TITLE 610 DEPARTMENT OF LABOR

Regulatory Analysis

LSA Document #26-309

I. Description of Rule

a. History and Background of the Rule – The requirement for the commissioner of the Indiana Department of Labor (DOL) to establish procedures for an informal review of any safety order, assessment of penalty, or notice of failure to correct violation has been in the Indiana Code at IC 22-8-1.1-28.4 since 1973. Initially the requirement was for such procedures to be established by regulation, but it was amended in 1988 to be established by rule adopted under IC 4-22-2. Regardless, the DOL recently discovered that such procedures have never been established by regulation or published in the Indiana Administrative Code under the current rule making process as required by statute. However, the process of informal review has been conducted by Indiana Occupational Safety and Health Administration (IOSHA) personnel for many years, and a procedure has been documented in the IOSHA Field Operations Manual (IFOM). For this proposed rule, the current IOSHA leadership team, along with agency counsel, enhanced and modified the IFOM procedure to be more comprehensive and to be properly formatted for an administrative rule.

b. Scope of the Rule – This proposed rule brings the DOL in statutory compliance by establishing the IOSHA informal review process in the Indiana Administrative Code.

c. Statement of Need – This proposed rule has been required by statute for over fifty-three years, but for some reason has never been included in the DOL's rules. It will provide clarity regarding the requirements as to how and when to request an informal review, how and when a review may be conducted, who may participate, what will and will not be discussed, and the possible outcomes of the review.

d. Statutory Authority for the Proposed Rule – The general authority for the DOL to regulate matters pertaining to the IOSH Act is found in IC 22-8-1.1-48.1. Furthermore, IC 22-8-1.1-28.4 specifically requires the DOL to adopt rules pertaining to the IOSHA informal review process, which is the subject of this proposed rule.

e. Fees, Fines, and Civil Penalties – This proposed rule does not add or increase any fee, fine, or civil penalty and does not need to follow the additional steps in IC 4-22-2-19.6.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule – December 31, 2026.

b. Estimated Fiscal Impact on State and Local Government – This rule describes the informal review process that has been done for many years and will continue to be done, so it will not have any fiscal impact on state and local government.

c. Sources of Expenditures or Revenues Affected by the Rule - This rule will not have any fiscal impact on state and local government.

III. Impacted Parties

Since the informal review process must be voluntarily requested by any employer who was issued a safety order by IOSHA, and there is no way to tell if an employer will actually exercise its right to request an informal review, it is not possible to say how many employers will be affected by this proposed rule. We know that there were 505 safety orders issued by IOSHA to employers annually on average in the last two years, but of those issued we do not know how many informal reviews were held. However, we know that an average of 118 safety orders per year were resolved by informal settlement agreements in the last two years, which means there were at least an average of 118 informal reviews held. We also know that an average 49 safety orders per year were contested in the last two years, but we also estimate that for at least around one third of the contested safety orders, employers do not seek an informal review. That means that only an average of 32 contested cases per year had an informal review. Therefore, the estimated average number of informal reviews held is the sum of the average number of informal settlement agreements and the estimated average number of safety orders contested that had an informal review, which totals around 150 per year.

IV. Changes in Proposed Rule

This proposed rule is not a change to an existing rule, but instead adds a new rule with eight sections as required by statute.

610 IAC 9-5-1	Adds new section for request for informal review and timing.
610 IAC 9-5-2	Adds new section for conduct of review.
610 IAC 9-5-3	Adds new section for submitting a request and clarification.
610 IAC 9-5-4	Adds a new section for conducting the review and notification.
610 IAC 9-5-5	Adds a new section for participating in the review and settlement.
610 IAC 9-5-6	Adds a new section for posting requirement, postponement, and no agreement signed.
610 IAC 9-5-7	Adds a new section for review guidelines.
610 IAC 9-5-8	Adds a new section for review outcomes.

V. Benefit Analysis

a. Estimate of Primary and Direct Benefits of the Rule – As this rule is being proposed as a statutory requirement (IC 22-8-1.1-28.4), the primary and direct benefit is that the DOL will be in compliance with its statutory requirements. This is inherently not the type of benefit that can be quantified, but the DOL believes it is significant.

b. Estimate of Secondary or Indirect Benefits of the Rule - A secondary or indirect benefit to being in statutory compliance with this proposed rule is that the regulated community impacted by this rule will have clear written procedures for the informal review process easily accessible to them.

c. Estimate of Any Cost Savings to Regulated Industries – There is no known cost savings to any regulated industries.

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities – This proposed rule describes an informal review process that has occurred for many years and imposes no cost or expense to regulated entities. It is a voluntary procedure that an employer does not have to pursue.

b. Estimate of Administrative Expenses Imposed by the Rules – The proposed rule does not contain any administrative expenses.

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6 – This proposed rule does not add or increase a fee, fine, or civil penalty.

d. If the implementation costs of the proposed rule are expected to exceed the threshold set in IC 4-22-2-22.7(c)(6) – The combined implementation and compliance costs of the proposed rule are zero, which is less than five hundred thousand dollars ($500,000) for businesses, units, and individuals over any two (2) year period.

VII. Sources of Information

a. Independent Verifications or Studies - The number of IOSHA safety orders issued; safety orders resolved by informal settlement agreement; and safety orders contested were obtained from the OSHA Information System (OIS), which is a database that IOSHA uses to enter its inspection data.

b. Sources Relied Upon in Determining and Calculating Costs and Benefits – There were no outside sources used to calculate costs and benefits.

VIII. Regulatory Analysis

There are no costs associated with this proposed rule, nor are there any cost savings, so the benefits of statutory compliance and the clarity of a written process for regulated entities clearly outweigh the costs.

IX. Contact Information of Staff to Answer Substantive Questions

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