

(G) preparing and filing the annual report with the governor required by IC 4-1-6;

(H) inter-agency transfer or public disclosure of personally identifiable employee medical information (subsection (m) of this section).

(2) Principal department investigator. The principal department investigator shall be the department employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the

examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this action (subsections (d)–(m) of this section). When access is pursuant to a written access order, the principal department investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, biostatistics, environmental health, etc.).

(d) Written access orders.

(1) Requirement for written access order. Except as provided in subsection (d)(4) below, each request by a department representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other recordholder shall be made pursuant to a written access order which has been approved by the commissioner. If deemed appropriate, a written access order may constitute, or be accompanied by, an administrative subpoena.

(2) Approval criteria for written access order. Before approving a written access order, the commissioner shall determine that:

(A) The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

(B) The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access.

(C) The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

(3) Content of written access order. Each written access order shall state with reasonable particularity:

(A) The statutory purposes for which access is sought.

(B) A general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

(C) Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

(D) The name, address, and phone number of the principal department investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

(E) The name, address, and phone number of the commissioner.

(F) The anticipated period of time during which the department expects to retain the employee medical information in a personally identifiable form.

(4) Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

(A) Specific written consent. If the specific written consent of an employee is obtained pursuant to 29 CFR 1910.20(e)(2)(ii), and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a principal department investigator shall be promptly named to assure protection of the information, and the commissioner shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of subsections (h)–(m) of this section.

(B) Physician consultations. A written access order need not be obtained where a department staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the department physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records, however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the department physician shall leave his or her control without the permission of the commissioner.

(e) Presentation of written access order and notice to employees.

(1) The principal department investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one (1) copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the principal department investigator or to the commissioner.

(2) The principal department investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

(3) The principal department investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter (See, 29 CFR 1910.20(e)(3)(ii)).

(4) The principal department investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the principal department investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

(f) Objections concerning a written access order. All employee, collective bargaining agent, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the commissioner. Unless the agency decides otherwise, access to the records shall proceed without delay notwithstanding the lodging of an objection. The commissioner shall respond in writing to each employee's and collective bargaining agent's written objection to department access. Where appropriate, the commissioner may revoke a written access order and direct that any medical information obtained by it be returned to the original recordholder or destroyed. The principal department investigator shall assure that such instructions by the commissioner are promptly implemented.

(g) Removal of direct personal identifiers. Whenever employee medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the principal department investigator shall, unless authorized by the commissioner, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number for each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The principal department investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the commissioner. The commissioner shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

(h) Internal agency use of personally identifiable employee medical information.

(1) The principal department investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

(2) The principal department investigator, the commissioner, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No department employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

(3) Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the attorney general, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

(4) Department employees and contractors are only authorized to use personally identifiable employee medical information for the purpose for which it was obtained, unless the specific written consent of an employee is obtained as to a secondary purpose, or the procedures of subsections (d)–(g) of this section are repeated with respect to the secondary purpose.

(5) Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

(i) Security procedures.

(1) Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

(2) The commissioner and the principal department investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

(3) The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

(4) The protective measures established by this section apply to all worksheets, duplicate copies, or other agency documents

containing personally identifiable employee medical information.

(5) Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

(j) Retention and destruction of records.

(1) Consistent with department records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original recordholder when no longer needed for the purposes for which they were obtained.

(2) Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the commissioner. The commissioner shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

(k) Results of an agency analysis using personally identifiable employee medical information. The commissioner shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

(l) Annual report. The commissioner shall be responsible for preparing and filing the annual report to the governor required by IC 4-1-6-7.

(m) Inter-agency transfer and public disclosure. Personally identifiable employee medical information shall not be transferred to another agency outside the department (other than to the office of attorney general) or disclosed to the public (other than to the affected employee or the original recordholder) unless permitted by the Indiana Occupational Safety and Health Act (IC 22-8-1.1) or the Fair Information Practices Act (IC 4-1-6). IC 22-8-1.1-17.1 provides that the results of medical examinations or tests shall remain confidential within the department.

(n) As used in this section the term "commissioner" means the Indiana commissioner of labor or in the commissioner's absence, his deputy. *(Department of Labor; 610 IAC 4-3-23; filed Jan 20, 1982, 10:55 am: 5 IR 547; filed Jan 8, 1986, 2:18 pm: 9 IR 1010; errata, 9 IR 1667; errata, 10 IR 1277; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

Rule 4. Recording and Reporting Occupational Injuries and Illnesses

610 IAC 4-4-1 Purpose and objectives

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 1. PURPOSE AND SCOPE. The regulations in this part implement sections 3.1 and 43.1 *[IC 22-8-1.1-3.1 and IC 22-8-1.1-43.1]*, of the Public Law 241. These sections provide for recordkeeping and reporting by employers covered under the Law as necessary or appropriate for enforcement of the Law, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. *(Department of Labor; PT 1904,1904.1; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 494; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-4-2 Employers to maintain log of occupational injuries and illnesses

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 2. LOG OF OCCUPATIONAL INJURIES AND ILLNESSES. (a) Each employer shall except as provided in paragraph (b) of this section, (1) maintain in each establishment a log of all recordable occupational injuries and illnesses for that establishment and; (2) enter each recordable occupational injury and illness on the log and summary as early as practicable but no later than six (6) working days after receiving information that a recordable injury or illness has occurred. For this purpose, Form OSHA No. 200 (610 IAC 4-4-15) or an equivalent which is as readable and comprehensible to a person not familiar with it shall be used. The log and summary shall be completed in the detail provided in the form and instructions on Form OSHA No. 200 (610 IAC 4-4-15).

(b) Any employer may maintain the log of occupational injuries and illnesses at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

(1) There is available at the place where the log is maintained sufficient information to complete the log to a date within 6 working days after receiving information that a recordable case has occurred, as required by paragraph (a) of this section.

(2) At each of the employer's establishments, there is available a copy of the log which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

(Department of Labor; PT 1904, 1904.2; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 495; filed Sep 9, 1981, 10:15 am: 4 IR 1990; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-4-3 Records to be kept per calendar year

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 3. PERIOD COVERED. Records shall be established on a calendar year basis. *(Department of Labor; PT 1904, 1904.3; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 495; filed Sep 9, 1981, 10:15 am: 4 IR 1991; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-4-4 Supplementary record at each establishment

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 4. SUPPLEMENTARY RECORD. In addition to the log of occupational injuries and illnesses provided for under § 1904.2 *[610 IAC 4-4-2]*, each employer shall have available for inspection at each establishment within six (6) working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying Occupational Safety and Health Administration Form OSHA No. 101 *[610 IAC 4-4-16]*. Workmen's compensation, insurance, Indiana Industrial Board Form 24, or other reports are acceptable alternative records if they contain the information required by Form OSHA No. 101 *[610 IAC 4-4-16]*. If no acceptable alternative record is maintained for other purposes, Form OSHA No. 101 *[610 IAC 4-4-16]* shall be used or the necessary information shall be otherwise maintained. *(Department of Labor; PT 1904,1904.4; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 495; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-4-5 Annual summary; certification; posting

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43; IC 22-8-1.1-43.1

Sec. 5. ANNUAL SUMMARY. (a) Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the form OSHA No. 200, (610 IAC 4-4-15) and the following information from that form: calendar year covered, company name, establishment name, establishment address, certification signature, title, and date. A form OSHA No. 200, (610 IAC 4-4-15) shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered on the totals line, and the form must be posted.

(b) The summary shall be completed by February 1, after the close of each calendar year.

(c) Each employer, or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the log and summary certifying that the annual summary is true and complete.

(d)(1) Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under 610 IAC 4-3-2(a). The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multiestablishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments. *(Department of Labor; PT 1904, 1904.5; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 496; filed Sep 9, 1981, 10:15 am: 4 IR 1991; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-4-6 Retention of records

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43; IC 22-8-1.1-43.1

Sec. 6. RETENTION OF RECORDS. Records provided for in 610 IAC 4-4-2, 610 IAC 4-4-4 and 610 IAC 4-4-5 (including OSHA Form No. 200 and its predecessor OSHA Form No. 100 and OSHA Form No. 102) shall be retained in each establishment for five (5) years following the end of the year to which they relate. *(Department of Labor; PT 1904, 1904.6; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 496; filed Sep 9, 1981 10:15 am: 4 IR 1991; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-4-7 Records to be available for inspection

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43; IC 22-8-1.1-43.1

Sec. 7. (a) Records provided for in 1904.2, 1904.4, and 1904.5 *[610 IAC 4-4-2, 610 IAC 4-4-4, and 610 IAC 4-4-5]* shall be available for inspection and copying by Safety and Health Inspectors of the Indiana Occupational Safety and Health Administration, 1013 State Office Building, during any Occupational Safety and Health inspection provided for under Part 1903 *[610 IAC 4-3]* and Public Law IC-22-8-1.1 or by any representative of the Indiana Occupational Safety and Health Administration accorded jurisdiction for Occupational Safety and Health inspections or for statistical compilations.

(b)(1) The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in 1904.2 *[610 IAC 4-4-2]* shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

(2) Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

(3) Access to the log provided under this section shall pertain to all logs retained under the requirements of 1904.6 *[610 IAC 4-4-6]*. *(Department of Labor; PT 1904, 1904.7; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 496; filed Sep 10, 1979, 3:15 pm: 2 IR 1383; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-4-8 Employers to report serious or fatal accidents

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 8. REPORTING OF FATALITY OR MULTIPLE HOSPITALIZATION ACCIDENTS. Within forty-eight (48) hours after the occurrence of an employment accident which is fatal to one or more employees or which results in hospitalization of five (5) or more employees, the employer of any employees so injured or killed shall report the accident either orally or in writing to the Bureau of Building and Factory Inspection Director at the Indiana Division of Labor, 1013 State Office Building. The reporting may be by telephone or telegraph. The report shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. The Director may require such additional reports, in writing or otherwise, as he deems necessary, concerning the accident. *(Department of Labor; PT 1904,1904.8; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 497; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-4-9 Penalties for false statements; failure to maintain records or file reports

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-37.1; IC 22-8-1.1-49

Sec. 9. FALSIFICATION, OR FAILURE TO KEEP RECORDS OR REPORTS. (a) Section 31.1 *[sic., IC 22-8-1.1-37.1]* of the Law provides that "Whoever knowingly makes a false statement, representation, or certification in any application, record, report, plan or other document required pursuant to this chapter, upon conviction shall be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment for not more than six (6) months, or both."

(b) Failure to maintain records or file reports required by this part, or in details required by forms and instructions issued under this part, may result in the issuance of safety orders and assessment of penalties as provided for in the Law. *(Department of Labor; PT 1904,1904.9; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 497; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-4-10 Change of ownership; preservation of records

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43; IC 22-8-1.1-43.1

Sec. 10. CHANGE OF OWNERSHIP. Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned such establishment. However, in the case of any change of ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this part. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under § 1904.6 *[610 IAC 4-4-6]*. *(Department of Labor; PT 1904,1904.11; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 497; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-4-11 Definitions

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

Sec. 11. (a) "Law" means Public Law 241-1973, the Occupational Safety and Health Law of 1973.

(b) The definitions and interpretations contained in section (1) of the law shall be applicable to such terms when used in this Part 1904 *[610 IAC 4-4]*.

(c) "Recordable occupational injuries and illnesses" are any occupational injuries or illnesses which result in:

(1) fatalities, regardless of the time between the injury and death or the length of the illness; or

(2) lost workday cases, other than fatalities, that result in lost workdays; or

(3) nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve: loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(d) "Medical treatment" includes treatment administered by a physician or by a registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.

(e) "First aid" is any one-time treatment, and any followup visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and followup visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(f) "Lost workdays:" the number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

(g)(1) "Establishment:" a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities operated from the same physical location as a lumber yard), each activity shall be treated as a separate establishment.

(2) For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day.

(3) Records for personnel who do not primarily report or work at a single establishment, and who are generally not supervised in their daily work, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

(h) Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89.

(1) Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

(2) Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise

to the general public for personal or household consumption.

Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

(3) Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance, and real estate.

(4) Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal education, social, and cultural; and membership organizations.

(5) The primary activity of an establishment is determined as follows: for finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of the normal basis for determining the primary activity.

(Department of Labor; PT 1904,1904.12; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 497; filed Apr 25, 1983, 2:14 pm: 6 IR 1072; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-4-12 Petition by employer to maintain different records; employee comments; notice

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

Sec. 12. PETITIONS FOR RECORDKEEPING EXCEPTIONS. (a) SUBMISSION OF PETITION. Any employer who wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in paragraph (c) of this section to the Commissioner of Labor.

(b) OPPORTUNITY FOR COMMENT. Affected employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the Commissioner involved within ten (10) working days following the receipt of notice under paragraph (c)(5) of this section.

(c) CONTENTS OF PETITION. A petition filed under paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) Specifications of the reasons for seeking relief;

(4) A description of the different recordkeeping procedures which are proposed by the applicant;

(5) A statement that the applicant has informed his affected employees of the petition by giving a copy thereof to them or to their authorized representative and by posting a statement giving a summary of the petition and by other appropriate means. A statement posted pursuant to this subparagraph shall be posted in each establishment in the same manner that notices are required to be posted under § 1903.2(a) *[610 IAC 4-3-2(a)]*. The applicant shall also state in his statement that he has informed his affected employees of their rights under this paragraph (b) of this section.

(d) ADDITIONAL NOTICE, CONFERENCES.

(1) In addition to the actual notice provided for in paragraph (c)(5) of this section, the Commissioner may provide, or cause to be provided, such additional notice of the petition as he may deem appropriate.

(2) The Commissioner may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.

(e) ACTION. After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the Commissioner finds that the alternative procedure proposed will not hamper or interfere with the purposes of the Law and will provide equivalent information, he may grant the petition subject to such conditions as he may determine appropriate, and subject to revocation for cause.

(f) PUBLICATION. Whenever any relief is granted to an applicant under this Law, notice of such relief, and the reasons therefor, shall be published in a newspaper of general circulation within the State.

(g) REVOCATION. Whenever any relief under this section is sought to be revoked for any failure to comply with the conditions thereof, an opportunity for informal hearing or conference shall be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement

of any such informal proceeding, the employer shall:

(1) Be notified in writing of the facts or conduct which may warrant the action; and

(2) be given an opportunity to demonstrate or achieve compliance.

(h) COMPLIANCE AFTER SUBMISSION OF PETITIONS. The submission of a petition or any delay by the Commissioner in acting upon a petition shall not relieve any employer from any obligation to comply with this part. However, the Commissioner shall give notice of the denial of any petition within a reasonable time.

(i) CONSULTATION. There shall be consultation between the appropriate representatives of the Indiana Occupational Safety and Health Administration and the U. S. Department of Labor–OSHA Department in order to insure the effective implementation of this section. *(Department of Labor; PT 1904,1904.13; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 499; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-4-13 Compliance with respect to employees not in fixed establishment

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

Sec. 13. EMPLOYEES NOT IN FIXED ESTABLISHMENTS. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of §§ 1904.2, 1904.4, and 1904.6 *[610 IAC 4-4-2, 610 IAC 4-4-4 and 610 IAC 4-4-6]* with respect to such employees by:

(a) Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

(b) Having the address and telephone number of the central place available at each worksite; and

(c) Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

(Department of Labor; PT 1904,1904.14; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 500; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-4-14 Exception for employers with no more than ten employees

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

Sec. 14. An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part *[610 IAC 4-4]* except the following:

(a) Obligation to report under 1904.8 *[610 IAC 4-4-8]* concerning fatalities or multiple hospitalization accidents; and

(b) Obligation to maintain a log of occupational injuries and illnesses under 1904.2 *[610 IAC 4-4-2]* and to make reports under 1904.21 upon being notified in writing by the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

(Department of Labor; PT 1904, 1904.15; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 500; filed Jan 18, 1979, 9:35 am: 2 IR 308; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-4-15 Form for keeping log of occupational injuries and illnesses

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-43.1

Sec. 15. EXHIBIT I. LOG OF OCCUPATIONAL INJURIES AND ILLNESSES. Each employer who is subject to the recordkeeping requirements of the Occupational Safety and Health Act must maintain for each establishment a log of all recordable occupational injuries and illnesses. This form (OSHA No. 200) may be used for that purpose. A substitute for the OSHA No. 200 is acceptable if it is as detailed, easily readable and understandable as the OSHA No. 200.

Each recordable occupational injury and occupational illness must be timely entered on the log. Logs must be kept current and retained for five (5) years following the end of the calendar year to which they relate. Following is a copy of OSHA Form 200:

Bureau of Labor Statistics
Log and Summary of Occupational
Injuries and Illnesses

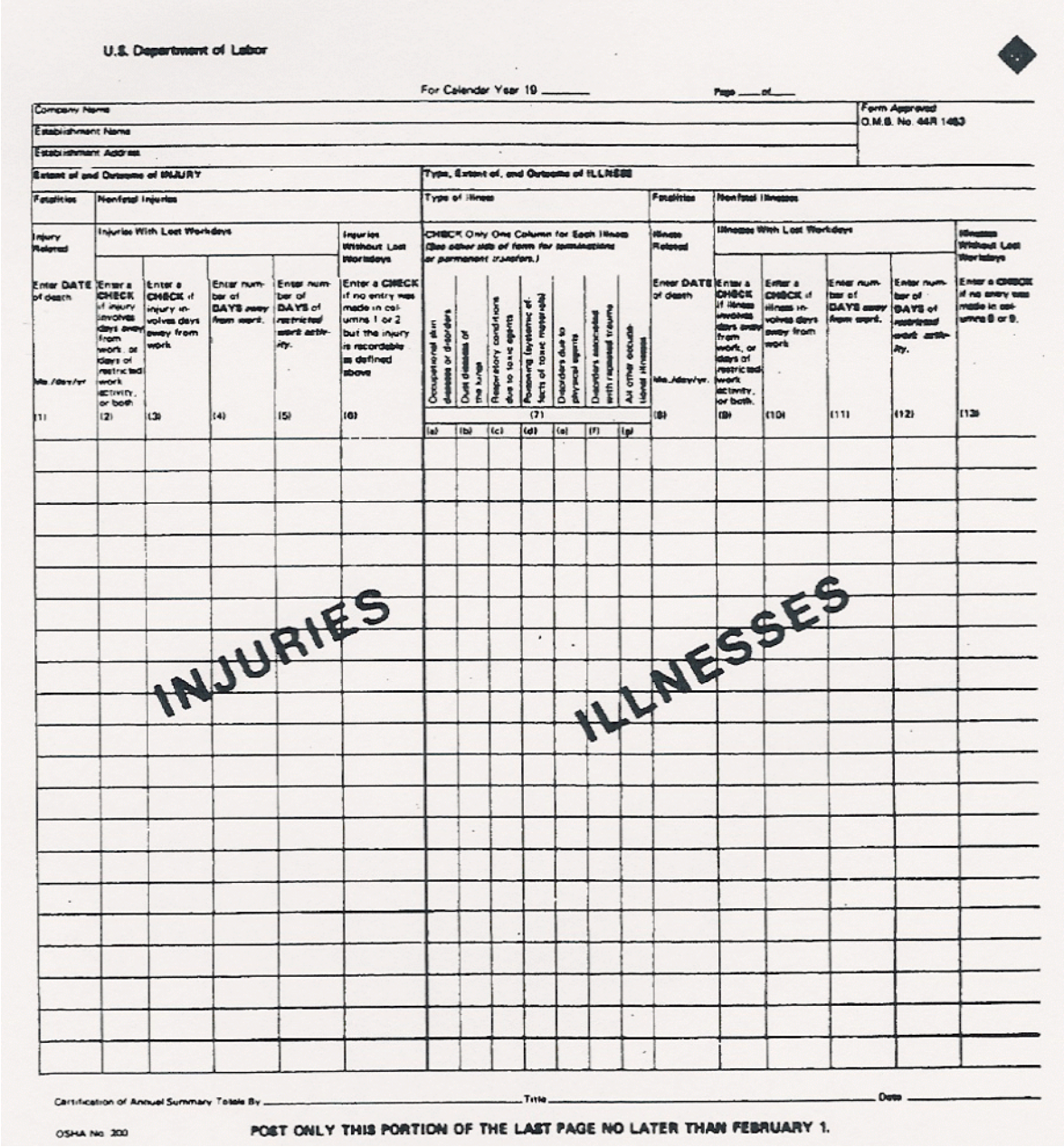
NOTE: This form is required by Public Law 91-596 and must be kept in the establishment for 5 years. Failure to maintain and post can result in the issuance of citations and assessment of penalties. *(See posting requirements on the other side of form.)*

RECORDABLE CASES: You are required to record information about every occupational death, every nonfatal occupational illness and those nonfatal occupational injuries which involve one or more of the following: loss of consciousness, restriction of work or motion, transfer to another job, or medical treatment (other than first aid) *(See definitions on the other side of form.)*

Case or File Number	Date of Injury or Onset of Illness	Employee's Name	Occupation	Department	Description of Injury or Illness
Enter a nonduplicating number which will facilitate comparisons with supplementary records.	Enter Mo./Day.	Enter first name or initial, middle initial, last name.	Enter regular job title, not activity employee was performing when injured or at onset of illness. In the absence of a formal title, enter a brief description of the employee's duties.	Enter department in which the employee is regularly employed or a description of normal workplace to which employee is assigned, even though temporarily working in another department at the time of injury or illness.	Enter a brief description of the injury or illness and indicate the part or parts of body affected. Typical entries for this column might be Amputation of 1st joint right forefinger, Strain of lower back, Contact dermatitis on both hands, Electrocution—body
(A)	(B)	(C)	(D)	(E)	(F)
					PREVIOUS PAGE TOTALS →
					TOTALS (Instructions on other side of form.) →

OSHA No. 200

U.S. GOVERNMENT PRINTING OFFICE: 827 812


U.S. Department of Labor

For Calendar Year 19 ____ Page ____ of ____

Company Name

Establishment Name

Establishment Address

Form Approved O.M.B. No. 44R 1453

Extent of and Outcome of INJURY

Fatalities | Nonfatal Injuries

Injury Related

Enter DATE of death

Mo./day/yr.

(1)

Injuries With Lost Workdays

Enter a CHECK if injury involves days away from work, or days of restricted work activity, or both (2)

Enter a CHECK if injury involves days away from work (3)

Enter number of DAYS away from work. (4)

Enter number of DAYS of restricted work activity. (5)

Injuries Without Lost Workdays

Enter a CHECK if no entry was made in columns 1 or 2 but the injury is recordable as defined above (6)

Type, Extent of, and Outcome of ILLNESS

Type of Illness

CHECK Only One Column for Each Illness (Use other side of form for terminations or permanent transfers.)

(7)

(a) Occupational skin diseases or disorders

(b) Dust diseases of the lungs

(c) Respiratory conditions due to toxic agents

(d) Poisoning (systemic effects of toxic materials)

(e) Disorders due to physical agents

(f) Disorders associated with repeated trauma

(g) All other occupational illnesses

Fatalities | Nonfatal Illnesses

Illness Related

Enter DATE of death

Mo./day/yr.

(8)

Illnesses With Lost Workdays

Enter a CHECK if illness involves days away from work, or days of restricted work activity, or both. (9)

Enter a CHECK if illness involves days away from work (10)

Enter number of DAYS away from work. (11)

Enter number of DAYS of restricted work activity. (12)

Illnesses Without Lost Workdays

Enter a CHECK if no entry was made in columns 9 or 10. (13)

INJURIES

ILLNESSES

Certification of Annual Summary Totals By _____ Title _____ Date _____

OSHA No. 200

POST ONLY THIS PORTION OF THE LAST PAGE NO LATER THAN FEBRUARY 1.

(Department of Labor; PT 1904, Exhibit I; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 501; filed Sep 9, 1981, 10:15 am: 4 IR 1991; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-4-16 Form for supplementary record

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-43.1

Sec. 16. SUPPLEMENTARY RECORD OF OCCUPATIONAL INJURIES AND ILLNESSES

To supplement the Log of Occupational Injuries and Illnesses (OSHA No. 200 (610 IAC 4-4-15), each establishment must maintain a record of each recordable occupational injury or illness. Workmen's compensation, insurance, or other reports are

acceptable as records if they contain all facts listed below or are supplemented to do so. If no suitable report is made for other purposes, this form (OSHA No. 101) may be used or the necessary facts can be listed on a separate plain sheet of paper. The records must be maintained for a period of not less than five years following the end of the calendar year to which they relate.

Such records must contain at least the following facts:

(1) About the employer–name, mail address, and location if different from mail address.

(2) About the injured or ill employee–name, social security number, home address, age, sex, occupation, and department.

(3) About the accident or exposure to occupational illness–place of accident or exposure, whether it was on employer's premises, what the employee was doing when injured, and how the accident occurred.

(4) About the occupational injury or illness–description of the injury or illness, including part of body affected; name of the object or substance which directly injured the employee; and date of injury or diagnosis of illness.

(5) Other–name and address of physician; if hospitalized, name and address of hospital; date of report; and name and position of person preparing the report.

EXHIBIT II

OSHA No. 101
Case or File No. _____

Form approved
OMB No. 44R 1453

SUPPLEMENTARY RECORD OF OCCUPATIONAL INJURIES AND ILLNESSES

EMPLOYER

1. Name _____
2. Mail address _____
   (No. and street) (City or town) (State)
3. Location, if different from mail address _____

INJURED OR ILL EMPLOYEE

4. Name _____ Social Security No. _____
   (First name) (Middle name) (Last name)
5. Home address _____
   (No. and street) (City or town) (State)
6. Age _____ 7. Sex: Male _____ Female _____ (Check one)
8. Occupation _____
   (Enter regular job title, not the specific activity he was performing at time of injury.)
9. Department _____
   (Enter name of department or division in which the injured person is regularly employed, even though he may have been temporarily working in another department at the time of injury.)

THE ACCIDENT OR EXPOSURE TO OCCUPATIONAL ILLNESS

10. Place of accident or exposure _____
    (No. and street) (City or town) (State)

If accident or exposure occurred on employer's premises, give address of plant or establishment in which it occurred. Do not indicate department or division within the plant or establishment. If accident occurred outside employer's premises at an identifiable address, give that address. If it occurred on a public highway or at any other place which cannot be identified by number and street, please provide place references locating the place of injury as accurately as possible.

11. Was place of accident or exposure on employer's premises? _____ (Yes or No)
12. What was the employee doing when injured? _____
(Be specific. If he was using tools or equipment or handling material, name them and tell what he was doing with them.)
13. How did the accident occur? _____
(Describe fully the events which resulted in the injury or occupational illness. Tell what happened and how it happened. Name any objects or substances involved and tell how they were involved. Give full details on all factors which led or contributed to the accident. Use separate sheet for additional space.)

OCCUPATIONAL INJURY OR OCCUPATIONAL ILLNESS

14. Describe the injury or illness in detail and indicate the part of body affected. _____
(e.g.: amputation of right index finger at second joint; fracture of ribs; lead poisoning; dermatitis of left hand, etc.)
15. Name the object or substance which directly injured the employee. (For example, the machine or thing he struck against or which struck him; the vapor or poison he inhaled or swallowed; the chemical or radiation which irritated his skin; or in cases of strains, hernias, etc., the thing he was lifting, pulling, etc.) _____
16. Date of injury or initial diagnosis of occupational illness _____
17. Did employee die? _____ (Yes or No) (Date)

OTHER

18. Name and address of physician _____
19. If hospitalized, name and address of hospital _____

Date of report _____ Prepared by _____
Official position _____

(Department of Labor; PT 1904, Exhibit II; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 507; filed Sep 9, 1981, 10:15 am: 4 IR 1998; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-4-17 Form for annual summary (Repealed)

Sec. 17. *(Repealed by Department of Labor; PT 1904, Exhibit III; filed Sep 9, 1981, 10:15 am: 4 IR 1999)*

610 IAC 4-4-18 Record keeping and reporting requirements (Repealed)

Sec. 18. *(Repealed by Department of Labor; PT 1952.4; filed Sep 9, 1981, 10:15 am: 4 IR 1999)*

610 IAC 4-4-19 Exception for SIC 52-89 establishments

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 19. An employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this rule *[610 IAC 4-4]* except the following:

(1) obligation to report under 610 IAC 4-4-8 concerning fatalities or multiple hospitalization accidents; and

(2) obligation to maintain a log of occupational injuries and illnesses upon being notified in writing by the Indiana division of labor and the Bureau of Labor Statistics of the United States Department of Labor that the employer has been selected to

participate in a statistical survey of occupational injuries and illnesses.
(Department of Labor; 610 IAC 4-4-19; filed Apr 25, 1983, 2:14 pm: 6 IR 1073; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

Rule 5. Interpretation of Discrimination Provisions Concerning Employee Filing Complaint or Testifying

610 IAC 4-5-1 Introductory statement

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 1. (a) The Indiana Occupational Safety and Health Act (IC 22-8-1.1) is a statute of general application designed to regulate employment conditions relating to occupational safety and health and to achieve safer and healthier workplaces throughout the state of Indiana. By terms of the act, every employer is required to furnish each of his employees employment and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm, and, further, to comply with occupational safety and health standards promulgated under the act.

(b) The act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of workplaces, and recordkeeping requirements. Enforcement procedures initiated by the Indiana Department of Labor, review proceedings before an independent quasi-judicial agency (the Board of Safety Review), and express judicial review are provided by the act. Under the act, Indiana is enforcing occupational safety and health requirements under a state plan pursuant to 29 U.S.C. §667.

(c) Employees and representatives of employees are afforded a wide range of substantive and procedural rights under the act. Moreover, effective implementation of the act and achievement of its goals depend in large part upon the active but orderly participation of employees, individually and through their representatives, at every level of safety and health activity.

(d) This rule (610 IAC 4-5) deals essentially with the rights of employees afforded under IC 22-8-1.1-38.1 which prohibits reprisals, in any form, against employees who exercise rights under the Indiana Occupational Safety and Health Act *[IC 22-8-1.1]*.

(e) As used in the rule (610 IAC 4-5), the term "chapter" means the Indiana Occupational Safety and Health Act (IC 22-8-1.1).

(f) This rule (610 IAC 4-5) is patterned after 29 CFR Part 1977 in which the United States Department of Labor has adopted provisions concerning the corresponding section to IC 22-8-1.1-38.1 under federal law (29 U.S.C. §660(c)). Subject to contrary provisions of Indiana law, it is the intention of the Indiana Commissioner of Labor to enforce IC 22-8-1.1-38.1 in the same manner the United States Department of Labor enforces 29 U.S.C. §660(c). *(Department of Labor; 610 IAC 4-5-1; filed Oct 2, 1986, 11:34 am: 10 IR 228; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-2 Purpose of this rule

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 2. The purpose of this rule (610 IAC 4-5) is to make available in one place interpretations of the various provisions of IC 22-8-1.1-38.1 which will guide the Indiana Commissioner of Labor in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect. *(Department of Labor; 610 IAC 4-5-2; filed Oct 2, 1986, 11:34 am: 10 IR 229; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-3 General requirements of IC 22-8-1.1-38.1

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 3. IC 22-8-1.1-38.1 provides in general that no person shall discharge or in any manner discriminate against any employee because the employee has:

(1) filed any complaint under or related to the chapter;
(2) instituted or caused to be instituted any proceeding under or related to the chapter;
(3) testified or is about to testify in any proceeding under the chapter or related to the chapter; or
(4) exercised on his own behalf or on behalf of others any right afforded by the chapter.

Any employee who believes that he has been discriminated against in violation of IC 22-8-1.1-38.1 may, within 30 days after such violation occurs, lodge a complaint with the Indiana Commissioner of Labor alleging such violation. The commissioner shall then cause appropriate investigation to be made. If, as a result of such investigation, the commissioner determines that the provisions of IC 22-8-1.1-38.1 have been violated a civil action shall be instituted within one hundred twenty (120) days after receipt of said complaint in the circuit courts of Indiana to restrain violations of IC 22-8-1.1-38.1 and to obtain other appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay. IC 22-8-1.1-38.1 further provides for notification of complainants by the commissioner of determinations made pursuant to their complaints. *(Department of Labor; 610 IAC 4-5-3; filed Oct 2, 1986, 11:34 am: 10 IR 229; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-4 Persons prohibited from discriminating

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 4. IC 22-8-1.1-38.1 specifically states that "no person shall discharge or in any manner discriminate against any employee" because the employee has exercised rights under the act. The prohibitions of IC 22-8-1.1-38.1 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. IC 22-8-1.1-38.1 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. See, Meek v. United States, 136 F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burns, 137 F.2d 37 (3rd Cir., 1943). *(Department of Labor; 610 IAC 4-5-4; filed Oct 2, 1986, 11:34 am: 10 IR 229; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-5 Persons protected by IC 22-8-1.1-38.1

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-1; IC 22-8-1.1-38.1

Sec. 5. (a) All employees are afforded the full protection of IC 22-8-1.1-38.1. For purposes of the Indiana Occupational Safety and Health Act *[IC 22-8-1.1]*, an employee is defined as "a person permitted to work by an employer in employment". The act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear intent that the existence of an employment relationship, for purposes of IC 22-8-1.1-38.1, is to be based upon economic realities rather than upon common law doctrines and concepts. See, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

(b) For purposes of IC 22-8-1.1-38.1, even an applicant for employment could be considered an employee. See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957). Further, because IC 22-8-1.1-38.1 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

(c) In view of the definition of "employer" contained in IC 22-8-1.1-1, employees of the state and all its political subdivisions are within the contemplated coverage of IC 22-8-1.1-38.1. *(Department of Labor; 610 IAC 4-5-5; filed Oct 2, 1986, 11:34 am: 10 IR 229; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-6 Unprotected activities distinguished

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 6. (a) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of IC 22-8-1.1-38.1 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the chapter does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).

(b) At the same time, to establish a violation of IC 22-8-1.1-38.1, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, IC 22-8-1.1-38.1 has been violated. See, Mitchell v. Goodyear Tire & Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing,

302 F. 2d 152 (5th Cir., 1962). Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case. *(Department of Labor; 610 IAC 4-5-6; filed Oct 2, 1986, 11:34 am: 10 IR 230; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-7 Specific protections; complaints under or related to the chapter

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 7. (a) Discharge of, or discrimination against, an employee because the employee has filed "any complaint*** under or related to this chapter (IC 22-8-1.1)***" is prohibited by IC 22-8-1.1-38.1. An example of a complaint made "under" the chapter would be an employee request for inspection pursuant to IC 22-8-1.1-24.1. However, this would not be the only type of complaint protected by IC 22-8-1.1-38.1. The range of complaints "related to" the chapter is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application.

(b) Complaints registered with federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this chapter. Likewise, complaints made to other agencies of the state or its political subdivisions regarding occupational safety and health conditions would be "related to" the chapter. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

(c) Further, the salutary principles of the chapter would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the chapter, and an employee would be protected against discharge or discrimination caused by a complaint to the employer. *(Department of Labor; 610 IAC 4-5-7; filed Oct 2, 1986, 11:34 am: 10 IR 230; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-8 Specific protections; proceedings under or related to the chapter

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 8. (a) Discharge of, or discrimination against, any employee because the employee has "instituted or caused to be instituted any proceeding under or related to this chapter" is also prohibited by IC 22-8-1.1-38.1. Examples of proceedings which could arise specifically under the chapter would be inspections of worksites under IC 22-8-1.1-23.1, employee contest of abatement date under IC 22-8-1.1-28.2, employee initiation of proceedings for promulgation of an occupational safety and health standard under IC 22-8-1.1-15.1, employee application for modification or revocation of a variance under IC 22-8-1.1-20.1, employee judicial challenge to a standard under IC 22-8-1.1-19, and employee appeal of a Board of Safety Review order under IC 22-8-1.1-35.5. In determining whether a "proceeding" is "related to" the chapter, the considerations discussed in 610 IAC 4-5-7 would also be applicable.

(b) An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the chapter. *(Department of Labor; 610 IAC 4-5-8; filed Oct 2, 1986, 11:34 am: 10 IR 230; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-9 Specific protections; testimony

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 9. Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the chapter is also prohibited by IC 22-8-1.1-38.1. This protection would, of course, not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rule making or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the chapter, he would be protected against discrimination resulting from such testimony. *(Department of Labor; 610 IAC 4-5-9; filed Oct 2, 1986, 11:34 am: 10 IR 230; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-10 Specific protections; exercise of any right afforded by the chapter

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-23.1; IC 22-8-1.1-24.1; IC 22-8-1.1-38.1

Sec. 10. (a) In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the chapter, IC 22-8-1.1-38.1 also protects employees from discrimination occurring because of the exercise of "any right afforded by this chapter". Certain rights are explicitly provided in the chapter; for example, there is a right to participate as a party in enforcement proceedings. Certain other rights exist by necessary implication. For example, employees may request information from the Indiana department of labor; such requests would constitute the exercise of a right afforded by the chapter. Likewise, employees interviewed by agents of the commissioner in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

(b)(1) On the other hand, as a general matter, there is no right afforded by the chapter which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the chapter will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to IC 22-8-1.1-23.1 and IC 22-8-1.1-24.1, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of IC 22-8-1.1-38.1 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

(2) However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition. *(Department of Labor; 610 IAC 4-5-10; filed Oct 2, 1986, 11:34 am: 10 IR 231; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-11 Procedures; filing of complaint of discrimination

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 11. (a) Who may file. A complaint of discrimination under IC 22-8-1.1-38.1 may be filed by the employee himself, or by a representative authorized to do so on his behalf.

(b) Nature of filing. No particular form of complaint is required.

(c) Place of filing. Complaint should be filed with the Indiana Department of Labor, Indiana Government Center-South, 402 West Washington Street, Room W195, Indianapolis, Indiana 46204; (317) 232-2378.

(d) Time for filing.

(1) IC 22-8-1.1-38.1(b) provides that an employee who believes that he has been discriminated against in violation of IC 22-8-1.1-38.1 "may, within 30 days after such violation occurs," file a complaint with the Indiana Commissioner of Labor.

(2) A major purpose of the 30-day period in this provision is to allow the commissioner to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

(3) However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

(Department of Labor; 610 IAC 4-5-11; filed Oct 2, 1986, 11:34 am: 10 IR 231; errata filed Sep 7, 2001, 10:25 a.m.: 25 IR 106; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-5-12 Procedures; notification of Commissioner of Labor's determination

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 12. IC 22-8-1.1-38-1 *[sic., IC 22-8-1.1-38.1]* provides that the commissioner is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the commissioner's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in IC 22-8-1.1-38.1. *(Department of Labor; 610 IAC 4-5-12; filed Oct 2, 1986, 11:34 am: 10 IR 232; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-13 Procedures; withdrawal of complaint

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 13. Enforcement of the provisions of IC 22-8-1.1-38.1 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the commissioner's investigation. The commissioner's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure. *(Department of Labor; 610 IAC 4-5-13; filed Oct 2, 1986, 11:34 am: 10 IR 232; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-14 Procedures; arbitration or other agency proceedings

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 14. (a) General. (1) An employee who files a complaint under IC 22-8-1.1-38.1 may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The commissioner's jurisdiction to entertain complaints under IC 22-8-1.1-38.1, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The commissioner may file an action in the circuit courts of Indiana regardless of the pendency of other proceedings.

(2) However, the commissioner also recognizes the national policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. See, e.g., Boy's Markets, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971). By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to complaints under IC 22-8-1.1-38.1.

(3) Where a complainant is in fact pursuing remedies, other than those provided by IC 22-8-1.1-38.1, postponement of the commissioner's determination and deferral to the results of such proceedings may be in order. See, Burlington Truck Lines, Inc., v. U.S., U.S. 156 (1962).

(b) Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under IC 22-8-1.1-38.1 and those proceedings are not likely to violate the rights guaranteed by IC 22-8-1.1-38.1. The factual issues in such proceedings must be substantially the same as those raised by IC 22-8-1.1-38.1 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (Oct. 10, 1972); Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).

(c) Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the chapter. In this regard, if such other actions initiated by a complainant are dismissed without adjudicatory hearing thereof, such dismissal will not ordinarily be regarded as determinative of the complaint under IC 22-8-1.1-38.1.

(Department of Labor; 610 IAC 4-5-14; filed Oct 2, 1986, 11:34 am: 10 IR 232; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-5-15 Employee refusal to comply with safety rules

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 15. Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the chapter are not exercising any rights afforded by the chapter. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by IC 22-8-1.1-38.1. This situation should be distinguished from refusals to work, as discussed in 610 IAC 4-5-10. *(Department of Labor; 610 IAC 4-5-15; filed Oct 2, 1986, 11:34 am: 10 IR 233; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

ARTICLE 5. CONSTRUCTION INDUSTRY (REPEALED)

(Repealed by Department of Labor; filed Jan 15, 1988, 1:54 pm: 11 IR 1784)

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