TITLE 610 DEPARTMENT OF LABOR

Notice of First Public Comment Period

LSA Document #26-305

IOSHA PENALTY REDUCTIONS

PURPOSE OF NOTICE

The Department of Labor (DOL) is soliciting public comment on amending rules at 610 IAC 9-4 to increase Indiana occupational safety and health administration (IOSHA) penalty reduction amounts.

ADDITIONAL DOCUMENTS

Regulatory Analysis: 20260902-IR-610260305RAA

Notice of Public Hearing: 20260902-IR-610260305PHA

CITATIONS AFFECTED: 610 IAC 9-4-3; 610 IAC 9-4-5

AUTHORITY: IC 22-1-1; IC 22-8-1.1-27.1; IC 22-8-1.1-48.1

OVERVIEW

Basic Purpose and Background

IOSHA follows the general penalty calculation structure that the federal Occupational Safety and Health Administration uses and publishes in its Field Operations Manual found in Compliance Directive Number CPL 02-00-164, with the last penalty reduction update being published on July 14, 2025. This update, as proposed in this rule, allows some businesses that have a good safety record and some smaller businesses with twenty-five (25) or less employees, to receive a greater penalty reduction, and removes previous discretion by IOSHA staff to only provide a partial reduction under some circumstances.

The implementation costs of the proposed rule are not expected to exceed the threshold set in IC 4-22-2-22.7(c)(6).

For purposes of IC 4-22-2-28.1, small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

J. Anthony Hardman

Indiana Department of Labor

402 West Washington Street, Room W195

Indianapolis, IN 46204

(317) 232-2696

DOLlegal@dol.in.gov

For purposes of IC 4-22-2-28.1, the Small Business Ombudsman designated by IC 5-28-17-6 is:

Caleb Wakeman

Small Business Ombudsman

Indiana Economic Development Corporation

One North Capitol, Suite 700

Indianapolis, IN 46204

(317) 269-2670

ombudsman@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in IC 5-28-17-6, specifically IC 5-28-17-6(9), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

REQUEST FOR PUBLIC COMMENT

DOL is soliciting public comment on the proposed rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #26-305 IOSHA Penalty Reductions

J. Anthony Hardman

Indiana Department of Labor

402 West Washington Street, Room W195

Indianapolis, IN 46204

(2) By email to DOLlegal@dol.in.gov. PLEASE NOTE: Email comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.

(3) Attend scheduled public hearing.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time-stamped not later than October 2, 2026.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Department of Labor, 402 West Washington Street, Room W195, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the Department of Labor office.

If DOL does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

PROPOSED RULE

SECTION 1. 610 IAC 9-4-3 IS AMENDED TO READ AS FOLLOWS:

610 IAC 9-4-3 Penalty reduction factors

Authority: IC 22-1-1; IC 22-8-1.1-27.1

Affected: IC 22-8-1.1-35.6

Sec. 3. (a) Penalty adjustments vary depending on an employer's size, determined by the maximum number of employees, good faith, and a history of previous violations. Maximum penalty reductions are generally as follows:

(1) Not more than seventy percent (70%) reduction, or eighty percent (80%) for serious knowing violations, may be provided for size.

(2) Not more than twenty-five percent (25%) reduction may be provided for good faith.

(3) Not more than ~~ten percent (10%)~~ **twenty percent (20%)** reduction may be provided for history.

However, no penalty reduction may be more than one hundred percent (100%) of the initial assessment. The reduction also may not reduce a penalty to less than the minimum penalty amounts described in this rule. Since these reduction factors are based on the general character of an employer's safety and health performance, the factors are calculated only one (1) time for each employer.

(b) After the classification as serious or nonserious, and the ~~GBPs~~ **gravity based penalties** have been determined for each violation, the penalty reduction factors for size, good faith, and history are applied subject to the following limitations:

(1) Penalties proposed for violations classified as repeat violations are reduced only for size.

(2) Penalties proposed for violations classified as knowing violations are reduced only for size and history.

(3) Penalties proposed for serious violations classified as high severity and greater probability violations are reduced only for size and history.

(c) A history reduction of ~~ten percent (10%)~~ **twenty percent (20%)** is given to employers that have not been issued by IOSHA any serious, knowing, or repeat violations in the past three (3) years.

(d) The three (3) year history of no prior safety orders from IOSHA is calculated from the opening conference date of the current inspection. Only safety orders that have become a final order under IC 22-8-1.1-35.6(a) within the three (3) years immediately before the opening conference date shall be considered.

(e) A history reduction may not be applied under the following conditions:

(1) For a repeat violation.

(2) To employers being issued a safety order for failure to certify abatement.

(3) For violations related to a fatality.

(4) To employers being issued a safety order for failure to notify employees and tagging movable equipment.

(f) A good faith penalty reduction is permitted to recognize an employer's effort to carry out an effective safety and health management system in the workplace. A good faith reduction is not related to an employer that immediately corrects or initiates steps to abate a hazard after being informed of a violation by the compliance safety and health officer (CSHO). The following apply to reductions for good faith:

(1) A good faith reduction is not permitted for any of the following:

(A) High gravity serious violations.

(B) Violations related to a fatality.

(C) Knowing violations. If a knowing violation is found, no reduction for good faith may be applied to any of the violations found during the same inspection.

(D) Repeat violations. If a repeat violation is found, no reduction for good faith may be applied to any of the violations found during the same inspection.

(E) Failure to correct violations. If a failure to correct **a** violation is found, no reduction for good faith may be applied to any of the violations found during the same inspection.

(F) The employer is issued a safety order under abatement verification for failure to certify abatement.

(G) The employer is issued a safety order under abatement verification for failure to notify employees and tagging movable equipment.

(H) The employer has no safety and health management system, or there are major deficiencies in the program.

(I) The employer failed to report a fatality, an inpatient hospitalization, an amputation, or the loss of an eye under the requirements of 29 CFR 1904.39.

(2) A good faith reduction is permitted as follows:

(A) A twenty-five percent (25%) reduction for good faith normally requires a written safety and health management system. In exceptional cases, CSHOs may recommend a full twenty-five percent (25%) reduction for employers with one (1) to twenty-five (25) employees, ~~that~~ **which** have carried out an effective safety and health management system, but have not documented it in writing. To qualify for this reduction, the employer's safety and health management system must provide:

(i) appropriate management commitment and employee involvement;

(ii) worksite analysis for the purpose of hazard identification;

(iii) hazard prevention and control measures;

(iv) safety and health training;

(v) where ~~young~~ persons less than eighteen (18) years of age are employed, the CSHO's evaluation must consider whether the employer's safety and health management system appropriately addresses the particular needs of those employees, relative to the types of work they perform and potential hazards to which they may be exposed; and

(vi) where persons who speak limited or no English are employed, the CSHO's evaluation must consider whether the employer's safety and health management system appropriately addresses the particular needs of those employees, relative to the types of work they perform and potential hazards to which they may be exposed.

(B) A fifteen percent (15%) reduction for good faith is normally given if the employer has a documented and effective safety and health management system, with only incidental deficiencies.

(C) Only fifteen percent (15%) and twenty-five percent (25%) may be used to reduce penalties due to the employer's good faith.

(g) A penalty reduction of not more than seventy percent (70%) is permitted for small employers and eighty percent (80%) for serious knowing violations under Table 4-5 in section 5 of this rule. The size of the employer is calculated based on the maximum number of employees of an employer at all workplaces nationwide at any one (1) time during the previous twelve (12) months.

(h) Reduction for size may not be given for an alleged violation that could have reasonably contributed to a fatal incident.

(i) The rates of size reduction to be applied are as follows:

Table 4-3: Size Reduction

Employees	Percent Reduction
~~1-10~~ **1-25**	70%
~~11-25~~	~~60%~~
26-100	30%
101-250	10%
251 or more	None

~~(j) When an employer with one (1) to twenty-five (25) employees has at least one (1) serious violation of high gravity or multiple serious violations of moderate gravity showing a lack of concern for employee safety and health, the CSHO may recommend that only a partial reduction in penalty may be permitted for size. If the division director approves the partial reduction, the justification is to be fully explained in the case file.~~

~~(k)~~ **(j)** The total size reduction normally equals the sum of the reductions for each factor. The following table gives an overview of the percent of penalty reductions that apply to serious, nonserious, and repeat violations, and may be used for determining appropriate reduced penalties for serious and nonserious violations:

Table 4-4: Penalty Table

Percent Reduction	Penalty in Dollars						
	Minimal-Greater	Low-Lessor	Medium-Lessor	High-Lessor	Low-Greater	Medium-Greater	High-Greater
0%	$1,000	$2,000	$3,000	$4,000	$5,000	$6,000	$7,000
10%	$900	$1,800	$2,700	$3,600	$4,500	$5,400	$6,300
15%	$850	$1,700	$2,550	$3,400	$4,250	$5,100	$5,950*
20%	$800	$1,600	$2,400	$3,200	$4,000	$4,800	$5,600
25%	$750	$1,500	$2,250	$3,000	$3,750	$4,500	$5,250*
30%	$700	$1,400	$2,100	$2,800	$3,500	$4,200	$4,900
35%	$650	$1,300	$1,950	$2,600	$3,250	$3,900	$4,550*
40%	$600	$1,200	$1,800	$2,400	$3,000	$3,600	$4,200
45%	$550	$1,100	$1,650	$2,200	$2,750	$3,300	$3,850*
55%	$450	$900	$1,350	$1,800	$2,250	$2,700	$3,150*
60%	$400	$800	$1,200	$1,600	$2,000	$2,400	$2,800
65%	$350	$700	$1,050	$1,400	$1,750	$2,100	$2,450*

70%	$300	$600	$900	$1,200	$1,500	$1,800	$2,100
75%	$250	$500	$750	$1,000	$1,250	$1,500	$1,750*
80%	$200	$400	$600	$800	$1,000	$1,200	$1,400
85%	$150	$300	$450	$600	$750	$900	$1,050*
95%	$50	$100	$150	$200	$250	$300	$350

~~(l)~~ **(k)** Starred figures (*) in Table 4-4 represent penalty amounts not normally proposed for high gravity serious violations because no reduction for good faith is made in those cases. These amounts may occasionally apply to nonserious violations where the division director has determined a high unreduced penalty amount to be warranted.

(Department of Labor; 610 IAC 9-4-3; filed May 19, 2025, 10:19 a.m.: 20250618-IR-610250159FRA)

SECTION 2. 610 IAC 9-4-5 IS AMENDED TO READ AS FOLLOWS:

610 IAC 9-4-5 Knowing violations

Authority: IC 22-1-1; IC 22-8-1.1-27.1

Affected: IC 22-8-1.1

Sec. 5. (a) Knowing violations are classified as serious or nonserious. There may be no reduction for good faith, and the total penalty, after reductions, may not be less than the statutory minimum.

(b) The reduction factors for size for serious knowing violations are applied as shown in the following table. This chart helps lessen the impact of large penalties for small employers with not more than fifty (50) employees. For violations that are not serious knowing, Table 4-4 in section 3 of this rule is used:

Table 4-5: Serious Knowing Penalty Reductions

Employees	Percent Reduction
~~10~~ **20** or fewer	80%
~~11-20~~	~~60%~~
21-30	50%
31-40	40%
41-50	30%
51-100	20%
101-250	10%
251 or more	0%

(c) The reduction factor for history is applied, and the proposed penalty determined, from the following table:

Table 4-6: Penalties to be Proposed for Serious Knowing Violations

Total Percent Reduction for Size and/or History	Related to Fatality	Not Related to Fatality		
		High Gravity	Moderate Gravity	Low Gravity
0%	$132,598	$70,000	$55,000	$40,000
10%	$119,338	$63,000	$49,500	$36,000
20%	$106,078	$56,000	$44,000	$32,000
30%	$92,819	$49,000	$38,500	$28,000
40%	$79,559	$42,000	$33,000	$24,000
60%	$53,039	$28,000	$22,000	$16,000
70%	$39,779	$21,000	$16,500	$12,000
80%	$26,520	$14,000	$11,000	$8,000
90%	$13,260	$7,000	$5,500	$5,000

(d) For regulatory violations determined to be knowing, the ~~GBP~~ **gravity based** penalty is multiplied by ten (10).

(Department of Labor; 610 IAC 9-4-5; filed May 19, 2025, 10:19 a.m.: 20250618-IR-610250159FRA)

Documents Incorporated by Reference: None Received by Publisher

Small Business Regulatory Coordinator: J. Anthony Hardman, Department of Labor, 402 West Washington Street, Room W195, Indianapolis, IN 46204, (317) 232-2696, DOLlegal@dol.in.gov

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