

# **FY 2013 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report**

## **State of Indiana Indiana Department of Labor**



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## I. Executive Summary

### A. Summary of the Report

The purpose of this comprehensive Federal Annual Monitoring Evaluation (FAME) report is to assess the State Plan's progress towards achieving performance goals established in their Fiscal Year (FY) 2013 Annual Performance Plan; to review the effectiveness of programmatic areas related to enforcement activities including a summary of an on-site evaluation; and to describe corrections made by the State Plan in response to the FY 2012 FAME report findings and recommendations. This report fully assesses the current performance of Indiana Department of Labor–Indiana Occupational Safety and Health Administration (IOSHA) 23(g) compliance program and compares the State Plan's effectiveness to OSHA.

Staffing remains a concern and affected the productivity of the Program. Benchmark compliance levels are 47 safety and 23 health compliance officers. Actual compliance staffing was 20 safety and 17 health compliance officers. Changes in several key positions took place. These included the following.

- October 2012, Tim Maley, replaced Jeff Carter as the Deputy Commissioner for IOSHA.
- On January 11, 2013, Sean Keefer replaced Lori Torres as the Commissioner for the Indiana Department of Labor.
- On September 18, 2013, Rick Ruble replaced Mr. Keefer as the Commissioner.
- The Director for General Industry position was also filled.

IOSHA has six main strategic goals. In order to meet these six goals, 12 performance goals were established. The State Plan achieved 11 of the 12 annual performance goals. The six strategic goals were: improving safety for health care workers, improving manufacturing and construction illness and injury rates, providing increased contact with stakeholders, improving cooperative programs and increasing professional growth of staff.

A total of five Complaints About State Plan Administration (CASPA) was investigated. One of the five CASPAs filed in April 2013 was classified as “sensitive”, containing three allegations covering both the enforcement and whistleblower programs:

- **Allegation 1:** Several concerns were raised about the complaint processes including how safety, health and whistleblower complaints are handled from receipt of complaint to final disposition.
- **Allegation 2.** Concerns were noted about the settlement process. This included informal and formal settlement for enforcement cases and also whistleblower investigations.
- **Allegation 3.** Concerns were noted about accountability of staff in meeting goals and quality of inspections/investigations. This would include performance measures, staff abilities and accountability for performance measures.

A three person team spent two weeks onsite conducting the investigation. Inspection, complaint and whistleblower case files were reviewed. Managers and workers were interviewed. The investigation found that all three allegations were valid. A total of 22 recommendations were issued.

Several State Activity Mandated Measure (SAMM) values were outside the established goals.

- SAMM 1, the average number of days to initiate a complaint inspection, goal was 10 days. The State Plan took an average of 37.71 days to initiate an inspection, which is 277% above the established goal.
- SAMM 2, average number of days to initiate a complaint investigation, goal was 5 days. The State Plan took an average of 36.19 days to initiate an investigation, which is 624% above the negotiated goal.
- SAMM 17, Planned vs. actual inspections - safety/health, goal was 1747safety and 292 health. IOSHA conducted 1285 safety and 228 health inspections.
- SAMM 20, percent in compliance safety and health, goal was 29.1 safety and 34.1 health. The safety incompliance rate was 61.17 and health was 54.13.
- SAMM 21, percent of fatalities responded to in one work day, goal was 100%. IOSHA responded within one work day to only 61% of fatality investigations.

During the case file review, it was determined that two of the 29 complaint inspection case files reviewed were not initiated for more than six months, which exceeds the statute of limitations of six months in cases where the violation was not a continuing event. It also could place workers at further risk to being exposed to a hazard due to the State Plan's slow response.

In the Whistleblower Protection Program, only six of the 30 reviewed case files were found to be completed correctly. The following problems were identified.

- The conclusions were incorrectly determined.
- Work refusal criteria were applied incorrectly.
- Prima facie elements were incorrectly addressed.
- Documentation such as complainant statements and Reports of Investigation was missing.
- Rebuttals from the complainants in response to the respondent's defense were not provided.
- In five case files where the determination was a settlement, the settlements did not comply with the Whistleblower Investigations Manual (WIM).
- Merit whistleblower complaints are required to be filed in state court within 120 days of the complaints filing by the complainant when a settlement cannot be reached with the respondent (See IC 22-8-1.1-38.1(b)). After this date, IOSHA is barred from going forward with a merit complaint. Investigators are required to have their Report of Investigation to the Deputy Commissioner by day 60 of the investigation and to the Attorney General by day 90.

IOSHA whistleblower staff was given additional training by Region V in August of 2013 to address these deficiencies identified during the sensitive CASPA investigation conducted earlier in the year. Five of the 30 files reviewed were completed after the training that was provided by Region V. None of these five files were completed correctly following the WIM.

According to the latest data from the Bureau of Labor Statistics' Census of Fatal Occupational Injuries Report in calendar year 2012, there were 113 fatalities in Indiana, a record low since 1992. Fifty-six of these fatalities were workplace related transportation accidents. To aid in addressing these fatalities, IOSHA has a partnership with the Indiana Department of Transportation (INDOT), and they have performed shared safety training with INDOT. They also have an initiative on distracted driving.

The Voluntary Protection Program (VPP) continues to be robust with 63 worksites approved. IOSHA personnel consist of a VPP Manager and Team Leader, who guide, train and coordinate 63 Special Government Employees (SGE). The SGEs received five training sessions and three best practice meetings during FY 2013 to ensure they are conducting the VPP evaluations in accordance with Occupational Safety and Health (OSHA) policies and procedures.

In order to aid inspection and complaint input, IOSHA implemented new software called OSHA Express in February 2014. The software will allow better electronic use and sharing of information, and it will improve data input. IOSHA states that during the pilot program they saw improvement in the days to initiate a complaint inspection or investigation. This pilot program also involved a change in the procedures of how they performed intake and processing of the complaints. A Complaint Supervisor now handles many of these duties.

## **B. State Plan Introduction**

The Indiana Department of Labor administers the Indiana Occupational Safety and Health (IOSHA) Program. The IOSHA Plan was approved on February 25, 1974 and certified on October 16, 1981. On September 26, 1986, IOSHA received final approval. The State Plan Designee is Rick Ruble, Commissioner of the Indiana Department of Labor. The Manager of the state's OSHA program is Tim Maley, Deputy Commissioner for IOSHA. IOSHA includes the Occupational Safety and Health (OSH) Compliance Division, which is responsible for Compliance Program administration through conducting enforcement inspections (General Industry and Construction), adoption of standards, and operation of other OSHA related activities

For FY 2013, the State Plan's 23(g) enforcement grant included state and federal funds totaling \$4,376,000, which were 50% federal funds. Consultation for the public sector, local, and state government entities utilizes funds under the 23(g) enforcement grant. Under the grant, the State Plan is expected to be staffed with 82.75 full time equivalent (FTE) workers; however, the State Plan only has 53.75 FTE workers.

In February of 2014, IOSHA implemented an appeal board for the Whistleblower Protection Program, which reviews appeals for the whistleblower decisions filed with the Whistleblower Protection Program. Previously, these cases were reviewed by an attorney, who would decide the status of the appealed cases.

Indiana operates a "mirror" Enforcement Program, as state law does not allow for the Agency to be more stringent than OSHA, and OSHA requires the State Plan to be at least as

effective as the federal program. According to IC 22-8-1.1-17.5, “The Commissioner may not adopt or enforce any provision used to carry out the enforcement of this chapter 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.”

Generally, the State Plan adopts all standards and program changes identically, with the exception of those standards and changes that are not within their jurisdiction. The State Plan does not operate jurisdiction over Maritime, United States Postal Service, or the Federal Government. Under their Whistleblower Program, they administer only Section 11(c) of the Occupational Safety and Health Act.

According to the Indiana Department of Labor (IDOL) website, “The mission of the Indiana Department of Labor is to advance the safety, health, and prosperity of Hoosiers in the workplace.”

Safety and health cases that are not resolved through the informal conference process are heard by the Indiana Board of Safety Review (BSR). The creating legislation is found at IC22-8-1.1-30.1 and the enabling legislation for the BSR is found at IC 615 IAC. The Board is an independent Administrative Review Board housed within IDOL and is governed by the Indiana Administrative Orders and Procedures Act (AOPA), which is found at IC 4-21.5-3.

This report was prepared under the direction of Nick Walters, Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA).

### **C. Data and Methodology**

A review of the IOSHA workplace safety and health program was conducted from February 3, 2013 to February 24, 2014 by a four person team with five days spent on-site. A report was made of all complaints, inspections and fatality cases which were closed between October 1, 2012 and September 30, 2013. From this report, 88 inspections and 12 complaint investigations were randomly selected. This random selection was composed of 14 fatality inspections, 28 complaint inspections, 31 programmed planned inspections, eight program related inspections, seven referral inspections, and 12 non-formal complaint investigations were reviewed. For the whistleblower program, 30 closed docketed cases and all eight of the administratively closed cases were reviewed.

Indiana data is entered into the Integrated Management Information System (IMIS), which is OSHA's database system. Compliance with legislative requirements regarding contact with families of fatality victims, training, and personnel retention was assessed.

The review also included interviews with several of Indiana's management and compliance staff.

### **D. Findings and Recommendations**

A detailed explanation of the findings and recommendations of the IOSHA performance evaluation is found in Section III, Assessment of State Plan Performance. A summary of all

the findings and recommendations noted, as the result of OSHA's review, is found in Appendix A, New and Continued Findings and Recommendations. In Appendix C, Status of FY 2012 Finding and Recommendations, a list of the FY 2012 findings and recommendations and their status can be found. Of the eight recommendations from FY 2012, two of the recommendations are completed and closed.

1. Finding 13-01: IOSHA conducted a total of 1,513 inspections (1285 safety and 228 health). The negotiated SAMM 17 value is 2,039 inspections (1747 safety and 292 health).

Recommendation 13-01: The agency should review its 2013-2017 Strategic Plan and revise goals as appropriate to ensure they are achievable and consistent with the mission of the agency.

2. Finding 13-02: For 17% of the cases reviewed, it took 55 days or more for cases to be issued after the CSHO turned them into their Supervisor with one file awaiting issuance for 135 days.

Recommendation 13-02: IOSHA should review the policies and processes in place in order to identify bottlenecks and inefficiencies.

3. Finding 13-03 (12-07): Sampling results were not being provided to the employer as required in the IOSHA FOM.

Recommendation 13-03 (12-07): A written letter containing all sampling results should be sent to the employer.

4. Finding 13-04 (12-01): IOSHA exceeded the agreed upon time of 10 days to initiate a complaint inspection. The average time to initiate a complaint inspection was 37.71 days. Two cases were identified where the complaint was not opened within six months of receipt.

Recommendation 13-04 (12-01): It is recommended that IOSHA utilize the use of administrative controls to ensure that complaint inspections are initiated in a timely manner in order to meet the negotiated SAMM 1 value of 10 days.

5. Finding 13-05: IOSHA exceeded the agreed upon time of five days to initiate a complaint investigation. The average time to initiate a complaint investigation was 36.19 days.

Recommendation 13-05: It is recommended that IOSHA utilize administrative controls to ensure that complaint investigations are initiated in a timely manner in order to meet the negotiated SAMM 2 value of 5 days.

6. Finding 13-06: As required in Chapter 8 of the IOSHA FOM, IOSHA failed to provide copies of the results of non-formal complaints to 60% of the complainants in which an address or some other form of contact information was provided.

Recommendation 13-06: IOSHA shall provide copies of non-formal complaint results to complainants that have provided an address or some other form of contact information.

7. Finding 13-07: Non-construction related vehicle accidents, murders, suicides, non-work related injuries and illnesses, and other areas where IOSHA does not have jurisdiction were inspected.

Recommendation 13-07: Fatalities and catastrophes not under the jurisdiction of IOSHA should be coded as a no inspection and no jurisdiction. Appropriate referrals should be made as necessary.

8. Finding 13-08: Only 8% of files had the required next of kin letters sent.

Recommendation 13-08: Both next of kin letters should be sent as required by CPL 02-00-153 Communicating OSHA Fatality Procedures to a Victim's Family.

9. Finding 13-09: Forty-five of 62 (73%) of fatality inspections were responded to in one day.

Recommendation 13-09: As required in the IOSHA FOM, it is recommended that IOSHA utilize administrative controls to ensure that fatality investigations are responded to in one day in order to meet the negotiated SAMM 21 value of 1 day.

10. Finding 13-10: Complaints alleging hazards associated with targeted programs were being converted into programmed planned inspections. No complaint information was being entered or maintained beyond the hazard allegations.

Recommendation 13-10: If a complaint alleging hazards associated with a targeted program is received, it should remain a complaint, and the complainant should be offered the opportunity to provide contact information and receive the results about their complaint.

11. Finding 13-11: All apparent violations were not cited in 11 of the 88 case files (12%) that were reviewed.

Recommendation 13-11: Address all hazards in plain view during the course of an inspection within the scope of that inspection. Ensure that Compliance Officers are not penalized for taking additional time to conduct complex inspections and appropriately identify and document all observed hazards during inspections, including industrial hygiene sampling.

12. Finding 13-12: Inadequate documentation was present in the worksheets and file to support that all required elements for a citation existed.



Recommendation 13-12: Per the IOSHA FOM, inspection files should contain adequate worker exposure, employer knowledge, and evidence that the violation exists.

13. Finding 13-13: None of the violations were correctly classified in 11% of the reviewed case files.

Recommendation 13-13: CSHOs should check for repeat violations, and correctly assess severity and probability as per the definition in the IOSHA FOM.

14. Finding 13-14 (12-03): The safety inspection in-compliance rate was 61.17% and the health inspection in-compliance rate was 54.13%

Recommendation 13-14 (12-03): It is recommended that IOSHA utilize the use of administrative controls in order to meet the SAMM 20a value of 29.1% for safety inspections and the SAMM 20b value of 34.1% for health inspections.

15. Finding 13-15: IOSHA failed to follow the PMA procedure. All of the required items were not in the files.

Recommendation 13-15: IOSHA should perform the PMA procedure per the IOSHA FOM.

16. Finding 13-16 (12-06): Interviews are not being documented, or the interviews are insubstantial in their content.

Recommendation 13-16 (12-06): Per the IOSHA FOM, interviews should be documented and contain content that addresses the safety and health concerns at the establishment being inspected.

17. Finding 13-17: IOSHA had not developed written procedures for implementing an Expedited Informal Settlement Agreement (EISA).

Recommendation 13-17: Ensure that a written EISA policy is developed and that the purpose, scope, application and staff training are identified in order to ensure consistent implementation throughout the staff.

18. Finding 13-18: IOSHA failed to provide all updates for federally initiated standard and program plan changes.

Recommendations 13-18: IOSHA shall provide all updates for federally initiated standards in a timely manner.

19. Finding 13-19: IOSHA was still utilizing the FIRM; even though, they adopted the FOM, CPL 02-00-148, on January 4, 2010.

Recommendation 13-19 Ensure that the FIRM is updated to be “at least as effective”

as OSHA's FOM and submit the accompanying plan supplemented as required by the FOM directive.

20. Finding 13-20: Investigators failed to follow the Whistleblower Investigator Manual (WIM) policies and procedures. The required documentation, intake and screening of cases, and file organization were not being completed per the WIM.

Recommendation 13-20: Every case file needs to be reviewed by a Supervisor to show compliance with the WIM, policies and procedures. Ensure that all investigative staff is following the same Whistleblower Program policies and procedures.

21. Finding 13-21: Not all of the whistleblower staff members have received the required whistleblower training courses at the OTI.

Recommendation 13-21: All of the whistleblower staff shall complete the required training courses and complete any additional training when it is made available.

22. Finding 13-22: Whistleblower Investigators are not completing thorough investigations. Interviews are not conducted, complainants are not provided opportunities for rebuttal, and testing the employer's defense is not conducted.

Recommendation 13-22: Whistleblower Investigators should follow policies and procedures as outlined in the WIM for performing the investigations.

23. Finding 13-23: Whistleblower Investigators are not always recognizing or applying the prima facie elements correctly in analyzing the cases, causing cases to be investigated which should not be. Cases are being closed without merit prior to a thorough investigation being completed.

Recommendation 13-23: Provide additional training to staff to ensure that the Whistleblower Investigators understand the application of the prima facie elements and the proper way to correctly analyze evidence for the determination.

24. Finding 13-24 (12-08): Merit whistleblower cases, for which a settlement was not reached, must be filed in state court within 120 days. However, Investigators are restricted to 60 days to complete these cases.

Recommendation 13-24 (12-08): Eliminate the 60 day investigative restriction and seek revision of the 120 day statutory deadline for filing in court in order to allow Whistleblower Investigators the needed time to complete a thorough investigation.

25. Finding 13-25: Settlement agreements are not completed in accordance with the Whistleblower Investigation Manual. Checks are made payable to and accepted by IOSHA and not returned to the employer for reissuance to the complainant.

Recommendation 13-25: In accordance with the WIM Chapter 6, Section IV (C), the settlement should require that a certified or cashier's check, or where installment

payments are agreed to, the checks, to be made out to the complainant, but sent to IOSHA. IOSHA shall promptly note receipt of the checks, copy the check(s), and mail the checks to the complainant.

26. Finding 13-26: Settlement agreements are not completed in accordance with the Whistleblower Investigation Manual. Reasonable efforts are not made to obtain monetary restitution and employment reinstatement in order to make-whole the complainant. The State Plan is telling complainants that failure to accept the agreement will result in the closing of their case even though there is no make whole remedy.

Recommendation 13-26: In accordance with the WIM Chapter 6, Section IV (C), if a settlement does not contain a make-whole remedy, the justification must be documented and the complainant's concurrence must be noted in the case file. IOSHA shall ensure that all settlement negotiations seek and make reasonable efforts to obtain make-whole remedies, including reinstatement for complainant's when termination is the alleged adverse employment action.

27. Finding 13-27: Settlement agreements are not completed in accordance with the Whistleblower Investigation Manual. The State Plan is entering into unilateral (bilateral) settlement agreements on behalf of the Complainant without a make-whole remedy.

Recommendation 13-27: Cease acceptance and approval of unilateral settlement agreements that do not make complainants whole.

28. Finding 13-28: complainants are not provided information regarding their right to appeal.

Recommendation 13-28: Ensure that complainants are provided information regarding their right to appeal as a routine part of the IOSHA Whistleblower Program.

29. Finding 13-29: IOSHA had not developed a procedure to approve Local Emphasis Programs which includes, but, is not necessarily limited to, a rationale, selection process, industries covered, and an evaluation for effectiveness of the program.

Recommendation 13-29: Develop a procedure to approve Local Emphasis Programs. As a guide follow OSHA directive CPL 04-00-001, Development of Local Emphasis Programs and/or develop a procedure for approval similar to this directive.

30. Finding 13-30: While IOSHA uses OSHA's VPP Policy and Procedure Manual (VPPPPM) as their reference document; the written report did not follow the required format nor were acceptance letters sent to the employer when an application is submitted

Recommendation 13-30: Ensure that the VPP Team follows all aspects of the VPPPPM.

31. Finding 13-31: While IOSHA stated they followed OSHA's Alliance Program directive (CSP 04-01-001), the Alliance signed agreements did not follow the required format.

Recommendation 13-31: IOSHA should draft and implement an Alliance Guidance document that is at least as effective as OSHA's.

32. Finding 13-32: While IOSHA stated they followed OSHA's Partnership Program directive (CSP 03-02-003), the Partnership signed agreements did not follow the required format.

Recommendation 13-32: IOSHA should draft and implement a Partnership Guidance document that is at least as effective as OSHA's.

33. Finding 13-33: While IOSHA currently allocates compliance staff levels that meet the required benchmark of 70 positions; only 37 enforcement positions are filled.

Recommendation 13-33: IOSHA should continue to try and fill all allocated benchmark positions while pursuing a modification of benchmark level with OSHA.

34. Finding 13-34: Injuries and illnesses were not reduced by 3% in the manufacturing industry. (Strategic Goal 2.1)

Recommendation 31-34: Evaluate the strategic plan in order to identify areas that will allow for a decrease in the rate injuries. Build it into a specific targeting program such as but not limited to amputations and powered industrial vehicles (PIV).

Not all of the findings and recommendations have been closed from FY 2012. Some of these findings were noted as being completed by the State Plan; however, during the FY 2013 review, it was noted that the conditions still existed. Others were not scheduled for completion at the time of the review.

## **I. Major New Issues**

It was found that IOSHA is not meeting its goals for timely initiation of complaint investigations. The negotiated goal for a complaint investigation is five days; however, the State Plan is taking an average of 36.19 days to perform an investigation, which is 624% above the five day goal. IOSHA contends that the new software, OSHA Express, will alleviate this problem.

In the Whistleblower Protection Program, only six of the 30 reviewed case files were found to be completed correctly. Problems were identified in the drawing of incorrect conclusions, incorrect application of the work refusal criteria, failure to correctly address prima facie elements, missing documentation such as complainant statements and Reports of

Investigation, and failure to provide rebuttals from the complainants in response to the respondent's defense. In five case files, where the determination was a settlement, the settlements did not comply with the Whistleblower Investigations Manual (WIM). Checks made payable to the state instead of the complainant were accepted, an Investigator entered into a unilateral settlement where the complainant wasn't in agreement or made whole, and an Investigator told a complainant if they did not accept a settlement that they would close the case.

The State Plan is still utilizing the Field Inspection Reference Manual (FIRM); even though they adopted the Field Operations Manual (FOM), CPL 02-00-148, on January 4, 2010. The State Plan should implement the usage of the FOM, CPL 02-00-148, with all staff members. The State Plan contends they are still in the process of making needed updates to reflect their program.

## **II. Assessment of State Plan Performance**

### **A. Enforcement**

During FY 2013, IOSHA conducted 1,513 inspections, 1,285 safety and 228 health. Of those 977 were programmed, 449 were complaints and referrals, 62 fatality, and 3 were follow-ups. The total number of inspections was an increase of almost 25% from FY 2012. However, the Program did not meet the negotiated fixed number of 2,039 inspections (1747 safety and 292 health). This data was obtained from the Inspection Micro-to-Host report dated November 4, 2013.

A review of the case files did determine that overall there were no longer loose forms in the files. While the files appeared organized, there was inconsistency in the manner in which the files were organized. It made it difficult to find many of the forms. Eighty-four of 88 (97%) files reviewed were using the diary sheet.

Fifteen of 88 (17%) case files reviewed required 55 or more days to issue after the CSHO turned their case file in to their Supervisor for review. Several files waited more than 100 days, and the longest was found to be 135 days. This is an excessive amount of time. There is a six month statute of limitation; however, there was no evidence present that this time was exceeded. SAMM 23a (safety lapse time) is 64.02 days while the reference values is 43.4 days. SAMM 23b (health lapse time) is 72.45 while the reference value is 57.05 days.

Sampling is performed by direct reading instruments, screening instruments, noise monitoring, equipment, and air monitoring instrumentation. Sampling data was reviewed for all health case files. Six reviewed case files contained sampling data. Two complaints were filed in which sampling was needed. One complaint addressed inadequate ventilation. The other complaint alleged exposure to MEK. However, due to a 66-day delay in opening the complaint, sampling for exposure to MEK was unable to be performed.

In one of the files, the sampling sheet did not contain information about the calibration of the equipment, and not enough data was present to know if the correct sampling procedures were being used. None of six files had the required letter sent with sampling results to the

employer. OSHA forms were being utilized with the exception of screening samples and direct reading samples for which one of each type of sample was noted having been performed. Previously, IOSHA was only sending the results to the employer only if there was an overexposure; however, starting in FY 2013, all sampling results were to be sent to the employers in a letter regardless of there being an overexposure.

**Finding 13-01:** IOSHA conducted a total of 1,513 inspections (1285 safety and 228 health). The negotiated SAMM 17 value is 2,039 inspections (1747 safety and 292 health).

**Recommendation 13-01:** The agency should review its 2013-2017 Strategic Plan and revise goals as appropriate to ensure they are achievable and consistent with the mission of the agency.

**Finding 13-02:** For 17% of the cases reviewed, it took 55 days or more for cases to be issued after the CSHO turned them into their Supervisor with one file awaiting issuance for 135 days.

**Recommendation 13-02:** Completed case files should be reviewed and issued promptly.

**Finding 13-03 (12-07):** Sampling results were not being provided to the employer.

**Recommendation 13-03 (12-07):** A written letter containing all sampling results should be sent to the employer.

**Observation FY 13-OB1:** The files, while organized, were using several different types of organization, creating difficulty in finding documents. One method to organize case files should be used.

## 1. Complaints

During the period October 1, 2012 through September 30, 2013, 376 complaints were inspected by Indiana. Twenty-eight complaints, which resulted in an on-site inspection, were randomly selected to be reviewed as part of this evaluation. In addition, 12 complaints resulting in a phone and fax type investigation were randomly selected for review.

IOSHA handles the intake of complaints through a Duty Officer. Previously, this was a role handled by a permanently assigned CSHO, who was responsible for the entire complaint investigation process. A CSHO no longer performs the job. The current Duty Officer does not have a safety and health background. The Duty Officer has taken 4 or 5 webinars about safety and health topics such as respirators. The contact of the employer, reviewing employer responses to the complaint items, and converting the complaints into inspections is no longer handled by the Duty Officer. These functions are now being performed by the Supervisor for Industrial Compliance and Whistleblower Protection. At times, the Supervisor employs the assistance of various CSHOs to help with the complaint investigations.

The Complaint Duty Officer works at a specific assigned desk with a dedicated phone and fax to receive complaints. Complaints can be made through the IOSHA internet complaint form, the OSHA internet complaint form, mail, email, phone, or fax.

There were 787 total complaints filed. There were 298 complaint investigations and 489 complaint inspections. In FY 2012, there were 809 total complaints, and in FY 2011, there were 520 total complaints. The average time to initiate a complaint investigation for all complaints in FY 2013 was 36.19 days. In FY 2011, it took 8.38 days and in FY 2012, it took 19.73 days. From FY 2011 to FY 2013, there was a 332% increase in the time it took to perform the complaint investigations. The State Plan has negotiated a five day goal in which to open the investigation of the complaints.

Twelve non-formal complaints were reviewed. Three of the 12 complaint files reviewed were initiated in a timely manner. Five of the 12 complaint files included the mailing address or other contact information for the complainant. Complainants for three of five complainants, in which addresses were provided, did not receive letters explaining the results of the investigation. Eleven of 12 complaints contained adequate abatement.

The average time to initiate an inspection for all complaint inspections in FY 2013 was 37.71 days. In FY 2012, it took 32.14 days to initiate the complaint inspection, and in FY 2011, it took 12.36 days. This was an increase of 205% from FY 2011 to FY 2013.

From the case file review, it was noted that 22 of the 28 (79%) complaints inspections reviewed were over the 10 day goal agreed upon to initiate a complaint inspection. Additionally, two cases were found to be over the six month statute of limitations. For the 28 cases reviewed, the average number of days to initiate an inspection was 61.79 days. Twelve of the 28 cases exceeded 60 days to initiate the complaint.

In all of the complaint inspection files, complaint items were adequately addressed. The narratives clearly explained what was found during the inspections. Evidence in the file supported these findings.

Three of the 28 complaint inspections were in-compliance. Violations were issued for 90% of the complaints.

The average number of days from the closing conference until the letters were sent to the complainants was 12.59 days.

Seven files were classified as referrals. Referrals can be made by other government agencies at the local, state, and federal levels, health agencies, media reports, accident reports, or referral through the OSHA 11(c) discrimination process. These files can also be handled through the complaint process.

**Finding 13-04 (12-01):** IOSHA exceeded the agreed upon time of 10 days to initiate a complaint inspection. The average time to initiate a complaint inspection was 37.71 days. Two cases were identified where the complaint was not opened within six months of receipt.

**Recommendation 13-04 (12-01):** It is recommended that IOSHA utilize the use of administrative controls to ensure that complaint inspections are initiated in a timely manner in order to meet the negotiated SAMM 1 value of 10 days.

**Finding 13-05:** IOSHA exceeded the agreed upon time of five days to initiate a complaint investigation. The average time to initiate a complaint investigation was 36.19 days.

**Recommendation 13-05:** It is recommended that IOSHA utilize administrative controls to ensure that complaint inspections are initiated in a timely manner in order to meet the negotiated SAMM 1 value of 5 days.

**Finding 13-06:** IOSHA failed to provide copies of the results of non-formal complaints to 60% of the complainants in which an address or some other form of contact information was provided.

**Recommendation 13-06:** IOSHA shall provide copies of non-formal complaint results to complainants that have provided an address or some other form of contact information.

## 2. Fatalities

During the period from October 1, 2012 through September 30, 2013, there were 62 fatalities/catastrophes which were investigated by IOSHA. Fourteen fatality/catastrophe files were reviewed as part of this evaluation.

Indiana only had 113 work-related fatalities during calendar year 2012, which is the lowest since 1992, according to Bureau of Labor Statistics. IOSHA has found that the highest portion of fatalities is transportation related. To address this, IOSHA has a partnership with the DOT for training and has an initiative on distracted driving.

The process for conducting fatality investigations begins with the Duty Officer, who takes the reported information via phone call and completes the initial OSHA-36 form (Fatality/Catastrophe Report). The Duty Officer prints out and saves the OSHA-36 as final. The Duty Officer creates a physical file and records the associated form numbers on the diary sheet and gives the file to a Supervisor for assignment. The Duty Officer also sends an electronic copy of the OSHA-36 via e-mail to a distribution list that includes the Commissioner, the Deputy Commissioner, and the Directors.

During non-working hours, there is a designated call list to alert staff of any fatalities that occur. The staff member who takes this call will contact a CSHO to go to the location of the fatality and open an inspection. The remaining procedures are the same as those during normal working hours.

The Deputy Commissioner contacts representatives of Region V when it is determined that the fatality warrants alerting the Region.



Many of the Compliance Officers primarily work outside the main office. Therefore, the supervisor assigns the case to a CSHO and forwards the electronic OSHA-36 to them via e-mail. The Supervisor also mails the physical case file with the diary sheet and printed OSHA-36 to the CSHO's home.

The CSHO is responsible for completing the investigation and appropriate inspection forms, which includes the OSHA-170 (Accident Investigation Summary) and updates to the OSHA-36. Forms are completed via laptop computer using the CSHO Applications program, saving the data and inspection forms to a 3 ½ inch floppy disk, assembling the case file with any forms, photos, documentation, etc., and mailing the disk and completed case file back to the supervisor. The CSHO collects the next of kin information and e-mails this to the Assistants for the Deputy Commissioner and Commissioner. The Assistants to the Deputy Commissioner and Commissioner are responsible for preparing and sending out the initial fatality investigation notification letter to the next of kin (signed by the Deputy Commissioner), as well as next of kin contact information to the AFL-CIO. This information is used by the AFL-CIO for the Worker Memorial in April each year.

After receiving the case file and floppy disk from the CSHO, the Supervisor is then responsible for: (1) transferring the appropriate case file forms to the NCR via the floppy disk and saving these as final; (2) reviewing the case file and any proposed citations; and (3) giving the case file to the appropriate Director with any proposed Safety Orders (citations) for final review and signature. The State Plan has a Fatality Review where the Deputy Commissioner, Director, and Supervisor meet to discuss the fatality investigation findings and any proposed citations prior to their issuance. This meeting allows the management team to discuss any findings and issues related to the case before citations are issued or the case is closed without issuing any citations. Another letter is then sent to the next of kin with the findings of the investigation.

The appropriate Supervisor is responsible for the final review of abatement and closing of case files. The appropriate Director handles any informal conferences and signs any informal settlement agreements for the State Plan.

Based on the fatality micro-to-host report, from October 1, 2012 through September 30, 2013, there were 62 total fatalities/catastrophes. Forty-five of the 62 (73%) fatality inspections were opened in one day. Thirteen of 14 (93%) fatality/catastrophe inspections contained an OSHA 36. Twelve of 14 (86%) fatality/catastrophe inspections contained an OSHA 170.

One of 14 cases did not have all apparent violations cited, but the violations which were cited appeared appropriate.

Six of the fourteen (43%) files were found to be in-compliance, with no citations issued. For three fatality files, it was determined that the Program did not have jurisdiction. Inspections were conducted and violations were issued in all three instances.

In one of 14 (8%) files, the required initial and final next of kin letters were sent. All of the files did include IMMLANG (code designed to allow the Agency to track fatalities among Hispanic and immigrant workers) documentation.

A review of Bureau of Labor Statistics data shows that approximately half of all workplace fatalities are attributable to transportation accidents. IOSHA contends that this is the reason they performed several fatality inspections that were not under their jurisdiction. See the table below for data.

Year	Total Fatalities	Transportation Fatalities
2012	113	56
2011	122	61
2010	115	54

**Finding 13-07:** Non-construction related vehicle accidents, murders, suicides, non-work related injuries and illnesses, and other areas where IOSHA does not have jurisdiction were inspected.

**Recommendation 13-07:** Fatalities and catastrophes not under the jurisdiction of IOSHA should be coded as a no inspection and no jurisdiction. Appropriate referrals should be made as necessary.

**Finding 13-08:** Only 8% of files had sent the required next of kin letters.

**Recommendation 13-08:** Both next of kin letters should be sent as required by CPL 02-00-153 Communicating OSHA Fatality Procedures to a Victim's Family.

**Finding 13-09:** Forty-five of 62 (73%) of fatality inspections were responded to in one day.

**Recommendation 13-09:** It is recommended that IOSHA utilize administrative controls to ensure that fatality investigations are responded to in one day in order to meet the negotiated SAMM 21 value of 1 day.

### 3. Targeting and Programmed Inspections

A special study of the development and evaluation of the effectiveness of the State Plan's targeting programs has been conducted, and the results are found below in Section G, Special Study – State Plan Targeting Programs.

There were 39 programmed planned and related inspections selected for review. These were safety and health inspections in construction and general industry.

It was noted during the review that several cases appeared to be complaints or referrals, containing an OSHA-7 type allegation of hazards sheet which was renamed to Emphasis hazard sheet. The allegations were very specific; instead of designating them as complaints or referrals, they were all incorrectly marked as programmed planned. A

discussion with the State Plan yielded that their policy was to change the complaints for hazards that are related to a OSHA NEP or OSHA LEP to programmed planned inspections because they do not have to get a signed complaint this way. Instead of designating those as programmed planned inspections, they should remain complaint and been upgraded for inspection based on the NEP or LEP hazard. Since no complaint documentation was in the file, it is unknown if there were complainants who should have been notified with the results of the inspections.

**Finding 13-10:** Complainants alleging hazards associated with targeted programs were being converted into programmed planned inspections. No complaint information was being entered or maintained beyond the hazard allegations.

**Recommendation 13-10:** If a complaint alleging hazards associated with a targeted program is received, it should remain a complaint, and the complainant should be offered the opportunity to provide contact information and receive the results about their complaint.

#### 4. Citations and Penalties

There were 3.29 violations issued per inspection; of which 2.83 were serious, willful or repeat. There were 1,546 total violations issued. One-thousand-two-hundred-fifty-four (81.1%) were serious, 14 (0.9%) were willful, and ten (0.6%) were repeat violations. There were twelve significant cases listed in the SOAR.

Sixty four percent (64%) of the inspections were in-compliance. However, 497 (92%) of the non-incompliance inspections resulted in serious violations being issued. The average initial penalty for those serious violations was \$1,430.

Citations and penalties are assessed by IOSHA whenever a violation is found. As previously indicated, IOSHA operates a “mirror” program with regard to standards such as the 29 CFR 1904, Laws and Regulations for Recordkeeping, 29 CFR 1910, Laws and Regulations for General Industry, and 29 CFR 1926, Laws and Regulations for Construction. Violations are issued to employers who fail to comply with these laws and regulations. IOSHA also utilizes the General Duty Clause, which states it is a violation for an employer to expose workers to a recognized serious safety or health hazard. If an applicable OSHA Occupational Safety and Health law or regulation does not exist, then IOSHA can then apply the General Duty Clause to address the violation.

IOSHA utilizes knowing, repeat, serious, and non-serious violation types. These are equivalent to OSHA’s willful, repeat, serious, and other-than-serious violation types.

IOSHA determines penalties in the same manner as OSHA. IOSHA utilizes a gravity-based penalty system evaluating the severity of the hazard and the probability that an exposure will occur. A new penalty policy was deployed by OSHA on August 20, 2010; however, IOSHA has not adopted the new penalty policy.

In 11 of the 88 (13%) reviewed case files, it was found that not all apparent violations were cited. Examples of apparent violations that were not cited include training, electrical, and respirator hazards. In 10 of the 88 (11%) files reviewed, it was found that citations were not correctly classified. Examples included failure to properly assess a repeat violation and failure to correctly assess severity. Inadequate documentation to support the violation was found in seven of 88 (8%) files. This includes not providing names of exposed workers, and failure to document exposure through photos or other means. Also, the majority of files stated that employer knowledge came from the fact that the violation was in plain view; however, there was normally no documentation of how long the hazard existed or if the employer had ever entered the area where the hazard existed. Finally, there was also inadequate documentation to support that a violation was correctly cited. Grouping of citations were rarely done.

**Finding 13-11:** All apparent violations were not cited in 11 of the 88 case files (12%) that were reviewed.

**Recommendation 13-11:** Address all hazards in plain view during the course of an inspection within the scope of that inspection. Ensure that Compliance Officers are not penalized for taking additional time to conduct complex inspections and appropriately identify and document all observed hazards during inspections, including industrial hygiene sampling.

**Finding 13-12:** None of the violations were correctly classified in 11% of the reviewed case files.

**Recommendation 13-12:** Per the IOSHA FOM, inspection files should contain adequate worker exposure, employer knowledge, and evidence that the violation exists.

**Finding 13-13:** None of the violations were correctly classified in 11% of the reviewed case files.

**Recommendation 13-13:** CSHOs should check for repeat violations, and correctly assess severity and probability as per the definition in the IOSHA FOM.

**Finding 13-14 (12-03):** The safety inspection in-compliance rate was 61.17% and the health inspection in-compliance rate was 54.13%

**Recommendation 13-14 (12-03):** It is recommended that IOSHA utilize the use of administrative controls in order to meet the SAMM 20a value of 29.1% for safety inspections and the SAMM 20b value of 34.1% for health inspections.

## 5. Abatement

The evaluation process included the review of 60 inspections with abatement. The verification of abatement is the responsibility of the Supervisor specifically assigned to

that task. IOSHA currently has 40 open cases with incomplete abatement greater than 60 days. The negotiated number is 45 cases.

All abatement periods were of the proper length. Seven of nine (78%) files containing a Petition for Modification of Abatement (PMA) did not contain all of the required documentation, which includes, but is not limited to the written request with address of all requirements and the required letters to the employer.

Three follow-up inspections were performed out of 1,513 inspections in FY 2013.

**Finding 13-15:** IOSHA failed to follow the PMA procedure. All of the required items were not in the files.

**Recommendation 13-15:** IOSHA should perform the PMA procedure per the IOSHA FOM.

## 6. Worker and Union Involvement

Only 21 of 88 (24%) case files reviewed indicated that workers were represented by a union.

IOSHA appeared to have adequate procedures to address worker and union involvement in the inspection process. IOSHA has developed its own forms to ensure that workers are represented and the appropriate contact information is acquired. Opening and closing conference sign-off sheets have also been developed. If there are union representatives present, it is noted on these sheets. This information was also placed in the OSHA-1 Inspection Form.

Seventy-nine of 88 (89%) case files reviewed had marked that interviews were performed. Seventy-four of 88 (84%) case files reviewed had interviews that were documented. However, it was noted in seven of the 74 (9%) files that the interviews were very limited to the point that they did not provide information pertinent to the inspection. These only extended to containing the address and a signature, or many had only statements such as “safety was good.”

**Finding 13-16 (12-06):** Interviews are not being documented, or the interviews are insubstantial in their content.

**Recommendation 13-16 (12-06):** Per the IOSHA FOM, interviews should be documented and contain content that addresses the safety and health concerns at the establishment being inspected.

## B. Review Procedures

### 1. Informal Conferences

Sixty-four of the reviewed case files contained violations. Of these 64 case files, 15 case files requested an informal conference. In one of the 15 (7%) files, it was determined the

informal was handled inappropriately. The company informed IOSHA that they would no longer be in business. IOSHA agreed to not eliminate the penalty and to consider all violations abated. However, the documentation showed the company would still exist, and the business would be moved to another location. Beyond a statement from the company and a page from their accounts, no evidence was offered that the company was no longer in business. IOSHA did not confirm this with any of the workers. All of the informal conferences were conducted in a timely manner.

The majority of companies were offered and accepted an expedited informal settlement agreement (EISA). For qualifying companies, IOSHA operates a penalty reduction program termed the EISA. For companies not involved in a fatality or catastrophe, the companies are offered EISA if they are current on penalties, have five or less higher/greater violations, and total penalties of not more than \$7500. The company has 15 business days to exercise this option, at which time they will receive a penalty reduction of 35%. The State Plan did not have a formal, written EISA policy in place.

Informal conferences are usually conducted by the Director of Industrial Compliance and the Director of Construction. They use an informal conference report, an IOSHA form, to record their actions during the informal conference and make any comments. During the informal conference, citations can be upheld, modified, reclassified, or deleted. Items which were not grouped may be grouped at this time. All of this can result in modification of a penalty. The employer may also be granted a 30% reduction in penalty for agreeing to additional training.

**Finding 13-17:** IOSHA had not developed written procedures for implementing an Expedited Informal Settlement Agreement (EISA).

**Recommendation 13-17:** Ensure that a written EISA policy is developed and that the purpose, scope, application and staff training are identified in order to ensure consistent implementation throughout the staff.

## 2. Formal Review of Citations

Two contested case files were reviewed during the process. Both contests were timely; however, in the first case, IOSHA did not have jurisdiction over the non-construction related vehicular accident. No changes were made, and it was settled and never went to court. Additional time to abate was requested. In the second case, violations were removed and reclassified due to citations being incorrectly issued on the wrong standard. The penalty was adjusted to reflect these changes. This also ended up being settled prior to going to court. The State Plan had a total of 29 contested cases during FY 2013.

For cases that are not resolved through the informal conference process, appeals are heard by the Indiana Board of Safety Review. The Board is an independent Administrative Review Board housed within the IDOL. The Board consists of five members, including two from labor, two from industry, and one safety and health professional. Appeals of Board decisions are performed by the appropriate County Circuit or Superior Trial Court.

## C. Standards and Federal Program Changes (FPC) Adoption

### 1. Standards Adoption

Only two standards were required to be adopted during FY 2013. They were 29 CFR 1926 Cranes and Derricks in Construction and Underground Construction and Demolition. Under the State of Indiana rules and procedures, the process for the adoption of federal standards occurs automatically and becomes effective 60 days after the effective date of federal standards. The Commissioner or their Designee is the person responsible for enforcing the federal standards 60 days after they become effective.

#### ***Federally Initiated Standards Log Summary for IN Report***

Subject	Intent to Adopt	Adopt Identical	Date Promulgated	Effective Date
Updating OSHA Standards Based on National Consensus Standards; Head Protection	YES	YES	7/16/2013	7/16/2013
Direct Final Rule - Cranes and Derricks in Construction; Underground Construction and Demolition	YES	YES	2/26/2014	2/26/2014

### 2. OSHA/State Plan Initiated Changes

The State Plan is not required to adopt all federal changes. The State Plan adopted the National Emphasis Program (NEP) for isocyanates (CPL 03-00-017) and the construction inspection targeting directive (CPL-02-00-155). They were not required to adopt the standard for maritime cargo due to lack of jurisdiction.

The State Plan did not provide timely response to the Federal Program Change notices. There were no state-initiated changes.

During the review, it was revealed that IOSHA was using the Field Inspection Reference Manual (FIRM) rather than the updated Field Operations Manual (FOM). On January 4, 2010, IOSHA adopted the FOM, CPL 02-00-148. This was a Federal Program Change (FPC) which required the State Plan states to adopt a FOM that was “at least as effective as” OSHA’s FOM. Since adopting the FOM 4 years ago, IOSHA workers are still utilizing the FIRM. IOSHA maintains that they are still updating the FOM to reflect the differences in their program. It is noted that IOSHA did not adopt the updated FOM, CPL 02-00-150, which was effective April 22, 2011.

Directive Number	Title	Adoption Required, Equivalency Required or Adoption Encouraged/Not Required	Intent to Adopt	Adopt Identical	State Adoption Date
<a href="#">CPL-02-01-055 2014 624</a>	Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification	Equivalency Required	NO	NO	N/A

<a href="#">CPL-02-00-155 2013 604</a>	Federal Program Change Memo for OSHA Instruction CPL-02-00-155	Equivalency Required	YES	YES	11/05/2013
<a href="#">CPL-03-00-017 2013 585</a>	[CPL 03-00-017] - National Emphasis Program Occupational Exposure to Isocyanates	Adoption Required	YES	YES	11/20/2013
<a href="#">CPL-02-13-01 2013 564</a>	Site-Specific Targeting 2012 (SST-12)	Equivalency Required	YES	YES	1/04/2013
<a href="#">CPL-02-01-054 2013 545</a>	Inspection and Citation Guidance for Roadway and Highway Construction Work Zones	Equivalency Required	YES	YES	1/16/2013

**Finding 13-18:** IOSHA failed to provide all updates for federally initiated standard and program Plan changes in a timely manner.

**Recommendations 13-18:** IOSHA shall provide all updates for federally initiated standards in a timely manner.

**Finding 13-19:** IOSHA was still utilizing the FIRM; even though, they adopted the FOM, CPL 02-00-148, on January 4, 2010.

**Recommendation 13-19:** Ensure that the FIRM is updated to be “at least as effective” as OSHA’s FOM and submit the accompanying Plan supplemented as required by the FOM directive.

#### **D. Variances**

During FY 2013, one variance was issued. The variance was for 29 CFR 1910.27(d)(2), which states that landing platforms shall be provided every 30 feet of height, except when no cage, well, or safety device is provided. Then they shall be provided every 20 feet.

The applicant requested a permanent variance to instead provide a hinged platform every 30 feet on their 84 foot fertilizer leg. The applicant also provided fall protection for workers during their climb. On March 13, 2013, the variance was granted.

While the variance appears to violate the regulation, the effect of not having offset platforms was remedied by providing the hinged platforms every 30 feet and the use of fall protection for workers while climbing these ladders. With the use of fall protection as well as the hinged platforms, the protection afforded to the workers appears to be adequate.

#### **E. Public Employee Program**

IOSHA operates a program that covers public sector workers. During FY 2013, there were 31 enforcement inspections of public sector entities. Public sector inspections represented 2.05% of the State Plan’s inspection activity.



Safety Orders issued to public sector entities contain an invoice with penalties indicating that if the hazards are corrected in a timely manner, the Deputy Commissioner has the authority to waive associated penalties once all hazards are abated.

## **F. Discrimination Program**

IOSHA's Whistleblower Protection Program consists of a Director, who manages enforcement as well as the Whistleblower Protection Program, a Supervisor, who handles Industrial Compliance enforcement and the Whistleblower Protection Program, and two Investigators. One of the Investigators works in the field and one works out of the state government complex. During the fiscal year, there have been several personnel changes with a team leader/investigator and an investigator retiring. The current Supervisor and one of the Investigators are both new to their positions.

Procedurally, the IOSHA Whistleblower Protection Program adheres to CPL 02-03-003 Whistleblower Investigations Manual (WIM) effective date September 20, 2011, 29 CFR 1977 effective date January 29, 1973 and the Revised Whistleblower Disposition Procedures Directive dated April 18, 2012. This review followed the guidelines, procedures, and instructions of OSHA's WIM, and 29 CFR 1977. Indiana Department of Labor's Commissioner, IOSHA's Whistleblower Director, and IOSHA's Supervisor were all interviewed and provided information as necessary.

There is no tracking system or database to track cases that are dual-filed with OSHA, nor is there a current tracking system for appeals; however, OSHA does maintain a database of cases that have been dual-filed with them. A new appeal review committee is to be implemented in February, 2014.

In early August 2013, Region V conducted a week long training session with current IOSHA whistleblower management and investigators. Prior to August 2013, Region V had conducted numerous trainings with the State Plan's whistleblower staff.

### **1. Investigative File Review**

#### Appropriateness of State Findings and Decisions

Sixty-two docketed and eight administratively closed cases were completed during this fiscal year. Thirty of 62 (48%) docketed cases files were reviewed. All eight of the administratively closed files were reviewed. Of the 30 reviewed docketed cases, one case was withdrawn, 23 cases were dismissed, five cases were settled and one was settled other. The cases were selected at random based on case type and determination for each of the Whistleblower Investigators for FY 2013.

In FY 2013, there were no complainants reinstated to their jobs and, \$10,158.61 in back wages was awarded to complainants.

During interviews with IOSHA's management, they confirmed adoption of OSHA's WIM. IOSHA does not have any other policies or procedures for their whistleblower

program. During the review, management was provided with an example of a case file review sheet and screening procedures.

In the case files reviewed, case file organization did not follow the WIM. Most case files were missing copies of administrative documents and missing evidence. The following was noted:

- Six cases were missing statements, including the complainant's statement.
- Five cases were missing the Reports of Investigation.
- Six cases were missing the table of contents.
- All of the cases revealed that they were not providing the complainant with an opportunity to provide a rebuttal of respondent's position. If they are, it is not documented in the case file.
- Three of the cases, including administratively closed files, had no documents to review.
- In all of the case files, the exhibits on the left side, which is for administrative documentation, were not tabbed or noted in the table of contents.

IOSHA management stated that most of the administratively closed cases were not documented or entered into IMIS. In all eight administratively closed cases reviewed, there were no letters to complainant explaining why a complaint was not slated for investigation or the complainant confirming their concurrence with the case being administratively closed.

There were five cases where a work refusal was a factor. The Investigators were not applying the criteria for work refusal as outlined in 29 CFR 1977.12. In these cases, complainants did not have a protected work refusal; therefore, there was no protected activity.

In three of the reviewed case files, there were incorrect conclusions made with regard to the cases. The following was noted.

- In an administratively closed case, IOSHA determined that the complainant did not have an adverse action. Complainant provided evidence to IOSHA that they had received a written disciplinary action. IOSHA closed the complaint, even though the complainant objected to the closing. IOSHA should have docketed the complaint and conducted an investigation.
- In the first docketed case, IOSHA dismissed the case, even though evidence did not support the dismissal. Evidence supported that this could be a merit case.
- In the second docketed case, IOSHA investigator dismissed the case because the respondent's business closed and could not make contact with them.

Five case files were reviewed where the determination was a settlement. In those settled cases, there were several items of concern. The settlement agreements did not comply with the WIM. The following was noted for these case files.

- In several of the settlement agreements, the check for back pay was made out to IOSHA instead of the complainant.

- There was evidence a complainant was told by the Investigator to take the respondent's offer. The complainant was told that if they did not accept the offer that the case would be closed.
- In another case, there was a settlement offer by the respondent to the complainant. The complainant declined their offer and the Investigator accepted the offer and signed the settlement agreement without complainant's concurrence. The Investigator entered into a unilateral settlement where the complainant was not provided a make whole remedy.

There were six case files that were docketed and investigated that should not have been. Two exceeded the filing time limit by more than 20 days, two lacked protected activity, one lacked jurisdiction, and one lacked adverse employment action as the complainant quit.

There were several case files where the Report of Investigations, letters to complainants and letters to respondents were not following standard business format. The letters to complainants did not have standard letterhead and contained numerous misspellings.

In 24 of 30 (80%) case files, the interview statements were signed or recorded. The interviews appropriately addressed the prima facie elements or tested the respondents defense. Only six of 30 (20%) case files reviewed were found to be done correctly. Of those six, none were completed subsequent to the training conducted by Region V OSHA in August 2013.

## 2. Program Management

### Timeliness of Investigations and Response

For FY 2013, the average days to complete a case were 89 days. IOSHA uses the Region V Whistleblower Intake Worksheet. Complainants are contacted timely for screening by the assigned Investigator. In most cases, a signed statement is obtained, or the screening is recorded and memorialized with a memo to file. Complainants are informed of their right to dual-file with OSHA, which is evident by the correspondence in the case files.

It is important to note that under IOSHA, merit whistleblower complaints are required to be filed in state court within 120 days of the complaint's initial filing by the complainant when a settlement cannot be reached with the respondent. After this date, IOSHA is barred from going forward with a merit complaint. Investigators are required to have their Report of Investigation to the Deputy Commissioner by day 60, and in the event it is not, an explanation is required. Complaints that appear to have a merit finding must be referred to the Attorney General's office by day 90, so the Attorney General's office has time to review the complaint and meet the 120 day state court filing requirement. Based on their 60 and 120 day rules, it is important that complainants are informed of their right to dual-file with OSHA. With these extremely tight time frames, Investigators may not be capable of conducting a thorough investigation.

### Other Issues Noted:

Data entered into the Whistleblower (WB) IMIS System was compared to the information contained in the case files. Approximately 15% of the case files reviewed showed at least one discrepancy between the data entered into WB IMIS, and the dates contained in the case file. The discrepancies were in the areas of filing date, ROI date, and disposition date. The review also revealed minimal use of case comments, tracking information, and adverse employment action sections.

### 3. Resources

The IOSHA discrimination program consists of two Investigators and one Supervisor. The Supervisor and an Investigator work out of the office, and the other Investigator works out of their home. Assignments are made by the Supervisor who sends case information electronically. When the investigations are completed, the Investigators return the case files and Report of Investigation to be signed by the Director. The Director admitted that files are not reviewed prior to issuing the determinations. All of the Whistleblower Investigators are required to receive training from the OSHA Regional Office and the OSHA Training Institute (OTI). One Investigator has not completed the required training at the OTI.

**Finding 13-20:** Investigators failed to follow the Whistleblower Investigator Manual (WIM) policies and procedures. The required documentation, intake and screening of cases, and file organization were not being completed per the WIM.

**Recommendation 13-20:** Every case file needs to be reviewed by a Supervisor to show compliance with the WIM, policies and procedures. Ensure that all investigative staff is following the same Whistleblower Program policies and procedures.

**Finding 13-21:** Not all of the whistleblower staff members have received the required whistleblower training courses at the OTI.

**Recommendation 13-21:** All of the whistleblower staff shall complete the required training courses and complete any additional training when it is made available.

**Finding 13-22:** Whistleblower Investigators are not completing thorough investigations. Interviews are not conducted, complainants are not provided opportunities for rebuttal, and testing the employer's defense is not conducted.

**Recommendation 13-22:** Whistleblower Investigators should follow policies and procedures as outlined in the WIM for performing the investigations.

**Finding 13-23:** Whistleblower Investigators are not always recognizing or applying the prima facie elements correctly in analyzing the cases, causing cases to be investigated which should not be. Cases are being closed without merit prior to a thorough investigation being completed.

**Recommendation 13-23:** Provide additional training to staff to ensure that the Whistleblower Investigators understand the application of the prima facie elements and the proper way to correctly analyze evidence for the determination.

**Finding 13-24 (12-08):** Merit whistleblower cases, for which a settlement was not reached, must be filed in state court within 120 days. However, Investigators are restricted to 60 days to complete these cases.

**Recommendation 13-24 (12-08):** Eliminate the 60 day investigative restriction and seek revision of the 120 day statutory deadline for filing in court in order to allow Investigators the needed time to complete a thorough investigation.

**Finding 13-25:** Settlement agreements are not completed in accordance with the Whistleblower Investigation Manual. Checks are made payable to and accepted by IOSHA and not returned to the employer for reissuance to the complainant.

**Recommendation 13-25:** In accordance with the WIM Chapter 6, Section IV (C), the settlement should require that a certified or cashier's check, or where installment payments are agreed to, the checks, to be made out to the complainant, but sent to IOSHA. IOSHA shall promptly note receipt of the checks, copy the check(s), and mail the checks to the complainant.

**Finding 13-26:** Settlement agreements are not completed in accordance with the Whistleblower Investigation Manual. Reasonable efforts are not made to obtain monetary restitution and employment reinstatement in order to make-whole the complainant. The State Plan is telling complainants that failure to accept the agreement will result in the closing of their case even though there is no make whole remedy.

**Recommendation 13-26:** In accordance with the WIM Chapter 6, Section IV (C), if a settlement does not contain a make-whole remedy, the justification must be documented and the complainant's concurrence must be noted in the case file. IOSHA shall ensure that all settlement negotiations seek and make reasonable efforts to obtain make-whole remedies, including reinstatement for complainants when termination is the alleged adverse employment action.

**Finding 13-27:** Settlement agreements are not completed in accordance with the Whistleblower Investigation Manual. The State Plan is entering into unilateral (bilateral) settlement agreements on behalf of the complainant without a make-whole remedy.

**Recommendation 13-27:** Cease acceptance and approval of unilateral settlement agreements that do not make complainants whole.

**Finding 13-28:** Complainants are not provided information regarding their right to appeal.

**Recommendation 13-28:** Ensure that complainants are provided information regarding their right to appeal as a routine part of the IOSHA whistleblower Program.

## **G. Special Study – State Plan Targeting Programs**

### Development of Targeting Programs

IOSHA has adopted some OSHA NEPs and LEPs. Strategic Goal #1 of the FY 2013 Performance Plan focuses on the healthcare industry by participating in the National Emphasis Program (NEP) and developing an LEP. No evidence is present that an LEP was developed.

IOSHA was not required to adopt CPL 04-00-001 (Development of Local Emphasis Programs). No guidance document was in place for the creation of Local Emphasis

Programs. The Governor of Indiana and the Commissioner of IOSHA are responsible for the creation of the targeting programs.

**Finding 13-29** IOSHA had not developed a procedure to approve Local Emphasis Programs which includes but, is not necessarily limited to a rationale, selection process, industries covered, and an evaluation for effectiveness of the program.

**Recommendation 13-29:** Develop a procedure to approve Local Emphasis Programs. As a guide follow OSHA directive CPL 04-00-001, Development of Local Emphasis Programs and/or develop a procedure for approval similar to this directive.

### Evaluation of the Targeting Program

There are no mechanisms available to be used to determine the effectiveness of the aforementioned targeting programs. The program utilizes DART rates to identify trends and emerging hazards. Some outreach had been conducted in conjunction with Indiana Department of Transportation's Work Zone Awareness Week.

Within the Construction Industry, IOSHA does focus on fall protection, trenching and scaffolding but a Local Emphasis Program had not been developed. There were no concrete methods in place to measure the effectiveness of these programs. IOSHA stated that they monitor non-compliance rates, accident injury rates and the types of complaints that they receive within the particular areas as a method to evaluate declining trends within an industry.

## **H. CASPAs**

During FY 2013, five Complaints About a State Plan Administration (CASPA) were received.

**CASPA 2013-28 IN** - The complainant alleged that they filed a safety and health complaint, and the items in the complaint were not adequately addressed. A case file review found that all items expressed by the complainant at that time were addressed. However, additional direction was provided to IOSHA to ensure the accurate write up of complaint items, interviews of workers addressed the complaint items, additional inspections were open with

employers at multi-employer worksites, and personal protective equipment was addressed. No recommendations were made.

**CASPA 2013-29 IN** - The complainant, who was an Indiana public sector worker, alleged that their investigation was purposefully being delayed by the State Plan. However, a CASPA investigation could not be performed at the time due to the complainant not having exhausted the available administrative remedies provided for by State Plan procedures and policies.

**CASPA 2013-30 IN** - Due to the nature and scope of the allegations, OSHA deemed this as a “sensitive” CASPA and began an investigation without requesting an initial analysis and response from the State Plan. Allegations included the following.

- Concerns were raised about the complaint processes including how safety, health and whistleblower complaints are handled from receipt of complaint to final disposition.
- Concerns were noted about the settlement process. This included informal and formal settlement for enforcement cases and also whistleblower investigations.
- Concerns were noted about accountability of staff in meeting goals and quality of inspections/investigations. This would include performance measures, staff abilities and accountability for performance measures.

OSHA’s investigation into the allegations found that each of the allegations were valid. A total of 22 Recommendations were documented. IOSHA received the CASPA findings and recommendation in February 2014 and did not have time or opportunity to respond to the recommendations at the time of this review.

**CASPA 2013-31 IN** - The complainant alleged that the safety and health complaint and a discrimination complaint that was filed were not properly investigated. After investigating the CASPA allegations, it was determined that IOSHA followed proper policies and procedures.

**CASPA 2013-32 IN**- The complainant alleged that IOSHA delayed pursuit of their discrimination complaint due to a familial relationship between staff members of the two agencies. During the case file review, it was found that there was an unreasonable delay in notifying the respondent; however, there was no evidence that this was due to it being a state agency or due to a familial relationship. In addition, a number of other issues were identified including that relevant personnel involved were not interviewed; interviews, which were performed, lacked relevant details; documentation was missing or not obtained; adverse actions and protected activities involved in the case were missing or not assessed properly; the respondent’s defense was not tested; and the Report of Investigation was not performed in the format required. IOSHA responded that they would ensure that proper and timely notifications are sent, and they would review the problems found in the case file with the Investigator and remind staff of these requirements as well. They also noted that all staff was retrained in August 19-22, 2013 by Region V, which occurred after this case file was closed.

## **I. Voluntary Compliance Program**

IDOL continues to have a very successful Voluntary Protection Program (VPP). The VPP is operated by two full time IOSHA workers. They perform almost all of their reviews utilizing Special Government Employees (SGE). IOSHA utilizes approximately 63 SGEs. The VPP program follows the same policies and procedures that OSHA follows.

As noted above, the IOSHA VPP follows the OSHA Program, with the exception of obtaining medical access orders (MAO) prior to entering an establishment. Annual and onsite evaluations of the VPP sites were performed. The State of Indiana does not have an MAO. Instead, they use an alternative procedure in which they send a notification to the company of their intent to view injury and illness data. The company is asked to post the notification. This notification provides a means for any worker objections. This meets the intent of the MAO.

In order to insure that all new and recertification evaluations are completed in a timely manner, at the beginning of the fiscal year, IOSHA blocks out time for each visit using a calendar. SGEs are then contacted in order to secure a qualified team for each onsite. Information, such as previous reports, the company application and the OSHA VPP Policy and Procedure Manual (VPPPPM) are provided to the Team members.

For new applicants, IOSHA assists the site in developing the application. This assistance includes visits to the site to conduct hazard identification and perform gap analysis as needed. This assistance may take two to three years to complete. Once the Application is complete, the onsite evaluation is scheduled. IOSHA does not send the acceptance letter, as required in the VPPPPM to the employer.

At the conclusion of the onsite evaluation, the Deputy Commissioner is contacted to obtain approval to share the recommendation of the Team and a copy of the draft report with the employer. Once all 90 day items are completed, a final version of the report is sent to the company.

The VPP reports are kept electronically on the “Public” network drive. A naming protocol has been established to provide constancy and allow for easier access to the information for all IOSHA staff. When the electronic folders were accessed, this naming protocol was not followed for each company. A total of four reports completed in FY 2013 were reviewed. The reports did not follow the template noted in the VPPPPM. The “worksheet” was not included.

In order to grow the SGE program and to provide additional resources for the VPP onsite visits, IOSHA holds at least one SGE training session each year. OSHA attends the training and is present to swear in the new SGEs.

**Finding 13-30:** While IOSHA uses OSHA’s VPP Policy and Procedure as their reference document; the report did not follow the required format nor were acceptance letters sent to the employer when an application is submitted.

**Recommendation 13-30:** Ensure that the VPP Team follows all aspects of the VPPPPM.



## Alliances

Alliances are developed and managed by the Indiana Consultation Project, INSafe. This prevents any conflicts of interest when inspections occur of establishments who participate in an Alliance. IOSHA continues to be a signatory on the Alliance agreements. Currently, IOSHA has three active agreements. While IOSHA stated they follow the OSHA's Alliance directive (CSP 04-01-001) during the development and implementation phases of all alliances, the alliance agreement documents do not follow the required format.

Meetings as established with each Alliance are held. Minutes are taken and copies maintained with each signed agreement. Annual reports are written and maintained with the agreement.

**Finding 13-31:** While IOSHA stated they followed OSHA's Alliance Program directive (CSP 04-01-001), the Alliance signed agreements did not follow the required format.

**Recommendation 13-31:** IOSHA should draft and implement an Alliance Guidance document that is at least as affective as OSHA's.

## Partnerships

There were three active Partnerships during FY 2013. IOSHA does not follow OSHA's Partnership Directive and has not developed a guidance document. Unlike OSHA, IOSHA continues to provide exemptions from programmed inspections if the partner has received a verification visit. The required core elements, such as verification, list of partners, Purpose and Scope, and Benefits; are not included in each partnership agreement. Annual evaluations and meeting notes are kept in a binder along with a copy of the signed agreement.

**Finding 13-32:** While IOSHA stated they followed OSHA's Partnership Program directive (CSP 03-02-003), the Partnership signed agreements did not follow the required format.

**Recommendation 13-32:** IOSHA should draft and implement a Partnership Guidance document.

## **J. Public Sector On-site Consultation Program**

INSafe conducted 19 on-site consultation visits in the public sector during FY 2013. Twenty-three serious hazards were identified. Due to these visits, 254 workers were removed from serious risk. The grant projected in FY 2013 that 27 safety visits would be performed, but only 12 safety visits were performed. In FY 2013, 12 health visits were projected to be performed, but only seven health visits were performed.

## **K. State Plan Administration**

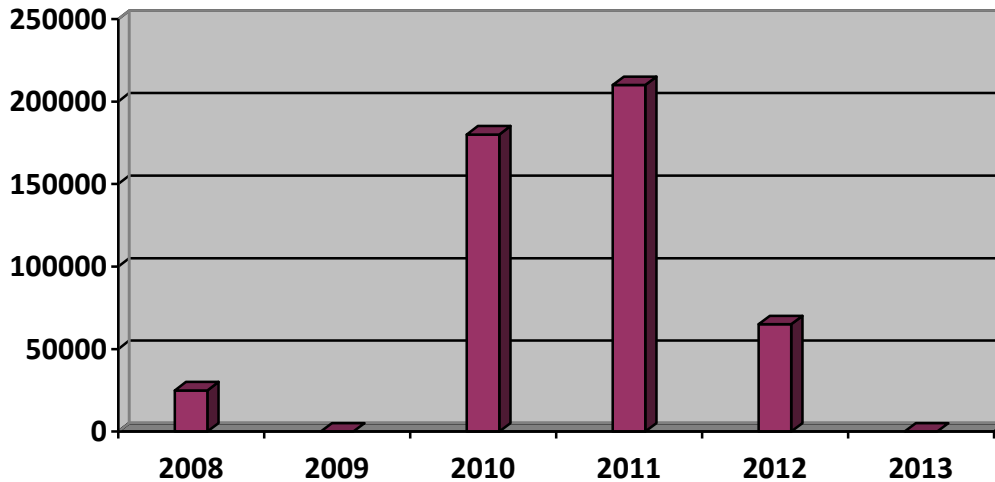
### 1. Training

During FY 2013, alongside acquiring the required training for all new hires as courses became available, 20 CSHOs participated in machine guarding training. Additional coursework was also received in hazardous waste operations training, communication tower and radio frequency training, and construction work zone safety training. The Agency continues to experience an influx of new hires and effort has been put forth to provide technical training that supports program readiness to address issues of technical expertise. Indiana has adopted OSHA’s directive for CSHO training, TED 01-00-018 *Initial Training Program for OSHA Compliance Personnel*, and supplemented staff training where opportunities have been presented. The program has also encouraged staff to seek professional certifications to further enhance individual expertise. The program has also implemented a policy of paying for test fees, prep fees, and a \$500 award for those successfully earning certification. Two CSHOs obtained safety certifications this year, a Certified Safety Professional and an Associate Safety Professional.

## 2. Funding

State and federal funds allocated to the IOSHA 23(g) program in FY 2013 was \$4,376,000, and no funds were deobligated. Deobligation of program funds has been a consistent action over time; however, this is the second time since FY 2009 that Indiana was able to utilize all funds associated with the 23(g) grant.

### Indiana 23(g) Lapse History



## 3. Staffing

IOSHA enforcement program management is the responsibility of the Deputy Commissioner. Directors from Industrial Compliance and Construction and Supervisors handle day-to-day activities necessary for required programmatic actions. The construction department field training officer has the responsibility of overseeing completion of all citation abatement issues.

Indiana has concluded that its existing benchmark levels are in need of re-evaluation. As a result, the Commissioner has petitioned OSHA to be allowed to update current benchmarks in order to be more in line with IOSHA’s view of needed staffing levels. The request for a change in required staffing levels is also due to legislative actions incurred regarding budget issues. This has continued to create problems for increasing staffing levels. The state also points out that modest budget increases experienced over time, which were less than 1% per year over the last decade, greatly influences their need for a change.

The latest information reported by the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) “Death on the Job Report” indicates that based on the current International Labor Organization (ILO) benchmark staffing level of inspectors for Indiana there should be 71 inspectors. At current staffing levels it would take approximately 110 years to inspect all job sites. The State Plan’s current benchmark of 70 inspectors is considerably lower than the recommended benchmark of 271 by the ILO. The ILO benchmark for labor inspectors is one inspector per 10,000 workers. In Indiana, the ratio is one inspector for every 38,167 workers. At the time of this review, Indiana reported that its program was operating with 37 Compliance Safety and Health Officers, which are 33 CSHOs below the benchmark of 70.

During FY 2013, it was found that 23 of 69 (33%) persons had changed or left their positions with IOSHA, according to staffing information from the 2013 and 2014 Grants. Five vacant positions still needed to be filled. Those positions consisted of two industrial hygienists, one construction safety CSHO, one discrimination officer and industrial compliance officer. Two positions were eliminated, one position changed in duties and qualifications and one position was added.

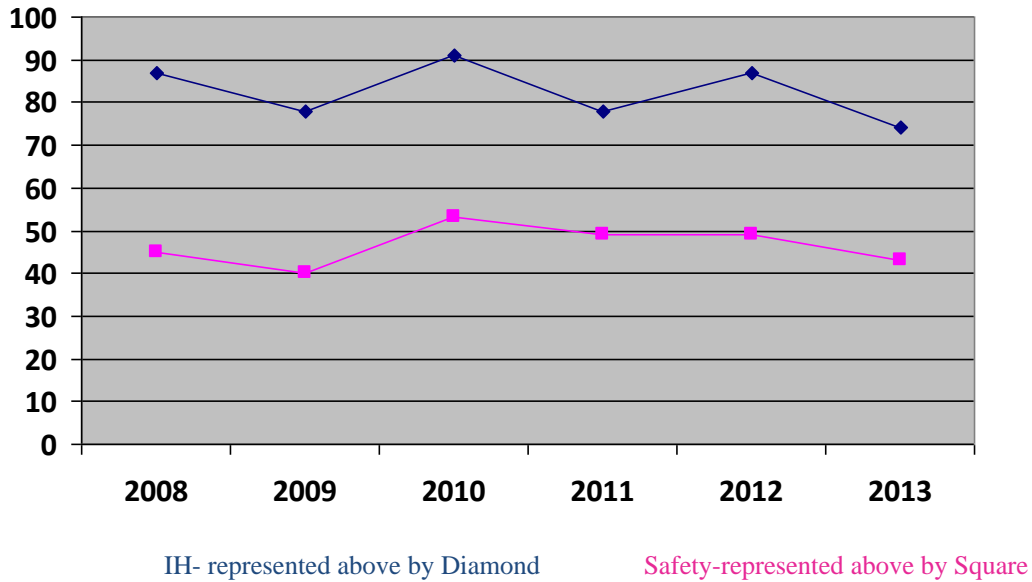
The changed position was the Complaint Duty Officer. Previously, this had been filled by a CSHO or someone with a safety and health background, but it was decided that this could be a clerical position. Since the person filling this position has no safety and health background, the Complaint Supervisor is now required to perform a majority of the duties. Rather than hire a Complaint Supervisor, these duties became a part of the newly created Whistleblower Supervisor position. During the review, it was found that the time to initiate a complaint inspection or investigation was excessive.

The Indianapolis Area Office continues to monitor staffing issues with the program and stresses the need of maintaining required benchmark staffing levels.

		<b>FY 09</b>	<b>FY 10</b>	<b>FY 11</b>	<b>FY 12</b>	<b>FY 13</b>
<b>Safety</b>	Benchmark	47	47	47	47	47
	Positions Allocated	47	47	47	47	44
	Positions Filled	19	25	23	23	20
	Vacancies	24	22	24	24	24
	% of Benchmarks Filled	51%	53%	49%	49%	43%
<b>Health</b>	Benchmark	23	23	23	23	23
	Positions Allocated	23	23	23	23	21
	Positions Filled	18	21	18	20	17

	Vacancies	4	2	5	3	4
	% of Benchmarks Filled	78%	91%	78%	87%	74%

Staffing as a Percentage of Benchmarks



While Indiana has not been able to hire staff close to the required benchmark levels during the course of FY 2013, issues of staff turnover still remain as an ongoing theme that needs to be addressed. The delivery of operation plans for enforcement activities are seen as being impacted by this issue. In the face of operational limits and constraints placed on the program, IOSHA has utilized hiring authority to fill vacancies to the extent possible.

**Finding 13-33:** While IOSHA currently allocates compliance staff levels that meet the required benchmark of 70 positions; only 37 enforcement positions are filled.

**Recommendation 13-33:** IOSHA should continue to try and fill all allocated benchmark positions while pursuing a modification of benchmark level with OSHA.

#### 4. Information Management

IOSHA utilizes the Integrated Management Information System (IMIS) database in order to manage their program and data. Indiana has a designated System Administrator. According to the System Administrator, all IMIS support is obtained through the OMDS Help Desk. Information technology issues not related to IMIS are handled by the Department of Information Technology (DIT) through the State of Indiana.

The System Administrator indicated that several IMIS reports are generated and distributed to the management team on a monthly basis, including:

- *Unsatisfied Activity* on the 15<sup>th</sup> of each month;

- *Select Violation Abatement Report* on the 15<sup>th</sup> of each month;
- *Complaint Tracking Report* on the 1<sup>st</sup> of each month;
- *Citations Pending Report* on the 15<sup>th</sup> of each month; and
- *Open Inspections* on the 1<sup>st</sup> of each month.
- *Case Lapse Time Reports* (reviewed by QMS Director) on the 1<sup>st</sup> of each month

Interviews with Directors, Supervisors, and Administrators also indicate that each of them utilizes a manual tracking system to supplement the IMIS system. IOSHA has created a process flow for the files based on this manual system, and each position is trained on where they are in the flow and the assigned tasks which must be completed.

#### 5. State Internal Evaluation Program (SIEP)

IOSHA uses a SIEP, which focuses on six areas of the program, including:

- Inspection Activity;
- Adequacy and Timeliness of Abatement;
- Staffing, Performance Management, and Training;
- Board of Safety Review;
- Discrimination Program; and
- Quality Metrics and Statistics.

The State Plan uses an audit plan for its internal evaluation plan with various metrics to be reviewed on an annual, semiannual, quarterly and monthly basis. IOSHA has also developed audit interview questions, an inspection review sheet, and uses the OSHA Area Office Audit Checklist as a supplementary tool to assist with audit strategies as they develop and implement their SIEP.

### **III. Assessment of State Plan Progress in Achieving Annual Performance Goals**

In the FY 2013 SOAR, IOSHA provided information that outlines their accomplishment of meeting the first year of their five-year Performance Plan. IOSHA shares their Performance Plan and their strategic goals with INSafe, the State Consultation Project. IOSHA has six strategic goals. Information provided by IOSHA has been reviewed and analyzed to assess their progress in meeting Performance Plan goals.

Strategic Goal #1 provides for making a focused effort in the healthcare industry by developing an LEP and participating in the NEP. No evidence is present that an LEP was developed. IOSHA has developed a worker healthcare safety and health initiative (<http://www.in.gov/dol/2761.htm>), but they have not provided an LEP to OSHA. IOSHA does have an enforcement guidance page which contains NEPs and LEPs adopted by IOSHA. On July 1, 2012, IOSHA adopted the Nursing Home NEP. This NEP was not found on IOSHA's enforcement guidance page located at <http://www.in.gov/dol/2754.htm>.

The other five goals were improving manufacturing and construction illness and injury rates, providing increased contact with stakeholders, improving cooperative programs and

increasing professional growth of staff. The six strategic goals had 12 annual performance goals. With the exception of one performance goal, manufacturing illness and injuries, all of the goals were met.

The following summarizes the activities and/or accomplishments for each of the FY 2013 performance goals.

**Strategic Goal #1:** Focus resources of INSafe, the Indiana Occupational Safety and Health Administration (IOSHA) and Quality, Metrics and Statistics (QMS) in the underserved Hoosier healthcare industry, which currently has one of the highest single injury and illness rates (5.9\* per 100 workers) of all major industries in Indiana. This includes creation of an outreach and education campaign, based upon data, research and stakeholder input and undertaking a focused enforcement effort in the healthcare industry by developing a Local Emphasis Program (LEP), and participating in appropriate National Emphasis Programs (NEPs).

**Performance Goal 1.1:** Reduce injuries and illnesses in the healthcare industry by 3%.

**Results:** This goal was met.

**Discussion:** The goal of reducing non-fatal occupational injuries and illnesses in the healthcare industry by 3 percent was exceeded for this one-year period. The 2012 Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses rate for healthcare was 5.3 per 100 workers. This represents a one-year decline of more than 10 percent from the 2010 rate of 5.9 per 100 workers.

**Performance Goal 1.3:** Conduct four inspections in the healthcare industry by end of FFY 2017.

**Results:** This goal was met.

**Discussion:** The goal of completing four healthcare industry inspections was exceeded. The Indiana Occupational Safety and Health Administration (IOSHA) conducted 10 inspections in the healthcare industry during FFY 2013.

**Strategic Goal #2:** Effect improved occupational injury and illness rates in the Hoosier manufacturing industry.

**Performance Goal 2.1:** Reduce injuries and illnesses in the manufacturing industry by 3%.

**Results:** This goal was not met.

**Discussion:** The goal of reducing non-fatal occupational injuries and illnesses in the manufacturing industry was not met for the one-year period. The 2012 Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses rate for manufacturing was 5.3. This represents a one-year increase of approximately 2 percent from the 2010 rate of 5.2 per 100 workers.

**Strategic Goal #3:** Effect improved occupational injury and illness rates in the Hoosier construction industry.

**Performance Goal 3:** Reduce injuries and illnesses rate in the construction industry by 3%.

**Results:** This goal was met.

**Discussion:** The goal of reducing non-fatal occupational injuries and illnesses in the construction industry by 3% was exceeded for this one year period. The 2012 Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses rate for construction was 3.1 per 100 workers. This represents a one year decline of nearly 19 percent from the 2010 rate of 3.8 per 100 workers.

**Strategic Goal #4:** Increase the number of stakeholder contacts by all Indiana Department of Labor divisions to reach at least 500,000 unique individuals of Indiana's 2.8 million workers. This will include enforcement inspections and consultations, as well as speeches, printed materials, resource tools distributed, web tools, seminars and conferences.

**Performance Goal 4.1:** Reach 90,000 individuals.

**Results:** This goal was met.

**Discussion:** The goal of reaching 90,000 individuals through inspections and consultation activities was exceeded for FY 2013. In FY 2013, INSafe affected 31,786 individuals through consultation efforts. In FY 2013, IOSHA impacted 181,727 individuals through inspection-related activities. Total individuals impacted by IOSHA and INSafe were 213,513 individuals.

**Performance Goal 4.3:** Develop 10 electronic outreach products or resources by end of FFY 2017.

**Results:** This goal was met.

**Discussion:** This goal was exceeded in FFY 2013

- IN Review – 2013, annual occupational safety and health publication
- Work Zone Safety webpage (including drop-in articles for audience segments—motorists and construction and trucking companies)
- Teen Worker Safety webpage (including distracted driving PSA)
- Healthcare Worker Safety and Health webpage (including sample signage—needlestick safety, workstation ergonomic safety, lifting safety, etc.)

**Strategic Goal #5:** Strengthen the cooperative programs of VPP, INSHARP, Partnerships and Alliances to provide support, mentoring, industry best practices, and acknowledgment of top performers without incentivizing mediocre review or diminished credibility of the program in an effort to encourage duplication of exemplary programs throughout Indiana industries. Actively promote employer and worker awareness of the VPP and INSHARP cooperative programs.

**Performance Goal 5.1:** Conduct at least 30 combined preliminary site visits and new or recertification visits for employer participation in VPP or INSHARP.

**Results:** This goal was met.

**Discussion:** The goal of conducting at least 30 combined preliminary site visits and new or recertification visits for employer participation in VPP or INSHARP has been exceeded in FY 2013.

- Conducted 2 new site/company evaluations (both visits are still in progress)

- Conducted 15 recertification visits (only 11 sites were recertified)  
*INSHARP activities = 17*
- Conducted 5 Star recertification evaluations
- Conducted 4 Merit to STAR VPP evaluations
- Conducted 5 new STAR site evaluations
- Conducted 1 new Merit site evaluation
- Conducted 1 One-Year STAR Conditional to VPP STAR evaluation

VPP activities = 16

Combined INSHARP/VPP activities were 33.

**Performance Goal 5.2:** Develop 10 partnerships or alliances by end of FFY 2017.

**Results:** This goal was met.

**Discussion:** During FY 2013, the Indiana Department of Labor amended and renewed a Partnership and entered into one Alliance.

**Strategic Goal #6:** Foster a culture of professional growth and development among IOSHA Compliance Safety and Health Officers and INSafe Safety and Health Consultants. Improve the division processes and skills of staff so as to employ the best trained, most technically proficient compliance officers, consultants and supervisory staff throughout State Plan programs working at top efficiency.

**Performance Goal 6.1:** Provide 2 non-OTI training opportunities.

**Results:** This goal was met.

**Discussion:** The Indiana Department of Labor exceeded the goal of providing 2 non-OTI training opportunities per year during FY 2013. Four additional training opportunities were provided. Select IOSHA CSHOs, supervisors and managers and INSafe Safety and Health Consultants participated in non-OTI provided training opportunities during FY 2013. This training included the following:

- 2-day Indiana Department of Transportation Work Zone Safety Training. The 2-day training incorporated classroom-style instruction as well as a field exercise to review project work zones;
- 3.5 day Whistleblower Protection (provided by Region V); and
- 1 day Crane Training (provided by Messer Construction).

**Performance Goal 6.2:** Have one staff member attain a professional certification or advanced degree.

**Results:** This goal was met.

**Discussion:** During FY 2013, an IOSHA CSHO achieved the Certified Hazardous Materials (CHMM) Manager certification.

**Finding 13-34:** Injuries and illnesses were not reduced by 3% in the manufacturing industry. (Strategic Goal 2.1)

**Recommendation 13-34:** Evaluate the strategic plan in order to identify areas that will allow for a decrease in the rate injuries. Build it into a specific targeting program such as but not limited to amputations and powered industrial vehicles (PIV).



## **IV. Other Special Measures of Effectiveness and Areas of Note**

### **OSHA SOFTWARE**

In order to improve their process, IOSHA has acquired new software called OSHA Express. It provides for better data entry by setting limitations and rules within the software to make sure all required elements of a file are addressed. It allows for better electronic handling of documents. IOSHA believes that this will improve the delivery of services. The staff says they have done a pilot test, and they found that it improved their entry. They will start using the software in February of 2014.

**Appendix A – New and Continued Findings and Recommendations**  
**FY 2013 Indiana State Plan Comprehensive FAME Report**

Rec #	Findings	Recommendations	FY 2012
13-01	IOSHA conducted a total of 1,513 inspections (1285 safety and 228 health). The negotiated SAMM 17 value is 2,039 inspections (1747 safety and 292 health).	The agency should review its 2013-2017 Strategic Plan and revise goals as appropriate to ensure they are achievable and consistent with the mission of the agency.	
13-02	For 17% of the cases reviewed, it took 55 days or more for cases to be issued after the CSHO turned them into their Supervisor with one file awaiting issuance for 135 days.	IOSHA should review the policies and processes in place to identify bottlenecks and inefficiencies.	
13-03	Sampling results were not being provided to the employer as required in the IOSHA FOM.	A written letter containing all sampling results should be sent to the employer.	12-07
13-04	IOSHA exceeded the negotiated further review level of 10 days to initiate a complaint inspection. The average time to initiate a complaint inspection was 37.71 days. Two cases were identified where the complaint was not opened with in six months of receipt.	It is recommended that IOSHA utilize the use of administrative controls to ensure that complaint inspections are initiated in a timely manner in order to meet the negotiated SAMM 1 value of 10 days.	12-01
13-05	IOSHA exceeded the negotiated further review level of five days to initiate a complaint investigation. The average time to initiate a complaint investigation was 36.19 days.	It is recommended that IOSHA utilize the use of administrative controls to ensure that complaint investigations are initiated in a timely manner in order to meet the negotiated SAMM 2 value of 5 days.	
13-06	As required in Chapter 8 of the IOSHA FOM, IOSHA failed to provide copies of the results of non-formal complaints to 60% of the complainants in which an address or some other form of contact information was provided.	IOSHA shall provide copies of non-formal complaint results to complainants that have provided an address or some other form of contact information.	
13-07	Non-construction related vehicle accidents, murders, suicides, non-work related injuries and illnesses, and other areas where IOSHA does not have jurisdiction were inspected.	Fatalities and catastrophes not under the jurisdiction of IOSHA should be coded as a no inspection and no jurisdiction. Appropriate referrals should be made as necessary.	
13-08	Only 8% of files had the required next of kin letters sent.	Both next of kin letters should be sent as required by CPL 02-00-153 Communicating OSHA Fatality Procedures to a Victim's Family.	
13-09	Forty-five of 62 (73%) of fatality inspections were responded to in one day.	As required in the IOSHA FOM, it is recommended that IOSHA utilize the use of administrative controls to ensure that fatality investigations are responded to in one day in order to meet the 1 day further review level for SAMM 21 value.	
13-10	Complaints alleging hazards associated with targeted programs were being converted into programmed planned inspections. No complaint information was being entered or maintained beyond the hazard allegations.	If a complaint alleging hazards associated with targeted programs is received, it should remain a complaint, and the complainant should be offered the opportunity to provide contact information and receive the results about their complaint.	

13-11	All apparent violations were not cited in 11 of the 88 case files (12%) that were reviewed.	Address all hazards in plain view during the course of an inspection within the scope of that inspection. Ensure that Compliance Officers are not penalized for taking additional time to conduct complex inspections and appropriately identify and document all observed hazards during inspections, including industrial hygiene sampling.	
13-12	Inadequate documentation was present in the worksheets and file to support that all required elements for a citation existed.	Per the IOSHA FOM, inspection files should contain adequate worker exposure, employer knowledge, and evidence that the violation exists.	
13-13	None of the violations were correctly classified in 11% of the reviewed case files.	CSHOs should check for repeat violations, and correctly assess severity and probability as per the definition in the IOSHA FOM.	
13-14	The safety inspection in-compliance rate was 61.17% and the health inspection in-compliance rate was 54.13%	It is recommended that IOSHA utilize the use of administrative controls in order to meet the SAMM 20a value of 29.1% for safety inspections and the SAMM 20b value of 34.1% for health inspections.	12-03
13-15	IOSHA failed to follow the Petition for Modification of Abatement (PMA) procedure. All of the required items were not in the files.	IOSHA should perform the PMA procedure per the IOSHA FOM.	
13-16	Interviews are not being documented, or the interviews are insubstantial in their content.	Per the IOSHA FOM, Interviews should be documented and contain content that addresses the safety and health concerns at the establishment being inspected.	12-06
13-17	IOSHA had not developed written procedures for implementing an Expedited Informal Settlement Agreement (EISA).	Ensure that a written EISA policy is developed and that the purpose, scope, application and staff training are identified in order to ensure consistent implementation throughout the staff.	
13-18	IOSHA failed to provide all updates for federally initiated standard and program plan changes.	IOSHA shall provide all updates for federally initiated standards in a timely manner.	
13-19	The IOSHA was still utilizing the FIRM; even though, they adopted the FOM, CPL 02-00-148, on January 4, 2010.	Ensure that the FIRM is updated to be “at least as effective” as OSHA’s FOM and submit the accompanying plan supplemented as required by the FOM directive.	
13-20	Investigators failed to follow the Whistleblower Investigator Manual (WIM) policies and procedures. The required documentation, intake and screening of cases, and file organization were not being completed per the WIM.	Every case file needs to be reviewed by a Supervisor to show compliance with the WIM, policies and procedures. Ensure that all investigative staff is following the same Whistleblower Program policies and procedures.	
13-21	Not all of the whistleblower staff members have received the required whistleblower training courses at the OSHA Training Institute (OSHA).	All of the whistleblower staff shall complete the required training courses and complete any additional training when it is made available.	
13-22	Whistleblower Investigators are not completing thorough investigations. Interviews are not conducted, complainants are not provided opportunities for rebuttal, and testing the employer’s defense is not conducted.	Whistleblower Investigators should follow policies and procedures as outlined in the WIM for performing the investigations.	

13-23	Whistleblower Investigators are not always recognizing or applying the prima facie elements correctly in analyzing the cases, causing cases to be investigated which should not be. Cases are being closed without merit prior to a thorough investigation being completed.	Provide additional training to staff to ensure that the Whistleblower Investigators understand the application of the prima facie elements and the proper way to correctly analyze evidence for the determination.	
13-24	Merit whistleblower cases, for which a settlement was not reached, must be filed in state court within 120 days. However, Whistleblower Investigators are restricted to 60 days to complete these cases.	Eliminate the 60 day investigative restriction and seek revision of the 120 day statutory deadline for filing in court in order to allow Investigators the needed time to complete a thorough investigation.	12-08
13-25	Settlement agreements are not completed in accordance with the Whistleblower Investigation Manual. Checks are made payable to and accepted by IOSHA and not returned to the employer for reissuance to the complainant.	In accordance with the WIM Chapter 6, Section IV (C), the settlement should require that a certified or cashier's check, or where installment payments are agreed to, the checks, to be made out to the complainant, but sent to IOSHA. IOSHA shall promptly note receipt of the checks, copy the check(s), and mail the checks to the complainant.	
13-26	Settlement agreements are not completed in accordance with the Whistleblower Investigation Manual. Reasonable efforts are not made to obtain monetary restitution and employment reinstatement in order to make-whole the complainant. The State Plan is telling complainants that failure to accept the agreement will result in the closing of their case even though there is no make whole remedy.	In accordance with the WIM Chapter 6, Section IV (C), if a settlement does not contain a make-whole remedy, the justification must be documented and the complainant's concurrence must be noted in the case file. IOSHA shall ensure that all settlement negotiations seek and make reasonable efforts to obtain make-whole remedies, including reinstatement for complainants when termination is the alleged adverse employment action.	
13-27	Settlement agreements are not completed in accordance with the Whistleblower Investigation Manual. The State Plan is entering into unilateral settlement agreements on behalf of the complainant without a make-whole remedy.	Cease acceptance and approval of unilateral settlement agreements that do not make complainants whole.	
13-28	Complainants are not provided information regarding their right to appeal.	Ensure that complainant are provided information regarding their right to appeal as a routine part of the IOSHA whistleblower program.	
13-29	IOSHA had not developed a procedure to approve Local Emphasis Programs which includes, but, is not necessarily limited to, a rationale, selection process, industries covered, and an evaluation for effectiveness of the program.	Develop a procedure to approve Local Emphasis Programs. As a guide follow OSHA directive CPL 04-00-001, Development of Local Emphasis Programs and/or develop a procedure for approval similar to this directive.	
13-30	While IOSHA uses OSHA's VPP Policy and Procedure Manual (VPPPPM) as their reference document; the written report did not follow the required format nor were acceptance letters sent to the employer when an application is submitted.	Ensure that the VPP Tem follows all aspects of the VPPPPM.	
13-31	While IOSHA stated that they followed OSHA's Alliance Program directive (CSP 04-01-001), the Alliance signed agreements did not follow the required format.	IOSHA should draft and implement an Alliance Guidance document that is at least affective as OSHA's.	

13-32	While IOSHA stated that they followed OSHA's Partnership Program directive (CSP 03-02-003), the Partnership signed agreements did not follow the required format.	IOSHA should draft and implement a Partnership Guidance document.	
13-33	While IOSHA currently allocates compliance staff levels that meet the required benchmark of 70 positions; only 37 enforcement positions are filled.	IOSHA should continue to try and fill allocated benchmark positions while pursuing a modification of benchmark level with OSHA.	
13-34	Injuries and illnesses were not reduced by 3% in the manufacturing industry. (Strategic Goal 2.1)	Evaluate the strategic plan in order to identify areas that will allow for a decrease in the rate injuries. Build it into a specific targeting program such as but not limited to amputations and powered industrial vehicles (PIV).	

Appendix B – Observations Subject to Continued Monitoring  
 FY 2013 Indiana State Plan Comprehensive FAME Report

Rec # [OB-1]	Observations	Federal Monitoring Plan	FY 2012
13-OB1	The case files, while organized, were using several different types of organization, creating difficulty in finding documents.	OSHA will continue to monitor IOSHA case file structure.	

**Appendix C - Status of FY 2012 Findings and Recommendations**  
**FY 2013 Indiana State Plan Comprehensive FAME Report**

<b>FY 2013 Indiana State Plan Comprehensive FAME Report</b>					
FY 12- Rec #	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status
12-01	IOSHA exceeded the agreed upon time of 10 days to initiate a complaint.	It is recommended that IOSHA utilize the use of administrative controls to ensure that staffing levels are maintained and that complaint inspections are initiated within the agreed 10-day period.	1) IOSHA has created a new supervisor position for daily oversight of intake effective August 26, 2013. The supervisor will ensure direct assignment of complaints to CSHOs. 2) IOSHA is committed to adding 2 additional CSHOs (October 2013) to handle complaints. 3) Training will be implemented for the current duty officer for health and safety recognition. Additionally, IOSHA made a large capital expenditure for “OSHA Express” to more efficiently enter data into the NCR. This will add to the overall timeliness and tracking of our process. OSHA Express will be implemented by February 2014.	IOSHA has delayed adding the 2 additional CSHOs until March 1, 2014. The positions have been approved, and the interviewing process is taking place.  Additional training for the duty officer has been completed. They have watched four or five webinars.  All the other corrective action items have been completed.	Open
12-02	The OSHA-1 did not indicate if English is a second language for the workers involved in a fatality or catastrophe.	IMMLANG should be marked in the OSHA-1 form as either yes or no as per the Field Operations Manual.	CSHOs have been informed of the finding and instructed about the entry. IOSHA will be conducting a random audit of 50% of the fatality inspections in December, 2013 to verify corrective action has taken place.	This corrective action has been implemented. The audit of the fatality files showed that 100% of the files address the IMMLANG.	Complete
12-03	The in-compliance rate for all safety inspections conducted continues to increase from 63% in FY 2011 to 68% in FY 2012 and with health in-compliance rates	IOSHA should determine the cause for these increases and implement an action plan to reduce the number of in-compliance	IOSHA has implemented a policy that all CSHOs, including supervisors, must take 2 classes at OTI per year to increase hazard recognition. Supervisors are now reviewing metrics to identify CSHOs with high in-compliance rates as candidates for shadowing.	This corrective action has been implemented.	Open

	increasing from 47% in FY 2011 to 48% in FY 2012.	inspections.	Additionally, IOSHA has corrected an oversight by the CSHOs. CSHOs were not checking to see if companies had been previously inspected in the last three years prior to performing a programmed planned inspection. This oversight had resulted in extra inspections that were found to be in-compliance.		
12-04	Verification of abatement continues to be an outlier with 17% of violations still not verified 60 days after the abatement due date.	Abatement for violations should be verified in a timely manner.	The Construction division has dedicated one worker to abatement verification. Effective immediately The Deputy Commissioner has directed Division Directors to run quarterly audits from open abatement reports to ensure that supervisors are up to date with abatement. Directors have been assigned to review all cases that are presently 60 days or over without abatement verification.	This corrective action has been implemented; furthermore, directors are reviewing all cases that are 20 days or over without abatement verification.	Complete
12-05	Twenty-eight percent of case files reviewed contained inadequate abatement.	IOSHA should ensure that all abatement is present and is adequate. Two primary items were noted where an abatement item was missing and the item was noted as corrected on the abatement certificate. This item is complete, awaiting verification.	IOSHA will be conducting a random audit of 10% of the 2013 closed abatement files in December of 2013 to verify corrective action has been instituted.	This item has been scheduled for completion by April 1, 2014.	Open
12-06	While worker interviews were almost always indicated as being performed, 27 of 86 files did not contain documentation showing worker interviews had been performed.	Worker interviews should always be documented to provide proof of worker exposure. This item is complete, awaiting verification.	Directors have been instructed not to allow citations to be issued without interview statement forms being included in the file. Item closed.	This corrective action has been implemented.	Open
12-07	In 91% of the cases where sampling had been conducted, the results had not been provided to the employer.	Ensure that a copy of all sampling results is sent to the employer.	Previously because of personal information on sampling results, CSHOs had been instructed to document that verbal sampling results were provided to the employer and that documentation of sampling may be requested at <a href="mailto:Apra@dol.in.gov">Apra@dol.in.gov</a> . This has been changed and the raw sampling results (without personal information) will be	This corrective action has been implemented.	Open



			transferred to a form letter and given to the employer. This change takes place immediately.		
12-08	Currently, whistleblower investigations must be completed within 120 days.	The Agency should seek revision of the 120day statutory deadline for filing in court.	The agency does not have control over the legislature and the current laws in Indiana. The agency is charged with only enforcing the laws not making the laws.	IOSHA will work with OSHA to determine a mechanism to resolve this legislative issue. The scheduled completion date is September 30, 2015.	Open

## Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report

### FY 2013 Indiana State Plan Comprehensive FAME Report

OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to national averages (the collective experience of State Plans and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (collective experiences of State Plan and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

<b>U.S. Department of Labor</b>				
Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: Indiana			FY 2013	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
<b>1</b>	Average number of work days to initiate complaint inspections	37.71	(Negotiated fixed number for each state) - 10	State data taken directly from SAMM report generated through IMIS.
<b>2</b>	Average number of work days to initiate complaint investigations	36.19	(Negotiated fixed number for each state) - 5	State data taken directly from SAMM report generated through IMIS.
<b>4</b>	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100%	100%	State data taken directly from SAMM report generated through IMIS.
<b>5</b>	Number of denials where entry not obtained	0	0	State data taken directly from SAMM report generated through IMIS.
<b>9a</b>	Average number of violations per inspection with violations by violation type	2.83	SWR: 2.04	State data taken directly from SAMM report generated through IMIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2011-2013.
<b>9b</b>	Average number of violations per inspection with violations by violation type	0.46	Other: .88	

<b>11</b>	Percent of total inspections in the public sector	2.05	(Negotiated fixed number for each state) - 4%	State data taken directly from SAMP report generated through IMIS.
<b>13</b>	Percent of 11c Investigations completed within 90 calendar days	56.25	100%	State data taken directly from SAMP report generated through IMIS.
<b>14</b>	Percent of 11c complaints that are meritorious	29.17	24.8% meritorious	State data taken directly from SAMP report generated through IMIS; National data was pulled from webIMIS for FY 2011-2013.
<b>16</b>	Average number of calendar days to complete an 11c investigation	75.95	90 Days	State data taken directly from SAMP report generated through IMIS.
<b>17</b>	Planned vs. actual inspections - safety/health	1285/228	(Negotiated fixed number for each state) 1747/292	State data taken directly from SAMP report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
<b>18a</b>	Average current serious penalty - 1 - 25 Employees	a. 599.35		State data taken directly from SAMP report generated through IMIS; national data is not available.
<b>18b</b>	Average current serious penalty - 26-100 Employees	b. 786.15		
<b>18c</b>	Average current serious penalty - 101-250 Employees	c. 1098.29		
<b>18d</b>	Average current serious penalty - 251+ Employees	d. 1868.92		
<b>18e</b>	Average current serious penalty - Total 1 - 250+ Employees	e. 956.97		
<b>19</b>	Percent of enforcement presence	1.19%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
<b>20a</b>	20a) Percent In Compliance – Safety	Safety - 61.17	Safety - 29.1	State data taken directly from SAMP report generated through IMIS; current national data is not

<b>20b</b>	20b) Percent In Compliance – Health	Health - 54.13	Health - 34.1	available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>21</b>	Percent of fatalities responded to in 1 work day	61%	100%	State data is manually pulled directly from IMIS for FY 2013
<b>22</b>	Open, Non-Contested Cases with Abatement Incomplete > 60 Days	40	45	Data not available
<b>23a</b>	Average Lapse Time - Safety	64.02	43.4	State data taken directly from SMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>23b</b>	Average Lapse Time - Health	72.45	57.05	
<b>24</b>	Percent penalty retained	56.59	66	State data taken directly from SMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>25</b>	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State data taken directly from SMM report generated through IMIS.