TITLE 610 DEPARTMENT OF LABOR

Regulatory Analysis

For IOSHA Penalty Rule

LSA Document #26-305

I. Description of Rule

a. History and Background of the Rule – The rule for calculating Indiana Occupational Safety and Health Administration (IOSHA) penalties was adopted at 610 IAC 9-4 on May 19, 2025, in response to House Enrolled Act 1623 that was passed in 2023 (P.L.249-2023). In Indiana, minimum and maximum IOSHA penalties are set by statute found in IC 22-8-1.1-27.1. IOSHA is required, however, to follow mostly the federal OSHA method of penalty calculation that is set forth in the federal OSHA Field Operations Manual (FOM), CPL 02-00-164. The FOM contains essentially the same penalty calculating procedures that are contained in our rule. Effective July 14, 2025, federal OSHA made changes to some of its penalty calculations in chapter 6 of the FOM and encouraged Indiana to adopt the same changes. This proposed rule represents the most recent changes to penalty calculations that were made by federal OSHA and come from federal OSHA directive number CPL 02-00-164.

b. Scope of the Rule – This rule allows some businesses to receive a greater penalty reduction and removes previous discretion by IOSHA staff to provide only a partial reduction under some circumstances. The FOM still allows the federal OSHA Area Director discretion to withhold some size reductions under some circumstances, but the proposed reduction changes align our rule with the latest reduction provisions in the FOM.

c. Statement of Need – Adoption of the provisions in this proposed rule was not required but was encouraged by federal OSHA, as our state plan monitor, to make our OSHA state plan at least as effective as theirs. If we do not adopt the greater penalty reductions, it will make Indiana's penalties more stringent than federal OSHA's penalties, which may put us in violation of IC 22-8-1.1-17.5 which states that we "may not adopt or enforce any provision . . . that is more stringent than the corresponding federal provision enforced by the United States Department of Labor under the Occupational Safety and Health Act of 1970." A greater penalty reduction to certain businesses also aligns with the governor's executive order (EO 25-17) to lessen the regulatory burden on Indiana businesses.

d. Statutory Authority for the Proposed Rule – IC 22-8-1.1-48.1

e. Fees, Fines, and Civil Penalties – As previously indicated, this rule does not add or increase any fees, fines, or civil penalties, but only provides greater penalty reductions, and the proposed rule still complies with 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 – By increasing penalty reductions for some IOSHA penalties, the total amount of penalties received by IOSHA and deposited into the state general fund after this rule takes effect may be reduced. Unfortunately, due to the uncertainty of the number of penalties assessed by IOSHA in the future, the future loss of revenue for the state cannot be calculated. However, the average annual revenue to the state over the last two years from IOSHA penalties has totaled approximately $1,679,990 per year and if all of the penalty reductions added by this rule reduce this average annual revenue by 5%, the impact to the state general fund would be a loss of approximately $84,000 per year.

c. Sources of Expenditures or Revenues Affected by the Rule – Any future lost revenue to the state general fund would be due to penalty reductions set forth in the proposed rule that require smaller penalties assessed on all employers in the state that receive a safety order with penalties from IOSHA for violations of health and safety regulations and qualify for a history reduction. Additionally, reductions would also come from smaller penalties assessed on all employers in the state that receive a safety order with penalties from IOSHA for violations of health and safety regulations and have between 11 and 25 employees, regardless of whether they qualify for a history reduction as described above.

III. Impacted Parties

Every employer in the state that receives a safety order with penalties from IOSHA for violations of health and safety regulations and qualifies for a history reduction will be impacted by this rule in the form of a greater penalty reduction. Likewise, every employer in the state that receives a safety order with penalties from IOSHA for violations of health and safety regulations and has between 11 and 25 employees will also be impacted by this rule in the form of a penalty reduction, in addition to or regardless of whether they qualify for a history reduction. Although we do not know exactly how many employers will be impacted by either penalty reduction, we know that there are approximately 110,000 employers in the state who are subject to IOSHA's jurisdiction, and of those, approximately 95,000 have only 1-19 employees. Of the total approximately 110,000 eligible employers, IOSHA only issued safety orders to approximately 505 employers annually on average in the last two years. Since not every employer who was issued a safety order qualifies for a history reduction, that number will be slightly less than 505 per year and the number of employers who qualify for the size reduction will be even a little less.

IV. Changes in Proposed Rule

These changes come from a change in the federal OSHA directive number CPL 02-00-164 known as the federal OSHA Field Operations Manual (FOM).

610 IAC 9-4-3(a)(3)	Changes the maximum history reduction from 10% to 20%.
610 IAC 9-4-3(c)	Changes the maximum history reduction from 10% to 20% (same change as above but different reference).
610 IAC 9-4-3, Table 4-3	For serious or non-serious violations, removes the 60% reduction for 11-25 employees and provides a 70% reduction for 1-25 employees, instead of just for 1-10 employees.

610 IAC 9-4-3(j)	Removes the ability of IOSHA staff to only apply a partial size reduction under certain circumstances.
610 IAC 9-4-5, Table 4-5	For knowing violations, removes the 60% reduction for the 11-20 employees and provides an 80% reduction for 1-20 employees, instead of just for 1-10 employees.

V. Benefit Analysis

a. Estimate of Primary and Direct Benefits of the Rule – The direct benefit of the proposed rule is the reduced penalties imposed upon affected employers by IOSHA safety orders. The amount of employer cost saved/ cannot be calculated due to too many unknown variables. The only thing that can be loosely estimated is the number of employers that may be affected by the cost savings. See Section III of this analysis.

b. Estimate of Secondary or Indirect Benefits of the Rule – Any indirect benefits of the proposed rule that may exist are unknown at this time.

c. Estimate of Any Cost Savings to Regulated Industries – Due to new penalty reduction provisions added to the existing rule, the proposed rule will provide a cost savings to certain employers who are assessed penalties by IOSHA for violations of health and safety regulations. The amount of savings to each affected employer will vary and cannot be estimated. The only thing that can be loosely estimated is the number of employers that may be affected by the cost savings. See Section III of this analysis.

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities – The proposed rule imposes no compliance costs for regulated entities.

b. Estimate of Administrative Expenses Imposed by the Rules – The proposed rule imposes no administrative expenses.

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6 – The proposed rule imposes no 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 do not reach 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 annual revenue received from IOSHA penalties for the last two years was obtained from the DOL daily receivables ledger. The number of IOSHA safety orders issued was 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 – Information regarding the number of Indiana employers was taken from the 2025 Small Business Profile for Indiana published by the U.S. Small Business Administration Office of Advocacy.

VIII. Regulatory Analysis

As previously mentioned, there are no costs to regulated entities for this proposed rule and although the benefits cannot be calculated, they clearly exceed the costs. The only things that can be said about the benefits are that 1) any Indiana company that receives an IOSHA citation with a penalty, qualifies for a history reduction, and has 26 or more employees will receive a greater penalty reduction; 2) any Indiana company that receives an IOSHA citation with a penalty and only has between 11 and 20 employees will also receive a greater penalty reduction; and 3) any Indiana company that receives an IOSHA citation with a penalty that is not a knowing violation, and only has between 21 and 25 employees, will also receive a greater penalty reduction.

IX. Contact Information of Staff to Answer Substantive Questions

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