INDIANA
DEPARTMENT OF LABOR

ERIC J. HOLCOMB, GOVERNOR
Rick J. Ruble, Commissioner
402 West Washington Street, Room W195
Indianapolis, Indiana 46204-2751
Phone: (317) 232-2655
Fax: (317) 233-3790

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Ms. Nancy G. Hauter
Acting Regional Administrator
Occupational Safety and Health Administration
John C. Kluczynski Federal Building
230 South Dearborn Street, Suite 3244
Chicago, Illinois 60604-1694

RE: Indiana Occupational Safety and Health Administration's Response Fiscal Year 2019 Federal Annual Monitoring Evaluation

Dear Acting Regional Administrator Hauter:

Thank you for the opportunity to provide a formal reply to the federal fiscal year 2019 (October 1, 2018 through September 30, 2019) Occupational Safety and Health Administration's (OSHA's) Federal Annual Monitoring Evaluation (FAME) of the Indiana Occupational Safety and Health Administration (hereinafter IOSHA) state plan. This correspondence will serve as IOSHA's formal response to the findings and recommendations set forth in the FY 2019 FAME.

It should be noted that case files reviewed for the FY 2019 did not include those files reviewed by federal OSHA representatives in January 2020 in response to Complaint Against a State Plan Administration (CASPA) 2020-41 and therefore any corrective action agreed upon explicitly excludes those case files.

IOSHA works with employers, employees, labor unions, associations, and many others to change workplace culture with the goal of increasing employer and worker awareness of, commitment to, and involvement in workplace safety and health. The Indiana Department of Labor firmly believes the IOSHA continues to use its resources to the best of its ability to reduce workplace injuries, illnesses, and exposures. This is underscored in Indiana's historic low nonfatal workplace injury and illness rate of 3.3 per 100 full-time workers as per the federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses. While the Indiana Department of Labor recognizes there is still work to be done, the Department is proud to showcase the 71% reduction in these incidents over the last 27 years. This decrease may be attributed to enforcement of workplace safety and health standards; outreach, education, and consultation provided by both state and private sector consultants; voluntary compliance initiatives made by employers and employees; and efforts made by trade associations and labor unions.

IOSHA Response to Finding FY 2019-01: IOSHA largely disagrees with Finding FY 2019-01.

IOSHA disagrees that 12 of the 15 complaint files reviewed by federal OSHA were missing letters to employers and complainants were either not sent or maintained in the case files. After review of the federal OSHA auditor's notes, IOSHA found only two complaint files out of the 15 summarized below that did not have a letter sent to the complainant. Therefore, this is not a significant and pervasive issue warranting a finding in this audit. IOSHA disagrees that nine of 15 files lacked documentation of a satisfactory determination of the employer's response. One of 15 files lacked documentation of a satisfactory determination and is not a significant and pervasive issue that would require a finding in this audit. Files audited for these findings have been summarized below.

- Referral 203448543: An onsite inspection 318108941 was conducted. There were no letters required to be sent to the employer. There was no complainant as it was a referral. Therefore, there were no letters were required to be sent to any complainant. On April 30, 2019 citations were sent to the employer. No determination was made on an employer response because an inspection was conducted. No closing letter is required to be sent to employers on referrals per the IFOM. There was no closing determination as an inspection was conducted and citations issued.
- Referral 203449897: For this referral, an onsite inspection was conducted. The corresponding inspection number is 318110889. There were no letters required to be sent to the employer. There was no complainant as it was a referral. Therefore, there were no letters that were required to be sent to any complainant. The inspection generated no citations.
- Referral 203444740: All letters to the employer were in the file and the response was marked satisfactory per the audit log in OSHA Express on October 11, 2018 prior to the fame audit. No closing letter is required to be sent to the employer per the IFOM.
- Referral 203445291: A satisfactory response was received from the employer on October 8, 2018 and the file was subsequently and appropriately closed on October 11, 2018. There was no complainant as it was a referral. Therefore, no letters that were required to be sent to any complainant. No closing letter is required to be sent to the employer per the IFOM.
- Complaint 209610765: This was an invalid and anonymous complainant. There were no letters required to be sent and no contact information to be able to send a letter to the complainant.
- Complaint 209612852: The complainant should have received an acknowledgement letter but was not sent one. The complaint was forwarded to IOSHA from the federal OSHA hotline. The complaint did not receive an automatic acknowledgement letter from Indiana's complaint webform. The letter to the employer requesting a response was sent the same day the response was received. This complaint was followed up on and a satisfactory response was received from the employer. This complaint is now satisfactorily closed, but not before this audit was conducted. The IOSHA Intake Division staff have been retrained to recognize when a complaint was not submitted through the Indiana webform and for the need to have an acknowledgement letter sent.
- Complaint 209613579: This complaint was to the "United States of America" and was received on January 10, 2019. The complaint was forwarded to federal OSHA on January 11, 2019 which was the next day as it was not IOSHA's jurisdiction. IOSHA's webform sent an automatic acknowledgement letter the same day the complainant submitted the online complaint and the acknowledgment letter was uploaded to OSHA Express in the file

labeled as "initial complaint" on the same day. The complainant received an acknowledgement letter with instructions on how to formalize the complaint and information on whistleblower provisions along with a copy of their complaint submitted. IOSHA's Intake Division receives the same acknowledgement letter and complaint from the webform automatically and uploads it to OSHA Express as the "initial complaint" because the letter serves as documentation that both an acknowledgement letter was sent and the information specific to the hazards alleged in the complaint submitted.

- Referral 203446349: A letter to the employer was sent on December 5, 2019 requesting documentation of corrective action. A satisfactory response was received on December 12, 2019 and the file was closed and denoted as satisfactory on January 22, 2019. A closing letter is not required by the IFOM to be sent to the employer. There was no complainant as this was a referral that was reported by the employer. Therefore, no letters were required to be sent to a complainant.
- Referral 203446299: The referral was received on December 5, 2018. A letter to the employer was sent also on December 5, 2018 requesting corrective action. A response was received from the employer on December 12, 2018. The file was closed and denoted as satisfactory on January 9, 2019. Although not required by the IFOM, the employer was sent an email stating that the complaint was closed.
- Complaint 209609304: A follow up phone call was made to the complainant after the complaint was received and a voicemail was left. The complainant never returned the voicemail. The complainant provided no other mailing or contact information for IOSHA to send an acknowledgement letter or closing letter after the satisfactory employer response was received. A closing letter is not required by the IFOM to be sent to the employer.
- Complaint 209609882: The complaint was received by telephone and acknowledged by telephone. A satisfactory response was received on October 29, 2018 and the complaint was denoted in OSHA Express as satisfactory on October 29, 2018 per the audit log in OSHA Express. The complainant refused to leave mailing or any other contact information. Therefore, no response could be sent to the complainant. A closing letter is not required by the IFOM to be sent to the employer.
- Complaint 209610450: The complaint was received on November 5, 2018 and the employer was sent a request for a response on the same day. On November 8, 2018, a satisfactory response was received by the employer and the file closed and marked as satisfactory in OSHA Express on the same day. The complaint did not provide any mailing address. A closing letter is not required by the IFOM to be sent to the employer.
- Complaint 209611037: This complaint was received on November 15, 2018 and a letter to the employer was sent the same day requesting information regarding the alleged hazards. IOSHA received a response from the employer on December 3, 2018 and the information was uploaded to the file, marked as satisfactory, and closed the same day per the audit log in OSHA Express. The complainant did not leave a mailing address, however, the complainant was telephoned and informed the results of the complaint which was noted in the file.
- Complaint 209611763: This complaint was received on December 4, 2018 from an anonymous complainant. The employer was sent a request for information regarding the alleged hazards on the same day the complaint was received. A response was received from the employer on January 18, 2019 and was uploaded to the file and closed the same day per the OSHA Express audit log. The employer response was denoted as satisfactory in

OSHA Express also on the same day that the response from the employer was received. A closing letter is not required by the IFOM to be sent to the employer.

- Complaint 209612308: This complaint was received on December 13, 2018. The complainant received an automatic acknowledgement response from the IOSHA webform and a copy is sent to intake along with the initial complaint that was uploaded into the file in OSHA Express the same day the complaint was received. The employer was also sent a request for information regarding the alleged hazards on the same day the complaint was received. A response from the employer was received on January 4, 2019. The response was uploaded to the file, marked as satisfactory, and closed per the audit log the same day the response was received from the employer. A closing letter for the employer is not required by the IFOM. A notification of the results of the nonformal complaint was not sent to the complainant.

IOSHA routinely and regularly sends acknowledgement letters to complainants and they are maintained in the files in OSHA Express. IOSHA is not required to send closing letters to the employer by any instructions provided for in the IFOM. Furthermore, IOSHA clearly marks all responses as satisfactory in OSHA Express before closing a file.

The IOSHA also disagrees with the following Finding FY 2019-01 statement: "In six of 15 (40%) of the files, serious injuries were reported, and the files were not documented to indicate why no inspection was conducted."

The six files in question were reviewed again by IOSHA. Upon this review, IOSHA found that two of the six files had corresponding inspections. However, there was conflicting information in the referral look-up. The unprogrammed activity (UPA) action indicated an inspection was planned, however, Box 22a in the referral look-up indicated no inspection was planned. These were simple clerical errors. In both instances, an inspection was conducted, and the appropriate safety orders were issued. Federal OSHA was advised that inspections were conducted on these two referrals during the FAME audit process and those inspections files were available for their review. Of the remaining four inspections, one was an injury which was processed using the rapid response investigation (RRI). This is within IOSHA's discretion and definition for use of the RRI process and should not need an explanation. The remaining three case files were not injuries, but rather complaints filed either anonymously or by a former employee and processed through the nonformal investigation process which is within IOSHA's discretion to process in such a manner. Furthermore, follow-up conversations with the complainant could not have occurred as there was no contact information provided by the complainant to obtain additional information. Additional information about each of the six files is summarized and available below.

- Referral 203448543: A serious injury was reported by the employer. An inspection was conducted. The corresponding IOSHA inspection number is 318108941.
- Referral 203449897: A serious injury was reported by the employer. An inspection was conducted. The corresponding IOSHA inspection number is 318110889.
- Referral 203446349: An employee slipped and fell while descending a railcar outside the path with guard railing and slip proof grid patterns. This was handled through the RRI process. The employer indicated in response that a third-party consultant was used to add

additional safety measures, besides the other two previously mentioned safety measures that were already in place, including fall protection and training.

- Complaint 209609304: No worker injury reported. A complaint was filed by former employee. The complaint was received and processed using IOSHA's nonformal complaint process per the IFOM. The Complainant was not a current employee and therefore was not able to formalize the complaint by providing their signature for an onsite inspection per the IFOM. The complainant was contacted to obtain additional details regarding their complaint.
- Complaint 209612308: No worker injury reported. A complaint was filed by a former employee. The complaint was received and processed using IOSHA's nonformal complaint process per the IFOM as the employee was not a current employee.
- Complaint 209612852: No worker injury reported. A complaint was received from an anonymous caller to the federal OSHA Hotline. This complaint was processed using IOSHA's nonformal complaint process per the IFOM as the employee was not willing to formalize their complaint for an onsite inspection.

IOSHA Response to Finding FY 2019-02 (FY 2018-03): IOSHA agrees that six, not seven as stated in the Finding statement of 12 (50%) health case files reviewed, industrial hygiene sampling was not conducted to address potential health hazards and/or health complaint items.

After further review, IOSHA identified one of the seven inspection files that carbon monoxide screening was at 36 parts per million (ppm) which does not exceed the permissible exposure limit, therefore there is no guidance that requires full shift sampling. INSafe sampling results for Hexavalent Chromium was included in the case file.

Furthermore, IOSHA agrees with federal OSHA's recommendations for CSHOs to discuss sampling strategies with Supervisors for health complaints prior to inspection. IOSHA will also work to develop and implement health inspection file audits every three months to ensure all sampling necessary is conducted and performed in an appropriate time and manner. A three-month audit cycle will allow for follow up sampling to be conducted if necessary, within statutory limitation time frames.

IOSHA Response to Finding FY 2019-03: IOSHA disagrees with the Finding that IOSHA does not have an inspection targeting system for identifying sites for inspections with specific hazards and/or high injury and illness rates related to OSHA's NEPs and the SST-16. IOSHA's Construction Safety and General Industry Divisions both conducted programmed inspections during review period. The Construction Safety division has always and continues to conduct programmed inspections by accessing OSHA Construction Inspection Targeting Application (CTarget) for comprehensive inspections.

The IOSHA General Industry Division conducted programmed inspections similar to federal OSHA and used the federal OSHA National Emphasis Program (NEP) on Amputations (2015) which was in effect for the time period being evaluated. These comprehensive inspections were opened in late August of 2018 with safety orders being issued in late October of 2018 which was during this FAME evaluation period. Many of these cases were closed in 2019 which was well within this FAME fiscal year evaluation period.

When conducting its own programmed inspections under the 2015 Amputations NEP, federal OSHA used the following parameters for Category 2 targeting as the excerpt below indicates:

Selection Process for Industries with High BLS Rates: Category 2.

1. OSHA used the most recent five years of BLS Data (Calendar year 2009, 2010, 2011, 2012, and 2013) on incidence rates for nonfatal occupational injuries and illnesses involving days away from work per 10,000 full-time workers.
2. OSHA limited the range to the NAICS Sector 31-33, Manufacturing.
3. OSHA selected NAICS with BLS incidence rates of 10.0 or greater for amputations for any year.
4. The process yielded 10 5-digit NAICS codes.

The following parameters were used by the General Industry division to select and conduct amputation NEP inspections:

1. IOSHA limited the range to the NAICS Sector 31-33, Manufacturing and then added additional NAICS code.
2. IOSHA selected NAICS codes within the Federal Injury Tracking Application with days away restricted and transferred (DART) rates of equal to 10.0 or greater.
3. The process yielded 28 5-digit NAICS code and 10 employers fell within those parameters.
4. IOSHA conducted NEP amputation inspections of 40% of those employers with the selected criteria described above.

In comparison, Federal OSHA used incidence rates for days away from work from the U.S. Bureau of Labor Statistics (BLS) that were two to six years out of date. The General Industry Division used more recent data from the previous year's DART rate which includes the days away from work cases and those cases that result in job restriction or transfer. This data is more inclusive of nonfatal occupational injuries than the outdated incidence rates that federal OSHA utilized in establishing a targeting group. Furthermore, the General Industry division used the individual Indiana employer DART rates for 2017 collected by federal OSHA in the more current Injury Tracking Application that employers are required to use to report injuries to federal OSHA. The IOSHA General Industry Division used more recent data DART rates specific to employers to justify probable cause for neutral targeting of programmed inspections in Indiana.

Next, like federal OSHA, the General Industry division obtained a target list utilizing the same NAICS codes limited to 31-33 which is the industry classification for manufacturing. However, the General Industry division added even more additional NAICS codes to encompass and reach more industry sectors than federal OSHA's targeted list that were also having a higher number of occupational amputations. The General Industry Division's targeting protocol resulted in a list of ten employers which is the same number of employers that federal OSHA's list produced.

Federal OSHA ceased providing target lists to state plans from their data in 2015 and left state plans without a means for gathering neutral site-specific target information. As recently as February 2020, IOSHA requested targeting data from Federal OSHA, but a response was received from Federal OSHA stating that the most recent Site-Specific Targeting program was not finalized. The following finding is also an incorrect statement: "All of these National Emphasis Programs

contain programmed planned inspection targeting protocol; however, IOSHA is not conducting programmed planned inspections based on these emphasis program." Some of these listed NEPs have an inspection targeting protocol that only requires an expansion of the scope of an inspection to follow the directive inspection procedures under certain specific circumstances and does not require the production of a targeting list. Federal OSHA has previously found and stated that IOSHA regularly allows for the expansion of the scope of the inspection, as appropriate.

In summary, IOSHA disagrees with Federal OSHA's statement that IOSHA did not provide targeting policies and procedures that are either identical or different to the regional office for review for the NEPs or SST-16, but agrees to continue to follow all NEP directives for targeting and screening of employers.

Going forward, IOSHA will proactively develop a targeting list with the approval of Federal OSHA or continue efforts to obtain approved lists from Federal OSHA for the site-specific targeting directive. However, IOSHA notes that federal OSHA's assertion that this programmed activity was not 100% identical to federal OSHA based on minor technical differences in targeting sources is not correct due to the fact that federal OSHA refused to provide data lists and continues to deny providing lists to IOSHA.

With respect to the recordkeeping inspections, there were many advantages to conducting these inspections. IOSHA was not merely "just cleaning up old files." The advantages were explained to federal OSHA on several occasions during monitoring meetings. IOSHA cross referenced the list of employers not responding to complaints with a list of employers not providing federal OSHA with injury data. By doing this cross reference, IOSHA was able to focus on those employers who did not respond to federal OSHA or IOSHA. This focus allowed IOSHA to use newer compliance officers to go onsite and provide INSafe consultation service information to employers, educate them on the new federal web-based injury reporting requirements, and resolve any open complaints with IOSHA. Employers were informed that the workplace safety and health consultation division, INSafe, was available to aid them in addressing any possible alleged hazards and developing and implementing a workplace safety and health program.

IOSHA does not assert that these recordkeeping inspections were meant to be identical to any federal programmed NEP or SST program but were extremely beneficial to the health and safety of workers in Indiana by focusing educational resources on those employers demonstrating a potential lack of health and safety knowledge in the workplace.

IOSHA Response Finding FY 2019-04 (FY2018-OB-01): Per the federal OSHA generated SAMM, IOSHA's in-compliance rate for safety inspections is 38.67% which is approximately 2% above the further review level (FRL) of 24.24% - 36.36%. IOSHA's in-compliance rate for health inspections is 54.24% and about 11% above the FRL of 28.9% - 43.35%.

As identified by the federal OSHA reviewers in the FY 2019 FAME report, the average number of violations per inspection (serious, willful, repeat) is approximately 2.8 (SAMM 5, Appendix D), and is well-above the national average range of 1.4 to 2.2.

It is important to note that the in-compliance rate for safety and health inspections (SAMM #9) is not an all-inclusive measure. Many of the health-related inspections were based upon complaints and the scope of those complaints are limited to what is complained about and inspected. Furthermore, the implication is that because IOSHA percentage of cases with no violations found is higher than the national average, that hazard identification is an issue. This general implication should not be reached without a more specific case-by-case analysis.

To further assist CSHOs, IOSHA has developed a hazard checklist to better ensure potential in "plain view violations are addressed." Also, as a matter of regular practice, IOSHA Supervisors use an internally developed Supervisor Case Audit Review Form which is completed upon review of an inspection case file. This form helps best ensure information necessary for the inspection has been completed. This includes a review of photographs that are available in the file. IOSHA Supervisors have always been instructed to ensure hazards in plain view are thoroughly investigated and apparent alleged violations are cited during the case file review. The IOSHA General Industry Division also continues to have "pre-issuance meetings" when serious injuries report (e.g. amputation(s), in-patient hospitalization(s), and loss(es) of eye(s)) inspections result in no alleged citations. IOSHA's Construction Safety Division uses internally developed "flip cards" to aide CSHOs in developing their respective case files. These flip cards are available to all CSHOs electronically and are in place for routinely cited violations including competent person, fall protection, cave-in protection, etc.

In conclusion, while IOSHA asserts looking solely at the in-compliance rate is not an all-inclusive matter or indicative of staff not addressing hazards, IOSHA agrees with the recommendations and will continue to abide by them. IOSHA will ensure supervisors review the inspection case files to make certain hazards in plain view and all other apparent violations are thoroughly investigated and cited, as appropriate.

IOSHA Response to Finding FY 2019-05: The IOSHA disagrees with the finding that the general duty clause (Indiana Code 22-8-1.1-2) was cited instead of an OSHA standard; all apparent hazards were not cited and, sections of 29 CFR 1910.147 (control of hazardous energy, lockout/tagout) were cited incorrectly.

IOSHA disagrees that the general duty clause and 1910.147 were used improperly in the following cases:

- Inspection 318110392: The general duty clause was used for training on a guarding issue. There is no training requirement in the guarding standard. The 1910.212 was also cited, therefore, the general duty clause was not used in lieu of the 1910.212 vertical standard. The minor service exception to 1910.147 applied and this is the reason that 1910.147 was not cited for lockout/training hazards.
- Inspection 318105335: The crane utilized a remote telependant controller that did not have functions marked legibly on the controller. IOSHA did not cite 1910.179(l)(3)(iii)(d) because the remote was a telependant and not a pendant control station. The telependant was wireless and not a true attached or wired "pendant" control station. Therefore, the general duty clause was used appropriately instead of the pendant control station standard.

- Inspection 318104155: IOSHA cited a crane hook which was missing a safety latch. A sling was involved, but the issue was the hook and not the sling. The hook is not part of the sling. The 1910.184 standard is the sling standard, and there were no known issues with the sling. Therefore, the general duty clause was used appropriately and as 1910.184 did not apply. Federal OSHA had previously agreed to remove this inspection as a finding during the audit process.
- Inspection 318108404: The employee was not cleaning the drill press and therefore, the lockout tagout standard did not apply. The drill press is used to *clean out* the holes of finished metal products per the inspection narrative. Nowhere in the 1B hazard description for the violation did the CSHO state that the employee was cleaning the drill press. There was even video of the accident for this inspection in the file that verified the employee was not cleaning the drill press. The employee was an operator and was operating the drill press at the time of the accident. The operator was not performing activities that would fall under the 1910.147 lockout/tagout standard.
- Inspection 318109410: IOSHA did not cite the general duty clause regarding lockout/tagout training that should have been cited under 191.147. The general duty clause was cited for training related to the process and procedure of obtaining a sample of the extruded wire. The lockout violation and the machine guarding were cited due to the employee being able to place his body in a pinch point. The bander was not guarded, and the employee did not lockout out the bander. It was not clear as to whether the minor servicing exception applied, so both guarding and lockout/tagout were cited. General lockout training under 1910.147 was provided by the employer and was in the inspection file, so it could not be cited. If the training on the sampling process was effectively done, then the accident would not have happened. Citing training for the lockout during the sampling would not have been a legally sufficient violation as there was no evidence that the employer had knowledge that the employees were utilizing the technique of sampling from the point of banding instead of sampling the banded wire after it had been moved to the ground floor.

In conclusion, IOSHA disagrees that this is a significant or pervasive issue warranting a finding. However, IOSHA agrees with the recommendation that upon the supervisor's review of case files, they should look for OSHA standards that should be cited in lieu of the general duty clause and that supervisors review the investigator's file thoroughly to ensure all apparent hazards are cited. IOSHA will continue to do this.

Indiana Response to Finding FY 2019-06 (Finding FY 2018-04): IOSHA agrees with federal OSHA's finding and recommendations to ensure that files include documentation on abatement methods observed that are specific to hazards identified and follow-up inspections include interviews with employees.

Indiana Response to Finding FY 2019-07: IOSHA agrees with federal OSHA's finding and recommendation to ensure checklists used to approve petitions for modified abatement (PMAs) are followed properly and will conduct periodic audits of case files with PMAs.

Indiana Response to Finding FY 2019-08 (Finding FY 2018-06): IOSHA agrees with federal OSHA's finding that informal settlement agreements (ISAs) have been signed by IOSHA prior to

the employer. IOSHA also agrees to the recommendation related to that finding and will sign Informal Settlement Agreements only after the appropriate employer representative has signed. However, IOSHA disagrees with this finding regarding the calculation of maximum reduction of penalties of more than 50% during informal hearings. The 50% cap is more appropriately calculated after citations are grouped or deleted that were issued. Federal OSHA's own interpretation allows for more than a 50% reduction in penalties during the informal hearing process through similar calculation and discretionary methods. IOSHA also disagrees that settlement language includes inappropriate statements that indicate IOSHA did not prove there was a violation and citations are deleted without proper justification in the file.

Federal OSHA's interpretation found at www.osha.gov/laws-regs/standardinterpretations/1991-09-24 allows for the reduction by 50% after the grouping of the violation. See the following excerpt:

> In the context of the significantly increased penalties that became effective on March 1, it may be appropriate in some cases to reduce the penalty by more than 50%, particularly in the light of recent understandings reached between the Regional Administrator and the Regional Solicitor as to what cases can be litigated due to resource limitations. In such cases Regional Administrators may be liberal in granting approval for penalty reductions exceeding 50%.
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> If the employer provides information in the informal conference that convinces the Area Director that the citations were issued incorrectly and should be withdrawn or that the citation items were incorrectly classified and should be adjusted, a new (reduced) penalty shall be calculated, based on the remaining citations and/or the new classifications. The Regional Administrator may, at his/her discretion, allow the Area Director to reduce the recalculated penalty proposed by more than 50% without contracting the Regional Administrator for approval. All such changes shall continue to be documented in the case file, as required by the FOM.
>
> 2. **Grouping of violations.**
> In this context a change is also made in current grouping policy as reflected in the FOM, Chapter V, C., regarding the grouping of violations. Restrictions on grouping related violations to achieve a lower penalty, when appropriate, are removed. **Related** violations may be grouped for purposes of reducing the penalty in appropriate cases. Regional Administrators shall provide more specific guidelines as necessary for their regions. Copies of such guidance shall be sent to the Director of Compliance Programs.
>
> If the Area Director in an informal conference concludes that related citations should be grouped, a new (reduced) penalty shall be calculated based on the grouped citation items. The Regional Administrator may, at his/her discretion, allow the Area Director to reduce the recalculated penalty proposed by more than 50% without contracting [sic] the Regional Administrator for approval. All such changes shall continue to be documented in the case file, as required by the FOM.

The following inspections are examples of those case files audited during this evaluation that IOSHA asserts the penalties were reduced appropriately:

- Inspection 318110392: Two citations ($5,000 each) were reduced to $2,500. The two items were grouped and reduced 50% after the recalculation of the penalties. This is in-line with federal OSHA practices see www.osha.gov/laws-regs/standardinterpretations/1991-09-24.
- Inspection 318109410: The Settlement Agreement in Safety Order 1-3 was not amended to place blame on the employees for not implementing lockout tagout. Furthermore, the item was changed to merely state that the employees did not utilize lockout and tagout and the penalty was increased for that item from $7,000 to $10,000. Only factual statements were stated in the alleged violation description (AVD) language and therefore there was no inappropriate language in this settlement agreement.
- Inspection 318112919: Safety Order 1a was reduced to a nonserious because it was regarding the visibility of ID plates on a forklift. The ID plate was not involved in the fatality and the numbers could have been deciphered. Safety Order 1b was reduced to $750 because it also was not related to the fatality and the husband/wife who were owners of the small company lost their own son during the accident and completed significant other safety enhancements. In a case where the new owners of a small family business lost their son in this incident, the Director appropriately used discretion allowed by the FOM to lower the penalty. This information was documented in the informal hearing notes.
- Inspection 318110467: The penalties were eliminated per the Indiana Public Sector Policy as the inspection involved a public sector workplace. The policy allows for the original penalties to be reduced to zero upon the completion of abatement. This policy was put in place because any monetary penalties assessed would only serve to penalize taxpayers for violations. No settlement agreement is used for this process as an agreement of the parties is not required.

IOSHA Response to Finding FY 2019-09 – FY 2019 – 11: IOSHA agrees with federal OSHA's recommendation for findings 2019-09 through 11.

IOSHA Response to Observation FY 2019-OB-01–FY OB-04: IOSHA agrees with federal OSHA's observations for 2019-OB-01 through 04 and will take the appropriate steps to further define the process and required actions.

IOSHA FY 2019 Response Conclusion: The Indiana Department of Labor's mission to advance the safety, health, and prosperity of Hoosiers in the workplace, embodies its commitment to workplace safety and health excellence. IOSHA prides itself on continuous improvement within the organization and truly values constructive feedback. IOSHA is committed to making improvements associated with any findings and observations, whenever appropriate. IOSHA will continue to proactively work with its federal OSHA partners to ensure the best outcomes for Hoosier workers.

Sincerely,

Rick J. Ruble
Commissioner of Labor