ARTICLE 4. SAFETY EDUCATION AND TRAINING–OCCUPATIONAL SAFETY

Rule 1. On-Site Consultations

610 IAC 4-1-1 On-site consultation services; personnel

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 1. On-site consultation services will be provided to requesting employers, by personnel from the Bureau of Safety Education and Training.

(a) These services will be provided insofar as the limitations on time and personnel will permit.

(b) The personnel providing the consultation will be qualified employees by reason of training, experience or professional attainment.

(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 1; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 462; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-1-2 Consultation service not to reduce enforcement

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 2. IOSHA enforcement personnel will not be temporarily assigned or "loaned" to provide the consultation service.

The intent of this statement is to preclude the possibility that there may be a reduction in or detraction from the enforcement activity. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 2; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 462; filed Sep 9, 1981, 10:15 am: 4 IR 2004; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-3 Board of health expert may be present if condition requires

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 3. However, if in the considered judgment of the consultant from the Bureau of Safety Education and Training, he determines that the specific condition described by the requesting employer is one which may require expert opinion or judgment from an Industrial Hygienist, he may request that such a person from the Indiana State Board of Health accompany him and be present during the consultation. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 3; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 462; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-4 Intention not to compete with private services

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 4. It is not the intent of the on-site consultation service offered by the Bureau of Safety Education and Training to intrude into or compete with those consultation services provided by legitimate engineering firms, insurance companies or professional consultants. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 4; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 462; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-5 Priorities for consultation

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 5. On-site consultation will be provided on a "first-come-first-served" basis consistent with the limitations of personnel and time available. First priority will be given to small employers in high hazard industries. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 5; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 462; filed Sep 9, 1981, 10:15 am: 4 IR 2004; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-6 Request from employer

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 6. The request from the employer shall be written, dated, and insofar as possible, specifically describe the particular condition, situation or equipment about which advice is sought. This degree of specificity will allow the consultant, who will be assigned to meet the request, to prepare himself in terms of:

(a) Applicable, up-to-date standards; and/or,

(b) The need for expert assistance of an Industrial Hygienist;

The smaller the employer, the less specific the request would have to be pertaining to consultations. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 6; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 462; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-7 Prior arrangements with employer; participation of employees

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 7. (a) Prior to the consultative visit, arrangements will be made with the requesting employer to insure that qualified members of management or employees will be available at the time of the actual consultation in order to explain the problems or conditions that exist.

(b) The consultant shall retain the right to confer with individual employees during the course of the visit in order to identify and judge the nature and extent of particular hazards.

(c) In addition, employees, their representatives, and members of a workplace joint safety and health committee may participate in the on-site consultative visit, to the extent desired by the employer. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 7; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 463; filed Sep 9, 1981, 10:15 am: 4 IR 2004; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-8 Consultation free to employers

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 8. There will be no charges, fees, or expenses chargeable to the employer for the consultation. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 8; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 463; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-9 Location of consultation; separation from enforcement

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 9. Only in rare instances will the consultative service be provided in the office of the Bureau of Safety Education and Training. In the event such a consultation does take place, measures will be taken to insure the complete separation of those engaging in the discussion from the employees in the enforcement program. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 9; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 463; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-10 Representative to indicate purpose and extent of visit

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 10. Upon arrival at the site of the consultation, the Bureau of Safety Education and Training representative will indicate the purpose and extent of his visit, and that he is there in response to an inquiry relative to specific areas and Indiana Occupational Safety and Health standards; and that he is not empowered to make a complete inspection of the facilities unless it is requested by the employer. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 10; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 463; filed Sep 9, 1981, 10:15 am: 4 IR 2005; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-10.5 Alleged violations recorded; abatement dates binding

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 10.5. The consultant will also inform the employer that he will record all alleged violations noted during the consultation and will set a reasonable abatement date for each alleged violation. He will also explain that these abatement dates are binding on the employer and that a follow-up visit will be made to insure the abatement of all serious violations. If an employer fails to abate any alleged serious violations, the matter shall be referred to the Bureau of Building and Factory Inspection for appropriate enforcement action. *(Department of Labor; 610 IAC 4-1-10.5; filed Sep 9, 1981, 10:15 am: 4 IR 2005; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-11 "Imminent danger" defined; procedure

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 11. At the outset of the consultation the employer will have thoroughly explained to him, the course of action that will be taken by the Bureau of Safety Education and Training representative if he notes a situation of alleged "Imminent Danger".

Definition–"Imminent Danger"

Imminent Danger is defined as any condition or practice in any place of employment which is such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such dnager *[sic.]* can be eliminated.

(a) In the case of an alleged Imminent Danger the consultant will:

(1) Immediately call the employer's attention to the condition;

(2) Immediately notify the affected employees of the alleged Imminent Danger;

(3) Request that action be taken immediately to abate the alleged Imminent Danger;

(4) Secure an agreement from the employer that employees will not be exposed to the hazard;

(5) Notify the Director of the Bureau of Safety Education and Training of the alleged Imminent Danger. If the employer refuses to immediately abate the Imminent Danger, the Director shall immediately notify the Bureau of Building and Factory Inspection for appropriate enforcement action.

(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 11; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 463; filed Sep 9, 1981, 10:15 am: 4 IR 2005; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-1-11.5 Agreement of employer

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 11.5. If the employer does not agree to the provisions listed in 610 IAC 4-1-7(b), 610 IAC 4-1-10.5 and 610 IAC 4-1-12, the consultant will not proceed with the consultation visit. *(Department of Labor; 610 IAC 4-1-11.5; filed Sep 9, 1981, 10:15 am: 4 IR 2006; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-12 Representative's advice not binding on IOSHA inspector

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 12. During the consultation, the employer must have explained to him that such advice, opinions, recommendations or suggestions that may be offered by the Bureau of Safety Education and Training representative are not binding on an IOSHA Inspection Officer and will not preclude the finding of alleged violations or the proposing of penalties found by an IOSHA Inspector at the time an inspection takes place at his place of operation. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 12; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 463; filed Sep 9, 1981, 10:15 am: 4 IR 2006; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-13 Consultation services separate from enforcement activities

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 13. Employers requesting consultation services shall be advised that the actions of a consultant from the Bureau of Safety Education and Training are completely separate, distinct and apart from the enforcement activities of an Inspection Officer from the Bureau of Building and Factory Inspection, and that:

(1) A consultative visit does not provide immunity from a future regularly scheduled inspection or an inspection resulting from a complaint, and neither;

(2) Does it serve as an indicator to the Bureau of Building and Factory Inspection that a complete inspection of the premises is to be made promptly, and;

(3) The employer who has requested an on-site consultation and has been placed on a "waiting list" is still subject to any inspection during that "waiting" period that would normally be scheduled or that would result from a complaint.

(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 13; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 463; filed Sep 9, 1981, 10:15 am: 4 IR 2006; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-1-14 Consultation visit after IOSHA inspection; restrictions

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 14. Employers may request on-site consultation to assist in the abatement of hazards cited during an IOSHA enforcement inspection. However, an on-site consultation visit may not take place after an IOSHA inspection until the employer has been notified that no Safety Order will be issued or, if a Safety Order is issued, until those items for which consultation is requested have become final orders. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 14; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 464; filed Sep 9, 1981, 10:15 am: 4 IR 2006; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-1-15 Written report

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 15. (a) A written report shall be prepared for each visit and sent to the employer. The report shall restate the employer's request and describe the working conditions examined by the consultant; shall identify specific hazards; shall describe their nature, including reference to applicable standards or codes; shall identify the seriousness of the hazard; and, to the extent possible, shall include suggested means or approaches to their elimination or control. Additional sources of assistance should be indicated, if known, including the possible need to procure specific engineering consultation, medical advice and assistance, etc. The report shall include references to the completion dates for violative conditions described in Rule 10.5 (610 IAC 4-1-10.5).

(b) The written report shall not be forwarded to the Bureau of Building and Factory Inspection for use in any compliance inspection or scheduling activities except insofar as that may be necessary pursuant to Rules 10.5 and 11 *[610 IAC 4-1-10.5 and 610 IAC 4-1-11]*.

(c) The consultant shall preserve the confidentiality of information obtained as the result of an on-site consultative visit which contains or might reveal a trade secret of the employer. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 15; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 464; filed Sep 9, 1981, 10:15 am: 4 IR 2006;*

readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-1-16 Employee participation (Repealed)

Sec. 16. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 16; filed Sep 9, 1981, 10:15 am: 4 IR 2007)*

610 IAC 4-1-17 Procedure for on-site consultation visit

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 17. The on-site consultation visit will consist of an opening conference, viewing of the problem areas, and closing conference with a subsequent written report. During the discussion with the employer the consultant shall:

(1) Discuss the overall accident prevention program with the employer;
(2) Explain to the employer which IOSHA Standards or rules and regulations apply to his workplace;
(3) Explain the technical language and application of the standards when necessary;
(4) Advise if and how the employer is not in compliance with IOSHA Standards or rules and regulations; and,
(5) Make recommendations to the employer on how alleged violations may be abated.

(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 17; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 464; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-1-18 Sources to confirm alleged violation (Repealed)

Sec. 18. *(Repealed by Department of Labor; Indiana Occupational Safety and Health; On-Site Consultations Rule 18; filed Sep 9, 1981, 10:15 am: 4 IR 2007)*

610 IAC 4-1-19 Written report following visit (Repealed)

Sec. 19. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Rule 19; filed Sep 9, 1981, 10:15 am: 4 IR 2007)*

610 IAC 4-1-20 Assistance to employers in voluntary compliance

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-41

Sec. 20. Summary. In summary, the on-site consultation service offered by the Bureau of Safety Education and Training is one of assisting employers in the State of Indiana in their progress toward voluntary compliance. Those employers who accept and agree with the objections of IOSHA and who are earnestly working to secure a safer, more healthful workplace, should receive assistance in their efforts to abate prior to inspection, rather than receive citations or monetary penalties for alleged violations after an inspection. *(Department of Labor; Indiana Occupational Safety and Health, On-Site Consultations Summary; filed Oct 11, 1977, 9:30 am: Rules and Regs. 1978, p. 464; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

Rule 2. Public Sector-Public Employee Safety Program

610 IAC 4-2-1 IOSHA applicable to public sector employers; volunteer fire companies

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1; IC 36-8-12

Sec. 1. (a) The Indiana occupational safety and health act, IC 22-8-1.1, pertains to and concerns public employment as well as private employment. IC 22-8-1.1 defines employer as, “any individual or type of organization, including the state and all its

political subdivisions, which has in its employ one (1) or more individuals". Employee is defined as, "a person permitted to work by an employer in employment".

(b) Therefore, the statute and all promulgated standards, rules, and regulations are applicable to public sector as well as private sector employers. Provided, however, that public employers must comply with the requirements for reporting and recording occupational injuries and illnesses found in 610 IAC 4-6 without regard to Standard Industrial Classification Code.

(c) For the purpose of the Indiana occupational safety and health act, "Volunteer fire companies", which exist pursuant to IC 36-8-12, shall be deemed public sector employers. *(Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Purpose; filed Apr 5, 1977, 10:16 a.m.: Rules and Regs. 1978, p. 467; filed Sep 9, 1981, 10:15 a.m.: 4 IR 1986; filed Jun 21, 1982, 3:00 p.m.: 5 IR 1607; filed Jan 8, 1986, 2:18 p.m.: 9 IR 999; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305; filed Jan 27, 2004, 7:00 p.m.: 27 IR 1879)*

610 IAC 4-2-2 Applicable law (Repealed)

Sec. 2. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Applicable Law; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-3 Purpose and scope (Repealed)

Sec. 3. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 1; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-4 Posting of notices; access to information by employees (Repealed)

Sec. 4. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 2; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-5 Compliance order (Repealed)

Sec. 5. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 3; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-6 Inspections (Repealed)

Sec. 6. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 4; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-7 Notice by employee of alleged violation (Repealed)

Sec. 7. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 5; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-8 Determination that inspection not warranted (Repealed)

Sec. 8. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 6; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-9 Imminent danger (Repealed)

Sec. 9. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 7; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-10 Posting of compliance order (Repealed)

Sec. 10. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 8; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-11 Record keeping and reporting requirements of public employers (Repealed)

Sec. 11. *(Repealed by Department of Labor; filed Jan 27, 2004, 7:00 p.m.: 27 IR 1879)*

610 IAC 4-2-12 On-site consultation; training of inspectors (Repealed)

Sec. 12. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 10; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

610 IAC 4-2-13 Administrative action for non-compliance and non-abatement (Repealed)

Sec. 13. *(Repealed by Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Sec 11; filed Sep 9, 1981, 10:15 am: 4 IR 1990)*

Rule 3. Inspections, Safety Orders and Penalties

610 IAC 4-3-1 Purpose and scope of rule

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 1. The Indiana occupational safety and health act, IC 22-8-1.1 requires, in part, that every employer covered under the act furnish to its employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees. The act also requires that employers comply with occupational safety and health standards promulgated under the act, and that employees comply with standards, rules, regulations and orders issued under the act which are applicable to their own actions and conduct. The act authorizes the department to conduct inspections, and to issue safety orders and proposed penalties for alleged violations. The act contains provisions for adjudication of violations, periods prescribed, for the abatement of violations, and proposed penalties by the board of safety review, if contested by an employer or by an employee or authorized representative of employees, and for judicial review. The purpose of 610 IAC 4-3 is to prescribe rules and to set forth general policies for enforcement of the inspection, safety order, and proposed penalty provisions of the act. In situations where 610 IAC 4-3 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the commissioner or his designee determines that an alternative course of action would better serve the objectives of the act. *(Department of Labor; PT 1903, 1903.1; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 481; filed Jan 8, 1986, 2:18 pm: 9 IR 999; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-2 Posting of notices by employers; "establishment" defined; availability to employees of law, regulations, and standards

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-27.1

Sec. 2. (a)(1) Each employer shall post and keep posted a notice or notices to be furnished by the department, informing employees of the protections and obligations provided for in the act and that for assistance and information, including copies of the act and of specific safety and health standards, employees should contact the employer or the office of the department. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

(2) Reproductions or facsimiles of the state poster shall constitute compliance with the posting requirements. Such

reproductions or facsimiles must be at least 8 1/2 inches by 14 inches, and the printing size is at least 10 pt. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, generally not less than 36 pt.

(b) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the department. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as longshoremen, traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of subsection (a) of this section.

(c) Copies of the act, all regulations published in 610 IAC 4, and all applicable standards will be available at the department of labor–IOSHA office. If any employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.

(d) Any employer failing to comply with the provisions of this section shall be subject to issuance of a safety order and penalty in accordance with the provisions of IC 22-8-1.1-27.1. *(Department of Labor; PT 1903, 1903.2; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 481; filed Jan 8, 1986, 2:18 pm: 9 IR 1000; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-3 Authority of compliance safety and health inspectors; security clearance

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-23.1

Sec. 3. (a) Compliance safety and health inspectors are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee or an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the act and rules published in 610 IAC 4, and other records which are directly related to the purpose of the inspection.

(b) Prior to inspecting areas containing information which is classified by an agency of the United States government in the interest of national security, the compliance safety and health inspectors shall have obtained the appropriate security clearance. *(Department of Labor; PT 1903, 1903.3; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 482; filed Jan 8, 1986, 2:18 pm: 9 IR 1000; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-4 Refusal to permit inspection; compulsory process

Authority: IC 22-8-1.1-7; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-15; IC 22-8-1.1-23.1

Sec. 4. (a) Upon a refusal to permit the compliance safety and health inspector, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with 610 IAC 4-3-3, or to permit a representative of employees to accompany the compliance safety and health inspector during the physical inspection of any workplace in accordance with 610 IAC 4-3-8, the compliance safety and health inspector shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The compliance safety and health inspector shall endeavor to ascertain the reason for such refusal, and he shall immediately report the refusal and the reason therefor to the commissioner. The commissioner shall consult with the attorney general, who shall take appropriate action, including compulsory process, if necessary.

(b) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the commissioner and the attorney general circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

(1) when the employer's past practice either implicitly or explicitly puts the commissioner on notice that a warrantless inspection will not be allowed;

(2) when an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

(c) For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section. *(Department of Labor; PT 1903, 1903.4; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 483; filed May 12, 1981, 3:07 pm: 4 IR 915; filed Sep 9, 1981, 10:15 am: 4 IR 1999; filed Jan 8, 1986, 2:18 pm: 9 IR 1001; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-5 Permission to enter may not be conditioned on waiver of cause of action

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 5. Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, safety order, or penalty under the act *[IC 22-8-1.1]*. Compliance safety and health inspectors are not authorized to grant any such waiver. *(Department of Labor; PT 1903, 1903.5; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 483; filed Jan 8, 1986, 2:18 pm: 9 IR 1001; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-6 Advance notice of inspections prohibited; exceptions; penalty

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-24.2; IC 22-8-1.1-27.1

Sec. 6. (a) Advance notice of inspection may not be given, except in the following situations:

(1) in cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

(2) in circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

(3) where necessary to assure the presence of representation of the employer and employees or the appropriate personnel needed to aid in the inspection; and

(4) in other circumstances where the commissioner determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(b) In the situations described in subsection (a) of this section, advance notice of inspections may be given only if authorized by the commissioner, except that in cases of apparent imminent danger, advance notice may be given by the compliance safety and health inspector with such authorization if the commissioner is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See 610 IAC 4-3-8(b) as to situations where there is no authorized representative of employees.) Upon the request of the employer, the compliance safety and health inspector will inform the authorized representative of employees of the inspection, provided that the employer furnishes the compliance safety and health inspector with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this section promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the compliance safety and health inspector promptly to inform such representative of the inspection, may be subject to a safety order and penalty under IC 22-8-1.1-27.1(a). Advance notice in any of the situations, described in subsection (a) of this section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual

circumstances.

(c) The act provides in IC 22-8-1.1-24.2 that any persons who give advance notice of any inspection to be conducted under the act, without authority from the commissioner or his duly authorized representative, commits a Class B misdemeanor, which is punishable by up to one hundred eighty (180) days imprisonment and a one thousand dollar ($1,000) fine. *(Department of Labor; PT 1903, 1903.6; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 483; filed Jan 8, 1986, 2:18 pm: 9 IR 1001; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-7 Conduct of inspection; authority of inspectors; precautions

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-23.1

Sec. 7. (a) Subject to the provisions of 610 IAC 4-3-3, inspections shall take place at such times and in such places of employment as the commissioner may direct. At beginning of an inspection, compliance safety and health inspectors shall present their credentials to the owner, operator, or agent in charge at the establishment; and indicate generally the scope of the inspection and the records specified in 610 IAC 4-3-3 which they wish to review. However, such designation of records shall not preclude access to additional records specified in 610 IAC 4-3-3.

(b) Compliance safety and health inspectors shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See 610 IAC 4-3-9 on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposure.

(c) In taking photographs and samples, compliance safety and health inspectors shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Compliance safety and health inspectors shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

(d) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

(e) At the conclusion of an inspection, the inspector shall confer with the employer or his representative and informally advise him of any apparant *[sic.]* safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the compliance safety and health inspector any pertinent information regarding conditions in the workplace.

(f) Inspections shall be conducted in accordance with the requirements of 610 IAC 4-3. *(Department of Labor; PT 1903, 1903.7; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 484; filed Jul 13, 1983, 2:37 pm: 6 IR 1728; filed Jan 8, 1986, 2:18 pm: 9 IR 1002; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-8 Employer and employee representatives may accompany inspector

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-24.3

Sec. 8. (a) Compliance safety and health inspectors shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the compliance safety and health inspector during the physical inspection of any workplace for the purpose of aiding such inspection. A compliance safety and health inspector may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the compliance safety and health inspector during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) Compliance safety and health inspectors shall have the authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this section. If there is no authorized representative of employees, or if the compliance safety and health inspector is unable to determine with reasonable certainty who is such representative, he shall

consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(c) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the compliance safety and health inspector, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the compliance safety and health inspector during the inspection.

(d) Compliance safety and health inspectors are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of 610 IAC 4-3-9(d). With regard to information classified by an agency of the U.S. government in the interest of national security, only persons authorized to have access to such information may accompany a compliance safety and health inspector in areas containing such information. *(Department of Labor; PT 1903, 1903.8; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 485; filed Jan 8, 1986, 2:18 pm: 9 IR 1003; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-9 Confidentiality of trade secrets; penalty

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 5-14-3; IC 22-8-1.1-48.4; IC 22-8-1.1-49

Sec. 9. (a) IC 22-8-1.1-48.4 provides: "All information reported to or otherwise obtained by the commissioner, his designated representatives, the department of labor, the occupational safety standards commission, the board of safety review, the bureau of safety education and training, and the agents and employees of any of them, that contains or might reveal a trade secret, shall be considered confidential, and shall be disclosed only to such other officers or employees concerned with the functions set forth in this chapter as may be necessary for them to discharge their duties under this chapter. In any proceeding, the commissioner, the commission, the board or a court shall issue such orders as may be appropriate, including the impoundment of files, or portions of files, to protect the confidentiality of trade secrets."

(b) IC 22-8-1.1-48.4 further provides: "No person may violate the confidentiality of trade secrets". Pursuant to IC 22-8-1.1-49 any person who knowingly does so commits a Class B misdemeanor. The maximum punishment would be one hundred eighty (180) days imprisonment and a one thousand dollar ($1,000) fine. Any information which would be protected by IC 22-8-1.1-48.4 would not be subject to the disclosure provisions of the Indiana access to public records law (IC 5-14-3).

(c) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the compliance safety and health inspector has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential–trade secret" and shall not be disclosed except in accordance with the provisions of IC 22-8-1.1-48.4.

(d) Upon the request of an employer, an authorized representative of employees under 610 IAC 4-3-8 in an area containing trade secrets shall be an employee in that area. Where there is no such representative or employee, the compliance safety and health inspector shall consult with a reasonable number of employees who work in that area concerning matters of safety and health. *(Department of Labor; PT 1903, 1903.9; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 486; filed Jan 8, 1986, 2:18 pm: 9 IR 1003; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-10 Inspectors may consult with employees

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 10. Compliance safety and health inspectors may consult with employee concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the act which he has reason to believe exists in the workplace to the attention of the compliance safety and health inspector. *(Department of Labor; PT 1903, 1903.10; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 487; filed Jan 8, 1986, 2:18 pm: 9 IR 1004; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-11 Notice by employee of alleged violation

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-24.1; IC 22-8-1.1-38.1

Sec. 11. (a) Any employee or representative of employees who believe that a violation of the act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the commissioner or to a compliance safety and health inspector. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the commissioner or the compliance safety and health inspector no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the department.

(b) If upon receipt of such notification, the commissioner determines that the complaint meets the requirements set forth in subsection (a) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the complaint.

(c) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the compliance safety and health inspector in writing, of any violation of the act which they have reason to believe exists in such workplace. Any such notice shall comply with the requirements of subsection (a) of this section.

(d) IC 22-8-1.1-38.1 provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter." *(Department of Labor; PT 1903, 1903.11; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 487; filed Sep 9, 1981, 10:15 am: 4 IR 2000; filed Jan 8, 1986, 2:18 pm: 9 IR 1004; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-12 Determination that inspection not warranted; informal conference

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-24.1

Sec. 12. (a) If the commissioner determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under 610 IAC 4-3-11, he shall notify the complaining party in writing within twenty (20) days of such determination giving the reasons why he is not making the requested inspection. The complaining party may obtain review of such determination by submitting a written statement of position with the commissioner and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the commissioner and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the commissioner, within twenty (20) days after the receipt of such a request, will hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the commissioner, within ten (10) days thereafter, shall affirm, modify, or reverse the determination and furnish the complaining party and the employer and *[sic.]* written notification of his decision and the reasons therefor. The decision of the commissioner shall be final and not subject to further review.

(b) If the commissioner determines that an inspection is not warranted because the requirements of 610 IAC 4-3-11(a) have not been met, he shall notify the complaining party in writing within twenty (20) days of such determination giving the reason why he is not making the requested inspection. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of 610 IAC 4-3-11(a). *(Department of Labor; PT 1903, 1903.12; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 488; filed Sep 9, 1981, 10:15 am: 4 IR 2001; filed Jan 8, 1986, 2:18 pm: 9 IR 1005; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-13 Imminent danger

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-39.1

Sec. 13. Whenever and as soon as a compliance safety and health inspector concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the act *[IC 22-8-1.1]*, he shall inform the affected employees and employers of the danger and that he is recommending a civil action to restrain such conditions or practices and for other appropriate relief in accordance with the provisions of IC 22-8-1.1-39.1. Appropriate safety orders and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of such danger by the compliance safety and health inspector, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger. *(Department of Labor; PT 1903, 1903.13; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 488; filed Jan 8, 1986, 2:18 pm: 9 IR 1005; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-14 Safety order; notice of violation; review procedures

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 14. (a) The commissioner shall review the inspection report of the compliance safety and health inspector. If, on the basis of the report, the commissioner believes that the employer has violated a requirement of IC 22-8-1.1-2 or of any standard, rule or order promulgated pursuant to IC 22-8-1.1-13.1, IC 22-8-1.1-15 and IC 22-8-1.1-15.1 or of any substantive rule published in 610 IAC 4, he shall, if appropriate, consult with the attorney general, and he shall issue to the employer either a safety order or a notice of de minimis violations which have no direct or immediate relationship to safety or health. An appropriate safety order or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the compliance safety and health inspector, the employer immediately abates, or initiates steps to abate, such alleged violation. Any safety order or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No safety order may be issued under this section after the expiration of six (6) months following the occurrence of any alleged violation.

(b) Any safety order shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the act, standard, rule, regulations, or order alleged to have been violated. Any safety order shall also fix a reasonable time or times for the abatement of alleged violation.

(c) If a safety order or notice of de minimis violations is issued for a violation alleged in a request for inspection under 610 IAC 4-3-11(a) or a notification of violation under 610 IAC 4-3-11(c), a copy of the safety order or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

(d) After an inspection, if the commissioner determines that a safety order is not warranted with respect to a danger or violation alleged to exist in a request for inspection under 610 IAC 4-3-11(a) or a notification of violation under 610 IAC 4-3-11(c), the informal review procedures prescribed in 610 IAC 4-3-12(a) shall be applicable. After considering all views presented, the commissioner shall affirm the determination not to issue a safety order, order a reinspection, or issue a safety order if he believes that the inspection disclosed a violation. The commissioner shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor. The determination of the commissioner shall be final and not subject to review.

(e) Every safety order shall state that the issuance of a safety order does not constitute a finding that a violation of the act *[IC 22-8-1.1]* has occurred unless there is a failure to contest as provided for in the act *[IC 22-8-1.1]* or, if contested, unless the safety order is affirmed by the board of safety review. *(Department of Labor; PT 1903, 1903.14; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 488; filed Jan 8, 1986, 2:18 pm: 9 IR 1005; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-15 Petition for modification of abatement date; information required; filing

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1
Affected: IC 4-21.5-3-5; IC 4-21.5-3-7; IC 22-8-1.1

Sec. 15. (a) An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of a safety order, but such abatement has not been completed because of factors beyond his reasonable control.

(b) A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed

abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(5) A certification that a copy of the petition has been posted, and if appropriate, served on the authorized representative of affected employees, in accordance with subsection (c)(2) of this section and a certification of the date upon which such posting and service was made.

(c)(1) A petition for modification of abatement date shall be filed with the commissioner no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(2) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted until the time period for the filing of a petition for review of the commissioner's granting or denying the petition expires. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

(3) Subsequent to the receipt of a petition, the commissioner shall issue an order under the provisions of IC 4-21.5-3-5 granting or denying the petition. The commissioner shall give such notice to the employer and any person who has requested it under IC 4-21.5-3-5(b)(4). Upon receipt, the employer shall immediately serve it on any authorized representative of affected employees and post it with the petition. It shall remain posted until the time period for the filing of a petition for review expires.

(4) The employer and affected employees or their authorized representatives may file a petition for review of the order described in subsection (c)(3) of this section within fifteen (15) days of its issuance (plus three (3) days if the notice is served by mail). If the fifteenth day would be a Saturday, Sunday, legal holiday under a state statute, or a day on which the department's offices are closed during regular business hours, the fifteen (15) day period shall run until the end of the next day which is not a Saturday, Sunday, legal holiday under a state statute, or a day on which the department's offices are closed during regular working hours.

(5) If a petition for review is filed, the commissioner shall grant or deny it under the provisions of IC 4-21.5-3-7. If he grants the petition for review, he shall immediately certify the dispute to the board of safety review. *(Department of Labor; PT 1903, 1903.14a; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 489; filed Jan 8, 1986, 2:18 pm: 9 IR 1006; filed May 22, 1987, 12:30 pm: 10 IR 2290, eff Jul 1, 1987; errata, 10 IR 2501; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-16 Notice of proposed penalty; factors; de minimis violations

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1
Affected: IC 4-21.5-3-6; IC 22-8-1.1-27.1

Sec. 16. (a) Concurrent with, the issuance of a safety order, or within five (5) working days after the issuance of a safety order, the commissioner shall notify the employer by certified mail or by personal service by the compliance safety and health inspector of the proposed penalty under IC 22-8-1.1-27.1, or that no penalty is being proposed. A notice accompanying the proposed penalty shall comply with IC 4-21.5-3-6 and inform the employer that the proposed penalty shall be deemed to be the final order of the board of safety review and not subject to review by any court or agency unless, within fifteen (15) working days from the receipt of such notice, the employer files with the commissioner a written petition for review.

(b) The commissioner shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violations, the good faith of the employer, and the history of previous violations, in accordance with the provisions of IC 22-8-1.1-27.1.

(c) Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the compliance safety and health inspector, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health. *(Department of Labor; PT 1903, 1903.15; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 491; filed Sep 9, 1981, 10:15 am: 4 IR 2001; filed Jan 8, 1986, 2:18 pm: 9 IR 1007; filed May 22, 1987, 12:30 pm: 10 IR 2291, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305) NOTE: The text of 610 IAC 4-3-16(b) and (c) in LSA Document #1-88(F) printed at 4 IR 2001, SECTION 4, was omitted from the final rule filed with the Secretary of State but has been editorially combined to eliminate*

conflicting Indiana Administrative Code sections.

610 IAC 4-3-17 Posting of safety order; penalty

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-25.2; IC 22-8-1.1-27.1; IC 22-8-1.1-28.1

Sec. 17. (a) Upon receipt of any safety order under the act *[IC 22-8-1.1]*, the employer shall immediately post such safety order, or a copy thereof, unedited, at or near each place an alleged violation referred to in the safety order occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the safety order at or near each place of alleged violation, such safety order shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed (see 610 IAC 4-3-2(b)), the safety order may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the safety order is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.

(b) Each safety order, or a copy thereof, shall remain posted until the violation has been abated, or for three (3) working days whichever is later. The filing by the employer of a petition for review under 610 IAC 4-3-18 shall not affect its posting responsibility under this section unless and until the board of safety review issues a final order vacating this safety order.

(c) An employer to whom a safety order has been issued may post a notice in the same location where such safety order is posted indicating that the safety order is being contested before the board of safety review, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

(d) Any employer failing to comply with the provisions of subsections (a) and (b) of this section shall be subject to the issuance of safety order and penalty in accordance with the provisions of IC 22-8-1.1-27.1. *(Department of Labor; PT 1903, 1903.16; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 491; filed Jan 8, 1986, 2:18 pm: 9 IR 1007; filed May 22, 1987, 12:30 pm: 10 IR 2292, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-18 Notice of intention to contest safety order or proposed penalty

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1
Affected: IC 4-21.5-3-7; IC 22-8-1.1-25.1; IC 22-8-1.1-28.1; IC 22-8-1.1-28.2

Sec. 18. (a) Any employer to whom a safety order or notice of proposed penalty has been issued, may, under IC 22-8-1.1-28.1 file with the commissioner a written petition for review stating that he intends to contest such safety order or proposed penalty. Such petition for review shall be postmarked within fifteen (15) working days of receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. Every petition for review shall specify whether it is directed to the safety order or to the proposed penalty, or both.

(b) Any employee or representative of employees of an employer to whom a safety order has been issued may file a written petition for review with the commissioner alleging that the period of time fixed in the safety order for the abatement of the violation is unreasonable. Such petition for review shall be postmarked within fifteen (15) working days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed.

(c) Upon receipt of a petition for review filed pursuant to subsection (a) or (b) of this section, the commissioner shall have five (5) working days in which to affirm, amend (modify or alter) or dismiss the safety order, or notice of proposed penalty. Notice of his action shall be served on the employer and upon any employee, or representative of employees, who has filed a petition for review, and said notice shall be posted at or near the place of the alleged violation in such a manner affected employees may become aware of it.

(d) If the commissioner affirms the safety order or proposed penalty, he shall also grant or deny the petition for review under the provisions of IC 4-21.5-3-7. If the commissioner amends the safety order or proposed penalty, the petition for review shall be deemed moot.

(e) However, an employer then desiring to contest an amended safety order or proposed penalty, or representative of employees desiring to contest the period of time fixed for abatement, shall file a petition for review which must be postmarked within fifteen (15) working days of issuance of the commissioner's action undertaken pursuant to subsection (c) of this section. The commissioner shall then grant or deny the petition for review under the provisions of IC 4-21.5-3-7.

(f) Upon the granting of a petition for review, the commissioner shall immediately certify the dispute to the board. *(Department of Labor; PT 1903, 1903.17; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 492; filed Sep 9, 1981, 10:15 am: 4 IR 2002; filed Jan 8, 1986, 2:18 pm: 9 IR 1008; filed May 22, 1987, 12:30 pm: 10 IR 2292, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-19 Failure to correct violation; additional penalty

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1
Affected: IC 4-21.5-3-7; IC 22-8-1.1-26.1; IC 22-8-1.1-27.1; IC 22-8-1.1-30.1

Sec. 19. (a) If an inspection discloses that an employer has failed to correct an alleged violation for which a safety order has been issued within the period permitted for its correction, the commissioner shall, if appropriate, consult with the attorney general, and he shall notify the employer by certified mail or by personal service by the compliance safety and health inspector of such failure and of the additional penalty proposed under IC 22-8-1.1-27.1(a)(3) by reason of such failure. The period for the correction of a violation for which a safety order has been issued shall not begin to run until the entry of a final order of the board of safety review in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

(b) Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may file with the commissioner a written petition for review stating that he intends to contest such notification or proposed additional penalty. Such petition for review shall be postmarked within fifteen (15) working days of the receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty.

(c) Upon receipt of a petition for review filed pursuant to subsection (b) of this section, the commissioner shall have five (5) working days in which to affirm, amend (modify or alter) or dismiss the notification of failure to correct violations and of proposed additional penalty. Notice of his action shall be served upon the employer and said notice shall be posted at or near the place of the alleged violation in such a manner that affected employees may become aware of it.

(d) If the commissioner affirms the notification of failure to correct violation and of proposed additional penalty, he shall also grant or deny the petition for review under the provisions of IC 4-21.5-3-7. If the commissioner amends the notification of failure to correct violation and of proposed additional penalty, the petition for review shall be deemed moot.

(e) However, an employer desiring to further contest an amended notification of failure to correct violation or proposed additional penalty shall file a petition for review which must be postmarked within fifteen (15) working days of receipt of the commissioner's action undertaken pursuant to subsection (c) of this section. The commissioner shall then grant or deny the petition for review under the provisions of IC 4-21.5-3-7.

(f) Upon the granting of a petition for review the commissioner shall immediately certify the dispute to the board.

(g) Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the board of safety review unless, within fifteen (15) working days from the date of receipt of such notification, the employer files with the commissioner a written petition for review. *(Department of Labor; PT 1903, 1903.18; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 492; filed Sep 9, 1981, 10:15 am: 4 IR 2002; filed Jan 8, 1986, 2:18 pm: 9 IR 1008; filed May 22, 1987, 12:30 pm: 10 IR 2293, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-19.1 Abatement verification

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-28.1

Sec. 19.1. (a) Inspections conducted by the department of labor (department) are intended to result in the abatement of violations of the Indiana Occupational Safety and Health Act (IOSHA). This section sets forth the procedures the department will use to ensure abatement. These procedures are tailored to the nature of the safety order and the employer's abatement actions. This section applies to employers who receive a safety order for a violation of IOSHA.

(b) The following definitions apply throughout this section:

(1) “Abatement” means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by the department during an inspection.

(2) “Abatement date” means the following:

(A) For an uncontested safety order item, the later of:

(i) the date in the safety order for abatement of the violation;

(ii) the date approved by the department or established in litigation as a result of a petition for modification of abatement date; or

(iii) the date established in a safety order by an informal settlement agreement.

(B) For a contested safety order item for which the board of safety review has issued a final order affirming the violation, the later of:

(i) the date identified in the final order for abatement;

(ii) the date computed by adding the period allowed in the safety order for abatement to the final order date; or

(iii) the date established by a formal settlement agreement.

(3) "Affected employees" means those employees who are exposed to the hazard identified as a violation in a safety order.

(4) "Contested safety order" means a safety order which is the subject of a petition for review filed pursuant to IC 22-8-1.1-28.1.

(5) "Final order date" means the following:

(A) For an uncontested safety order item, the fifteenth working day after the employer's receipt of the safety order.

(B) For a contested safety order item:

(i) the date on which the board of safety review issues its decision or order disposing of all or pertinent part of a case; or

(ii) the date on which a court issues a decision affirming the violation in a case in which a final order of the board of safety review has been stayed.

(6) "Movable equipment" means a hand-held or nonhand-held machine or device, powered or unpowered, that is used to do work and is moved within or between worksites.

(7) "Uncontested safety order" means a safety order for which a petition for review has not been filed pursuant to IC 22-8-1.1-28.1.

(c) Requirements for abatement certification shall be as follows:

(1) Within ten (10) calendar days after the abatement date, the employer must certify to the department that each violation cited in the safety order has been abated, except as provided in subdivision (2).

(2) The employer is not required to certify abatement if the compliance safety and health inspector, during the on-site portion of the inspection:

(A) observes, within twenty-four (24) hours after a violation is identified, that abatement has occurred; and

(B) notes in the safety order that abatement has occurred.

(3) The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required by subsection (h), the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

(d) Requirements for abatement documentation shall be as follows:

(1) The employer must submit to the department, along with the information on abatement certification required by subsection (c)(3), documents demonstrating that abatement is complete for each knowing or repeat violation and for any serious violation for which the department indicates in the safety order that such abatement documentation is required.

(2) Documents demonstrating that abatement is complete may include, but are not limited to:

(A) evidence of the purchase or repair of equipment;

(B) photographic or video evidence of abatement; or

(C) other written records.

(e) Requirements for abatement plans shall be as follows:

(1) The department may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than ninety (90) calendar days. If an abatement plan is required, the safety order must so indicate.

(2) The employer must submit an abatement plan for each cited violation within twenty-five (25) calendar days from the final order date when the safety order indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete.

(f) Requirements for progress reports shall be as follows:

(1) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The safety order must indicate:

(A) that periodic progress reports are required and the safety order items for which they are required;

(B) the date on which an initial progress report must be submitted, which may be no sooner than thirty (30) calendar days after submission of an abatement plan;

(C) whether additional progress reports are required; and

(D) the date on which additional progress reports must be submitted.

(2) For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken.

(g) Requirements for employee notification shall be as follows:

(1) The employer must inform affected employees and their representative about abatement activities covered by this section by posting a copy of each document submitted to the department or a summary of the document near the place where the violation occurred.

(2) Where such posting does not effectively inform employees and their representatives about abatement activities, for example, for employers who have mobile work operations, the employer must:

(A) post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or

(B) take other steps to communicate fully to affected employees and their representatives about abatement activities.

(3) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the department as follows:

(A) an employee or an employee representative must submit a request to examine and copy abatement documents within three (3) working days of receiving notice that the documents have been submitted; and

(B) the employer must comply with an employee's or employee representative's request to examine and copy abatement documents within five (5) working days of receiving the request.

(4) The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the department and that abatement documents are:

(A) not altered, defaced, or covered by other material; and

(B) remain posted for three (3) working days after submission to the department.

(h) Requirements for transmitting abatement documents shall be as follows:

(1) The employer must include, in each submission required by this section, the following information:

(A) The employer's name and address.

(B) The inspection number to which the submission relates.

(C) The safety order and item numbers to which the submission relates.

(D) A statement that the information submitted is accurate.

(E) The signature of the employer or the employer's authorized representative.

(2) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the department receives the document is the date of submission.

(i) Requirements for movable equipment shall be as follows:

(1) For serious, repeat, and knowing violations involving movable equipment, the employer must attach a warning tag or a copy of the safety order to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites.

(2) Attaching a copy of the safety order to the equipment is deemed by the department to meet the tagging requirement of subdivision (1), as well as the posting requirement of section 17 of this rule.

(3) The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the safety order issued.

(4) If the violation has not already been abated, a warning tag or copy of the safety order must be attached to the equipment:

(A) for hand-held equipment, immediately after the employer receives the safety order; or

(B) for nonhand-held equipment, prior to moving the equipment within or between worksites.

(5) For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by the department to meet the requirements of this section when the information required by

subdivision (3) is included on the tag.

(6) The employer must assure that the tag or copy of the safety order attached to movable equipment is not altered, defaced, or covered by other material.

(7) The employer must assure that the tag or copy of the safety order attached to movable equipment remains attached until:

(A) the violation has been abated and all abatement verification documents required by this section have been submitted to the department;

(B) the cited equipment has been permanently removed from service or is no longer within the employer's control; or

(C) the board of safety review or a court issues a final order vacating the safety order.

(Department of Labor; 610 IAC 4-3-19.1; filed Jun 11, 1998, 5:00 p.m.: 21 IR 4206; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-3-19.5 Denial of petition for review

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1
Affected: IC 4-21.5-3; IC 22-8-1.1-28.1; IC 22-8-1.1-28.3

Sec. 19.5. (a) If the commissioner denies a petition for review filed under 610 IAC 4-3-15, 610 IAC 4-3-18, or 610 IAC 4-3-19, he shall notify the petitioner in writing that the petition for review is denied and that the petitioner may seek administrative review of the denial by filing a written request for reconsideration following the provisions of IC 4-21.5-3-7(c). The time period for seeking such administrative review is computed following the provisions of IC 4-21.5-3-2.

(b) If such a request for reconsideration of denial of a petition for review is filed, the resulting preliminary hearing remains in the jurisdiction of the commissioner and thus the matter is not certified to the board of safety review. It shall be conducted under the applicable provisions of IC 4-21.5-3.

(c) If the final result of such preliminary hearing results in the granting of the petition for review which had previously been denied, the commissioner shall immediately certify the matter to the board. *(Department of Labor; 610 IAC 4-3-19.5; filed May 22, 1987, 12:30 pm: 10 IR 2294, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-20 Informal review of safety order, penalty, or notice of failure to correct violation

Authority: IC 4-21.5-3-34; IC 4-21.5-3-35; IC 22-8-1.1-28.4; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 20. (a) This section is adopted pursuant to IC 22-8-1.1-28.4 to permit informal review of safety orders, assessments of penalties, or notices to correct violations issued pursuant to the act *[IC 22-8-1.1]*.

(b) At the request of an affected employer, employee, or representative of employees, the commissioner may hold an informal conference for the purpose of discussing any issues raised by an inspection, safety order, notice of proposed penalty, notice of failure to correct violation, or a petition for review. Provided, however, that no such conference or request for such conference shall operate as a stay of the fifteen (15) working day period for filing a petition for review as prescribed in 610 IAC 4-3-18 and 610 IAC 4-3-19.

(c) The informal conference may be held within the fifteen (15) working day period to file a petition for review provided for in 610 IAC 4-3-18 and 610 IAC 4-3-19, or within the five (5) working day period the commissioner has to respond to a petition for review also provided for in 610 IAC 4-3-18 and 610 IAC 4-3-19. Conferences shall be scheduled at the discretion of the commissioner as time permits. In order to facilitate scheduling, those desiring an informal conference are urged to contact the commissioner as soon as possible after receipt of the safety order, notice of proposed penalty, or notice of failure to correct violation.

(d) If the informal conference is requested by the employer, an affected employee or his representative shall be given an opportunity to participate, at the discretion of the commissioner. If the conference is requested by an employee or representative of employee, the employer shall be afforded an opportunity to participate at the discretion of the commissioner. Any party may be represented by counsel at such conference.

(e) During the informal conference any matter in dispute among the parties will be discussed in an informal manner. As a result of the informal conference the commissioner may issue an amended safety order, notice of proposed penalty or notice of failure to correct violation. The amended safety order shall be posted in the same manner as the original safety order as required by 610 IAC 4-3-17.

(f) An employer dissatisfied with the results of an informal conference may file a petition for review concerning the safety

order, notice of proposed penalty, or notice of failure to correct violation as provided for in 610 IAC 4-3-18 and 610 IAC 4-3-19. If the informal conference is held within the five (5) working day period the commissioner has to respond to a petition for review and the commissioner's subsequent action is to affirm the safety order and penalty or notification of failure to correct, no further petition for review is necessary and the commissioner shall grant or deny the petition for review.

(g) An employee or representative of employee dissatisfied with the results in an informal conference may file a petition for review concerning the time fixed for abatement of a violation as provided for in 610 IAC 4-3-18. If the informal conference is held within the five (5) working day period the commissioner has to respond to a petition for review and the commissioner's subsequent action is to affirm the safety order and penalty, no further petition for review is necessary and the commissioner shall grant or deny the petition for review. *(Department of Labor; PT 1903, 1903.19; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 493; filed Sep 9, 1981, 10:15 am: 4 IR 2003; filed Jan 8, 1986, 2:18 pm: 9 IR 1009; filed May 22, 1987, 12:30 pm: 10 IR 2294, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-21 Definitions

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 21. As used in this rule (610 IAC 4-3):

(a) "Act" means the Indiana occupational safety and health act (IC 22-8-1.1).

(b) The definitions and interpretations contained in IC 22-8-1.1-1 shall be applicable to such terms when used in 610 IAC 4-3.

(c) "Working days" means Mondays through Fridays, but shall not include Saturdays, Sundays, or legal holidays under a state statute, or days on which the department's offices are closed during regular business hours. In computing working days, the day of receipt of any notice shall not be included, and the last day of the working days shall be included.

(d) "Compliance safety and health inspector" means a person authorized by the commissioner to conduct inspections.

(e) "Department" means the Indiana department of labor.

(f) "Commissioner" means the commissioner of the department or his duly designated representative.

(g) "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under 610 IAC 4-3-11(a) and (c), any reinspection, followup inspection, accident investigation or other inspection conducted under IC 22-8-1.1. *(Department of Labor; PT 1903, 1903.21; filed Apr 5, 1977, 10:24 am: Rules and Regs. 1978, p. 493; filed Jan 8, 1986, 2:18 pm: 9 IR 1009; filed May 22, 1987, 12:30 pm: 10 IR 2295, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-22 Action by United States department of labor on request for variance

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-25.1

Sec. 22. Where action has been taken by the United States Department of Labor, pursuant to the Federal Occupational Safety and Health Act of 1970, on any temporary or permanent variance request to a federal standard which is identical to an Indiana occupational health and safety standard, the commissioner shall consider such action as an authoritative interpretation of the employer(s) compliance obligation with regard to the state standard, or portion thereof, identical to the federal standard or portion thereof, affected by the action in the employment or places of employment covered by the variance application. *(Department of Labor; 610 IAC 4-3-22; filed Sep 9, 1981, 10:15 am: 4 IR 2004; filed Jan 8, 1986, 2:18 pm: 9 IR 1010; filed May 22, 1987, 12:30 pm: 10 IR 2295, eff Jul 1, 1987; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-3-23 Department access to employee medical information; policies, procedures, and safeguards

Authority: IC 22-8-1.1-48.1
Affected: IC 4-1-6-2; IC 4-1-6-7; IC 22-8-1.1-17.1

Sec. 23. (a) General policy. Department access to employee medical records will in certain circumstances be important to the

agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, department authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, department examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by department only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

(b) Scope and application.

(1) Except as provided in subsections (b)(3)–(b)(6) below, this section applies to all requests by department personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provisions of 29 CFR 1910.20(e).

(2) For the purpose of this section, "personally identifiable employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g. exact age, height, weight, race, sex, date of initial employment, job title, etc.).

(3) This section does not apply to department access to, or the use of, aggregate employee medical information or medical records on individual employees which is not in a personally identifiable form. This section does not apply to records required by 610 IAC 4-4, to death certificates, or to employee exposure records, including biological monitoring records treated by 29 CFR 1910.20(c)(5) or by specific occupational safety and health standards as exposure records.

(4) This section does not apply where department compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational safety and health standard, or with 29 CFR 1910.20. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the recordholder. The compliance safety and health inspectors shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

(5) This section does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

(6) This section does not apply where a written directive by the commissioner of labor authorized appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

(7) Even if not covered by the terms of this section, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care benefitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

(c) Responsible persons.

(1) The commissioner of labor shall be responsible for the overall administration and implementation of the procedures contained in this section and shall be responsible for:

(A) department access to personally identifiable employee medical information (subsection (d));

(B) assuring that written access orders meet the requirements of subsections (d)(2) and (d)(3) of this section;

(C) responding to employee, collective bargaining agent, and employer objections concerning written access orders (subsection (f) of this section);

(D) regulating the use of direct personal identifiers (subsection (g) of this section);

(E) regulating internal agency use and security of personally identifiable employee medical information (subsections (h)–(j) of this section);

(F) assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees (subsection (k) of this section);

(G) preparing and filing the annual report with the governor required by IC 4-1-6;

(H) inter-agency transfer or public disclosure of personally identifiable employee medical information (subsection (m) of this section).

(2) Principal department investigator. The principal department investigator shall be the department employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the

examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this action (subsections (d)–(m) of this section). When access is pursuant to a written access order, the principal department investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, biostatistics, environmental health, etc.).

(d) Written access orders.

(1) Requirement for written access order. Except as provided in subsection (d)(4) below, each request by a department representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other recordholder shall be made pursuant to a written access order which has been approved by the commissioner. If deemed appropriate, a written access order may constitute, or be accompanied by, an administrative subpoena.

(2) Approval criteria for written access order. Before approving a written access order, the commissioner shall determine that:

(A) The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

(B) The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access.

(C) The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

(3) Content of written access order. Each written access order shall state with reasonable particularity:

(A) The statutory purposes for which access is sought.

(B) A general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

(C) Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

(D) The name, address, and phone number of the principal department investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

(E) The name, address, and phone number of the commissioner.

(F) The anticipated period of time during which the department expects to retain the employee medical information in a personally identifiable form.

(4) Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

(A) Specific written consent. If the specific written consent of an employee is obtained pursuant to 29 CFR 1910.20(e)(2)(ii), and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a principal department investigator shall be promptly named to assure protection of the information, and the commissioner shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of subsections (h)–(m) of this section.

(B) Physician consultations. A written access order need not be obtained where a department staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the department physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records, however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the department physician shall leave his or her control without the permission of the commissioner.

(e) Presentation of written access order and notice to employees.

(1) The principal department investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one (1) copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the principal department

investigator or to the commissioner.

(2) The principal department investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

(3) The principal department investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter (See, 29 CFR 1910.20(e)(3)(ii)).

(4) The principal department investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the principal department investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

(f) Objections concerning a written access order. All employee, collective bargaining agent, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the commissioner. Unless the agency decides otherwise, access to the records shall proceed without delay notwithstanding the lodging of an objection. The commissioner shall respond in writing to each employee's and collective bargaining agent's written objection to department access. Where appropriate, the commissioner may revoke a written access order and direct that any medical information obtained by it be returned to the original recordholder or destroyed. The principal department investigator shall assure that such instructions by the commissioner are promptly implemented.

(g) Removal of direct personal identifiers. Whenever employee medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the principal department investigator shall, unless authorized by the commissioner, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number for each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The principal department investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the commissioner. The commissioner shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

(h) Internal agency use of personally identifiable employee medical information.

(1) The principal department investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

(2) The principal department investigator, the commissioner, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No department employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

(3) Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the attorney general, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

(4) Department employees and contractors are only authorized to use personally identifiable employee medical information for the purpose for which it was obtained, unless the specific written consent of an employee is obtained as to a secondary purpose, or the procedures of subsections (d)–(g) of this section are repeated with respect to the secondary purpose.

(5) Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

(i) Security procedures.

(1) Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

(2) The commissioner and the principal department investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

(3) The photocopying or other duplication of personally identifiable employee medical information shall be kept to the

minimum necessary to accomplish the purposes for which the information was obtained.

(4) The protective measures established by this section apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

(5) Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

(j) Retention and destruction of records.

(1) Consistent with department records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original recordholder when no longer needed for the purposes for which they were obtained.

(2) Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the commissioner. The commissioner shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

(k) Results of an agency analysis using personally identifiable employee medical information. The commissioner shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

(l) Annual report. The commissioner shall be responsible for preparing and filing the annual report to the governor required by IC 4-1-6-7.

(m) Inter-agency transfer and public disclosure. Personally identifiable employee medical information shall not be transferred to another agency outside the department (other than to the office of attorney general) or disclosed to the public (other than to the affected employee or the original recordholder) unless permitted by the Indiana Occupational Safety and Health Act (IC 22-8-1.1) or the Fair Information Practices Act (IC 4-1-6). IC 22-8-1.1-17.1 provides that the results of medical examinations or tests shall remain confidential within the department.

(n) As used in this section the term "commissioner" means the Indiana commissioner of labor or in the commissioner's absence, his deputy. *(Department of Labor; 610 IAC 4-3-23; filed Jan 20, 1982, 10:55 am: 5 IR 547; filed Jan 8, 1986, 2:18 pm: 9 IR 1010; errata, 9 IR 1667; errata, 10 IR 1277; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

Rule 4. Recording and Reporting Occupational Injuries and Illnesses

610 IAC 4-4-1 Purpose and objectives (Repealed)

Sec. 1. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-2 Employers to maintain log of occupational injuries and illnesses (Repealed)

Sec. 2. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-3 Records to be kept per calendar year (Repealed)

Sec. 3. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-4 Supplementary record at each establishment (Repealed)

Sec. 4. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-5 Annual summary; certification; posting (Repealed)

Sec. 5. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-6 Retention of records (Repealed)

Sec. 6. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-7 Records to be available for inspection (Repealed)

Sec. 7. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-8 Employers to report serious or fatal accidents (Repealed)

Sec. 8. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-9 Penalties for false statements; failure to maintain records or file reports (Repealed)

Sec. 9. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-10 Change of ownership; preservation of records (Repealed)

Sec. 10. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-11 Definitions (Repealed)

Sec. 11. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-12 Petition by employer to maintain different records; employee comments; notice (Repealed)

Sec. 12. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-13 Compliance with respect to employees not in fixed establishment (Repealed)

Sec. 13. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-14 Exception for employers with no more than ten employees (Repealed)

Sec. 14. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-15 Form for keeping log of occupational injuries and illnesses (Repealed)

Sec. 15. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-16 Form for supplementary record (Repealed)

Sec. 16. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

610 IAC 4-4-17 Form for annual summary (Repealed)

Sec. 17. *(Repealed by Department of Labor; PT 1904, Exhibit III; filed Sep 9, 1981, 10:15 am: 4 IR 1999)*

610 IAC 4-4-18 Record keeping and reporting requirements (Repealed)

Sec. 18. *(Repealed by Department of Labor; PT 1952.4; filed Sep 9, 1981, 10:15 am: 4 IR 1999)*

610 IAC 4-4-19 Exception for SIC 52-89 establishments (Repealed)

Sec. 19. *(Repealed by Department of Labor; filed Sep 26, 2002, 11:22 a.m.: 26 IR 370)*

Rule 5. Interpretation of Discrimination Provisions Concerning Employee Filing Complaint or Testifying

610 IAC 4-5-1 Introductory statement

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 1. (a) The Indiana Occupational Safety and Health Act (IC 22-8-1.1) is a statute of general application designed to regulate employment conditions relating to occupational safety and health and to achieve safer and healthier workplaces throughout the state of Indiana. By terms of the act, every employer is required to furnish each of his employees employment and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm, and, further, to comply with occupational safety and health standards promulgated under the act.

(b) The act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of workplaces, and recordkeeping requirements. Enforcement procedures initiated by the Indiana Department of Labor, review proceedings before an independent quasi-judicial agency (the Board of Safety Review), and express judicial review are provided by the act. Under the act, Indiana is enforcing occupational safety and health requirements under a state plan pursuant to 29 U.S.C. §667.

(c) Employees and representatives of employees are afforded a wide range of substantive and procedural rights under the act. Moreover, effective implementation of the act and achievement of its goals depend in large part upon the active but orderly participation of employees, individually and through their representatives, at every level of safety and health activity.

(d) This rule (610 IAC 4-5) deals essentially with the rights of employees afforded under IC 22-8-1.1-38.1 which prohibits reprisals, in any form, against employees who exercise rights under the Indiana Occupational Safety and Health Act *[IC 22-8-1.1]*.

(e) As used in the rule (610 IAC 4-5), the term "chapter" means the Indiana Occupational Safety and Health Act (IC 22-8-1.1).

(f) This rule (610 IAC 4-5) is patterned after 29 CFR Part 1977 in which the United States Department of Labor has adopted provisions concerning the corresponding section to IC 22-8-1.1-38.1 under federal law (29 U.S.C. §660(c)). Subject to contrary provisions of Indiana law, it is the intention of the Indiana Commissioner of Labor to enforce IC 22-8-1.1-38.1 in the same manner the United States Department of Labor enforces 29 U.S.C. §660(c). *(Department of Labor; 610 IAC 4-5-1; filed Oct 2, 1986, 11:34 am: 10 IR 228; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-2 Purpose of this rule

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 2. The purpose of this rule (610 IAC 4-5) is to make available in one place interpretations of the various provisions of IC 22-8-1.1-38.1 which will guide the Indiana Commissioner of Labor in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect. *(Department of Labor; 610 IAC 4-5-2; filed Oct 2, 1986, 11:34 am: 10 IR 229; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-3 General requirements of IC 22-8-1.1-38.1

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 3. IC 22-8-1.1-38.1 provides in general that no person shall discharge or in any manner discriminate against any employee because the employee has:

(1) filed any complaint under or related to the chapter;

(2) instituted or caused to be instituted any proceeding under or related to the chapter;

(3) testified or is about to testify in any proceeding under the chapter or related to the chapter; or

(4) exercised on his own behalf or on behalf of others any right afforded by the chapter.

Any employee who believes that he has been discriminated against in violation of IC 22-8-1.1-38.1 may, within 30 days after such violation occurs, lodge a complaint with the Indiana Commissioner of Labor alleging such violation. The commissioner shall then cause appropriate investigation to be made. If, as a result of such investigation, the commissioner determines that the provisions of IC 22-8-1.1-38.1 have been violated a civil action shall be instituted within one hundred twenty (120) days after receipt of said complaint in the circuit courts of Indiana to restrain violations of IC 22-8-1.1-38.1 and to obtain other appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay. IC 22-8-1.1-38.1 further provides for notification of complainants by the commissioner of determinations made pursuant to their complaints. *(Department of Labor; 610 IAC 4-5-3; filed Oct 2, 1986, 11:34 am: 10 IR 229; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-4 Persons prohibited from discriminating

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 4. IC 22-8-1.1-38.1 specifically states that "no person shall discharge or in any manner discriminate against any employee" because the employee has exercised rights under the act. The prohibitions of IC 22-8-1.1-38.1 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. IC 22-8-1.1-38.1 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. See, Meek v. United States, 136 F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burns, 137 F.2d 37 (3rd Cir., 1943). *(Department of Labor; 610 IAC 4-5-4; filed Oct 2, 1986, 11:34 am: 10 IR 229; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-5 Persons protected by IC 22-8-1.1-38.1

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-1; IC 22-8-1.1-38.1

Sec. 5. (a) All employees are afforded the full protection of IC 22-8-1.1-38.1. For purposes of the Indiana Occupational Safety and Health Act *[IC 22-8-1.1]*, an employee is defined as "a person permitted to work by an employer in employment". The act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear intent that the existence of an employment relationship, for purposes of IC 22-8-1.1-38.1, is to be based upon economic realities rather than upon common law doctrines and concepts. See, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

(b) For purposes of IC 22-8-1.1-38.1, even an applicant for employment could be considered an employee. See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957). Further, because IC 22-8-1.1-38.1 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

(c) In view of the definition of "employer" contained in IC 22-8-1.1-1, employees of the state and all its political subdivisions are within the contemplated coverage of IC 22-8-1.1-38.1. *(Department of Labor; 610 IAC 4-5-5; filed Oct 2, 1986, 11:34 am: 10 IR 229; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-6 Unprotected activities distinguished

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 6. (a) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of IC 22-8-1.1-38.1 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the chapter does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).

(b) At the same time, to establish a violation of IC 22-8-1.1-38.1, the employee's engagement in protected activity need not

be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, IC 22-8-1.1-38.1 has been violated. See, Mitchell v. Goodyear Tire & Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962). Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case. *(Department of Labor; 610 IAC 4-5-6; filed Oct 2, 1986, 11:34 am: 10 IR 230; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-7 Specific protections; complaints under or related to the chapter

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 7. (a) Discharge of, or discrimination against, an employee because the employee has filed "any complaint*** under or related to this chapter (IC 22-8-1.1)***" is prohibited by IC 22-8-1.1-38.1. An example of a complaint made "under" the chapter would be an employee request for inspection pursuant to IC 22-8-1.1-24.1. However, this would not be the only type of complaint protected by IC 22-8-1.1-38.1. The range of complaints "related to" the chapter is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application.

(b) Complaints registered with federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this chapter. Likewise, complaints made to other agencies of the state or its political subdivisions regarding occupational safety and health conditions would be "related to" the chapter. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

(c) Further, the salutary principles of the chapter would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the chapter, and an employee would be protected against discharge or discrimination caused by a complaint to the employer. *(Department of Labor; 610 IAC 4-5-7; filed Oct 2, 1986, 11:34 am: 10 IR 230; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-8 Specific protections; proceedings under or related to the chapter

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1

Sec. 8. (a) Discharge of, or discrimination against, any employee because the employee has "instituted or caused to be instituted any proceeding under or related to this chapter" is also prohibited by IC 22-8-1.1-38.1. Examples of proceedings which could arise specifically under the chapter would be inspections of worksites under IC 22-8-1.1-23.1, employee contest of abatement date under IC 22-8-1.1-28.2, employee initiation of proceedings for promulgation of an occupational safety and health standard under IC 22-8-1.1-15.1, employee application for modification or revocation of a variance under IC 22-8-1.1-20.1, employee judicial challenge to a standard under IC 22-8-1.1-19, and employee appeal of a Board of Safety Review order under IC 22-8-1.1-35.5. In determining whether a "proceeding" is "related to" the chapter, the considerations discussed in 610 IAC 4-5-7 would also be applicable.

(b) An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the chapter. *(Department of Labor; 610 IAC 4-5-8; filed Oct 2, 1986, 11:34 am: 10 IR 230; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-9 Specific protections; testimony

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 9. Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the chapter is also prohibited by IC 22-8-1.1-38.1. This protection would, of course, not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rule

making or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the chapter, he would be protected against discrimination resulting from such testimony. *(Department of Labor; 610 IAC 4-5-9; filed Oct 2, 1986, 11:34 am: 10 IR 230; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-10 Specific protections; exercise of any right afforded by the chapter

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-23.1; IC 22-8-1.1-24.1; IC 22-8-1.1-38.1

Sec. 10. (a) In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the chapter, IC 22-8-1.1-38.1 also protects employees from discrimination occurring because of the exercise of "any right afforded by this chapter". Certain rights are explicitly provided in the chapter; for example, there is a right to participate as a party in enforcement proceedings. Certain other rights exist by necessary implication. For example, employees may request information from the Indiana department of labor; such requests would constitute the exercise of a right afforded by the chapter. Likewise, employees interviewed by agents of the commissioner in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

(b)(1) On the other hand, as a general matter, there is no right afforded by the chapter which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the chapter will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to IC 22-8-1.1-23.1 and IC 22-8-1.1-24.1, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of IC 22-8-1.1-38.1 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

(2) However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition. *(Department of Labor; 610 IAC 4-5-10; filed Oct 2, 1986, 11:34 am: 10 IR 231; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-11 Procedures; filing of complaint of discrimination

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 11. (a) Who may file. A complaint of discrimination under IC 22-8-1.1-38.1 may be filed by the employee himself, or by a representative authorized to do so on his behalf.

(b) Nature of filing. No particular form of complaint is required.

(c) Place of filing. Complaint should be filed with the Indiana Department of Labor, Indiana Government Center-South, 402 West Washington Street, Room W195, Indianapolis, Indiana 46204; (317) 232-2378.

(d) Time for filing.

(1) IC 22-8-1.1-38.1(b) provides that an employee who believes that he has been discriminated against in violation of IC 22-8-1.1-38.1 "may, within 30 days after such violation occurs," file a complaint with the Indiana Commissioner of Labor.

(2) A major purpose of the 30-day period in this provision is to allow the commissioner to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

(3) However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith

to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

(Department of Labor; 610 IAC 4-5-11; filed Oct 2, 1986, 11:34 am: 10 IR 231; errata filed Sep 7, 2001, 10:25 a.m.: 25 IR 106; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)

610 IAC 4-5-12 Procedures; notification of Commissioner of Labor's determination

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 12. IC 22-8-1.1-38-1 *[sic., IC 22-8-1.1-38.1]* provides that the commissioner is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the commissioner's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in IC 22-8-1.1-38.1. *(Department of Labor; 610 IAC 4-5-12; filed Oct 2, 1986, 11:34 am: 10 IR 232; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-13 Procedures; withdrawal of complaint

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 13. Enforcement of the provisions of IC 22-8-1.1-38.1 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the commissioner's investigation. The commissioner's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure. *(Department of Labor; 610 IAC 4-5-13; filed Oct 2, 1986, 11:34 am: 10 IR 232; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-14 Procedures; arbitration or other agency proceedings

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 14. (a) General. (1) An employee who files a complaint under IC 22-8-1.1-38.1 may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The commissioner's jurisdiction to entertain complaints under IC 22-8-1.1-38.1, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The commissioner may file an action in the circuit courts of Indiana regardless of the pendency of other proceedings.

(2) However, the commissioner also recognizes the national policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. See, e.g., Boy's Markets, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971). By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to complaints under IC 22-8-1.1-38.1.

(3) Where a complainant is in fact pursuing remedies, other than those provided by IC 22-8-1.1-38.1, postponement of the commissioner's determination and deferral to the results of such proceedings may be in order. See, Burlington Truck Lines, Inc., v. U.S., U.S. 156 (1962).

(b) Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under IC 22-8-1.1-38.1 and those proceedings are not likely to violate the rights guaranteed by IC 22-8-1.1-38.1. The factual issues in such proceedings must be substantially the same as those raised by IC 22-8-1.1-38.1 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (Oct. 10, 1972); Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).

(c) Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the chapter. In this regard, if such other actions initiated by a complainant are dismissed without adjudicatory hearing thereof, such dismissal will not ordinarily be regarded as determinative of the complaint under IC 22-8-1.1-38.1. *(Department of Labor; 610 IAC 4-5-14; filed Oct 2, 1986, 11:34 am: 10 IR 232; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

610 IAC 4-5-15 Employee refusal to comply with safety rules

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-38.1

Sec. 15. Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the chapter are not exercising any rights afforded by the chapter. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by IC 22-8-1.1-38.1. This situation should be distinguished from refusals to work, as discussed in 610 IAC 4-5-10. *(Department of Labor; 610 IAC 4-5-15; filed Oct 2, 1986, 11:34 am: 10 IR 233; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

Rule 6. Recording and Reporting Occupational Injuries and Illnesses

610 IAC 4-6-1 Purpose

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 1. (a) The purpose of this rule is to require employers to record and report work related fatalities, injuries, and illnesses.

(b) Recording or reporting a work related injury, illness, or fatality does not mean that:

(1) the employer or employee was at fault;

(2) an Indiana or federal Occupational Safety and Health Act (OSHA) rule has been violated; or

(3) the employee is eligible for workers' compensation or other benefits.

(c) All employers covered by the Indiana Occupational Safety and Health Act (IOSHA) (IC 22-8-1.1 et seq.) are covered by this rule. Sections 2 through 4 of this rule describe which employers do not have to keep OSHA injury and illness records unless Indiana occupational safety & health administration (IOSHA), the federal Occupational Safety and Health Administration (OSHA), or the Bureau of Labor Statistics (BLS) informs them in writing that they must keep records. Under sections 2 through 4 of this rule, employers with ten (10) or fewer employees and business establishments in certain industry classifications are partially exempt from keeping OSHA injury and illness records.

(d) Sections 5 through 14 of this rule describe the work related injuries and illnesses that an employer must enter into the OSHA records and explains *[sic., explain]* the OSHA forms that employers must use to record work related fatalities, injuries, and illnesses.

(e) Under section 8 of this rule, IOSHA believes most significant injuries and illnesses will result in one (1) of the criteria listed in section 8(a) of this rule. However, there are some significant injuries, such as a punctured eardrum or a fractured toe or rib, for which neither medical treatment nor work restrictions may be recommended. In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of diagnosis but are likely to be recommended as the disease progresses. OSHA believes that cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses and must be recorded at the initial diagnosis even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case. *(Department of Labor; 610 IAC 4-6-1; filed Sep 26, 2002, 11:22 a.m.: 26 IR 353)*

610 IAC 4-6-2 Partial exemption for employers with 10 or fewer employees

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 2. (a) Basic requirement *[sic., requirements]* for partial exemptions based on the number of employees are as follows:
(1) If an employer had ten (10) or fewer employees at all times during the last calendar year, that employer does not need to keep Occupational Safety and Health Administration (OSHA) injury and illness records unless federal OSHA, the Indiana occupational safety and health administration (IOSHA), or the Bureau of Labor Statistics informs the employer in writing that the employer must keep records under section 24 or 25 of this rule. However, all employers covered by the Indiana Occupational Safety and Health Act must report to IOSHA any workplace incident that results in a fatality or hospitalization of employees as required by section 23 of this rule.
(2) If an employer had more than ten (10) employees at any time during the last calendar year, that employer must keep OSHA injury and illness records unless that employer's establishment is classified as a partially exempt industry under section 3 of this rule.
(b) This section shall be implemented as follows:
(1) The partial exemption for size is based on the number of employees in the entire company.
(2) To determine if an employer is exempt because of size, the employer needs to determine the company's peak employment during the last calendar year. If the employer had no more than ten (10) employees at any time in the last calendar year, then the company qualifies for the partial exemption for size.

(Department of Labor; 610 IAC 4-6-2; filed Sep 26, 2002, 11:22 a.m.: 26 IR 354)

610 IAC 4-6-3 Partial exemption for establishments in certain industries

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 3. (a) Basic requirements for partial exemptions for establishments in certain industries are as follows:
(1) If a private-sector employer's business establishment is classified in a specific low hazard retail, service, finance, insurance, or real estate industry, as described in subsection (b), that employer does not need to keep Occupational Safety and Health Administration (OSHA) injury and illness records unless the government asks the employer to keep the records under section 24 or 25 of this rule.
(2) Private-sector employers with the following Standard Industrial Classification (SIC) codes do not need to keep OSHA injury and illness records unless the government asks the employer to keep the records under section 24 or 25 of this rule:
(A) 525x Hardware Stores.
(B) 542x Meat and Fish Markets.
(C) 544x Candy, Nut, and Confectionary Stores.
(D) 545x Dairy Products Stores.
(E) 546x Retail Bakeries.
(F) 549x Miscellaneous Food Stores.
(G) 551x New and Used Car Dealers.
(H) 552x Used Car Dealers.
(I) 554x Gasoline Service Stations.
(J) 557x Motorcycle Dealers.
(K) 56xx Apparel and Accessory Stores.
(L) 573x Radio, Television, and Computer Stores.
(M) 58xx Eating and Drinking Places.
(N) 591x Drug Stores and Proprietary Stores.
(O) 592x Liquor Stores.
(P) 594x Miscellaneous Shopping Goods Stores.
(Q) 599x Retail Stores Not Elsewhere Classified.
(R) 60xx Depository Institutions, Banks, and Savings Institutions.

(S) 61xx Nondepository Institutions.
(T) 62xx Security and Commodity Brokers.
(U) 63xx Insurance Carriers.
(V) 64xx Insurance Agents, Brokers, and Services.
(W) 653x Real Estate Agents and Managers.
(X) 654x Title Abstract Offices.
(Y) 67xx Holding and Other Investment Offices.
(Z) 722x Photographic Studios, Portrait.
(AA) 723x Beauty Shops.
(BB) 724x Barber Shops.
(CC) 725x Shoe Repair and Shoeshine Parlors.
(DD) 726x Funeral Service and Crematories.
(EE) 729x Miscellaneous Personal Services.
(FF) 731x Advertising Services.
(GG) 732x Credit Reporting and Collection Services.
(HH) 733x Mailing, Reproduction, and Stenographic Services.
(II) 737x Computer and Data Processing Services.
(JJ) 738x Miscellaneous Business Services.
(KK) 764x Reupholstery and Furniture Repair.
(LL) 78xx Motion Picture.
(MM) 791x Dance Studios, Schools, and Halls.
(NN) 792x Producers, Orchestras, Entertainers.
(OO) 793x Bowling Centers.
(PP) 801x Offices and Clinics of Medical Doctors.
(QQ) 802x Offices and Clinics of Dentists.
(RR) 803x Offices of Osteopathic Physicians.
(SS) 804x Offices of Other Health Practitioners.
(TT) 807x Medical and Dental Laboratories.
(UU) 809x Health and Allied Services Not Elsewhere Classified.
(VV) 81xx Legal Services.
(WW) 82xx Educational Services, Schools, Colleges, Universities, and Libraries.
(XX) 832x Individual and Family Services.
(YY) 835x Child Day Care Services.
(ZZ) 839x Social Services Not Elsewhere Classified.
(AAA) 841x Museums and Art Galleries.
(BBB) 86xx Membership Organizations.
(CCC) 87xx Engineering, Accounting, Research, Management, and Related Services.
(DDD) 899x Services Not Elsewhere Classified.

However, all employers must report to the Indiana occupational safety and health administration any workplace incident that results in a fatality or the hospitalization of employees as required by section 23 of this rule.

(3) If one (1) or more of an employer's establishments are classified in a nonexempt industry, that employer must keep OSHA injury and illness records for all of such establishments unless the employer is partially exempted because of size under section 2 of this rule.

(b) Implementation for partial exemption for establishments in certain industries shall be as follows:

(1) The partial industry classification exemption applies only to business establishments in the retail, services, finance, insurance, or real estate industries (SICs 52xx-89xx). Business establishments classified in the:

(A) agriculture;
(B) mining;
(C) construction;
(D) manufacturing;

(E) transportation;
(F) communication;
(G) electric, gas, and sanitary services; or
(H) wholesale trade;

are not eligible for the partial industry classification exemption.

(2) The partial industry classification exemption applies to individual business establishments. If an employer has several business establishments engaged in different classes of business activities, some of the employer's establishments may be required to keep records, while others may be exempt.

(3) Employers determine their SIC code by using the Standard Industrial Classification Manual, Executive Office of the President, Office of Management and Budget. Employers may contact the Indiana occupational safety and health administration office for help in determining the SIC.

(Department of Labor; 610 IAC 4-6-3; filed Sep 26, 2002, 11:22 a.m.: 26 IR 354)

610 IAC 4-6-4 Keeping records for more than one agency

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 4. (a) If an employer creates records to comply with another government agency's injury and illness record keeping requirements, the Indiana occupational safety and health administration (IOSHA) will consider those records as meeting the record keeping requirements in this rule if the federal Occupational Safety and Health Administration (OSHA) accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information that this rule requires the employer to record. Employers may contact IOSHA for help in determining whether the records kept meet IOSHA's requirements.

(b) All employers, including those partially exempted by reason of company size or industry classification, must report to IOSHA any workplace incident that results in a fatality or the hospitalization of employees as required by section 23 of this rule.

(Department of Labor; 610 IAC 4-6-4; filed Sep 26, 2002, 11:22 a.m.: 26 IR 355)

610 IAC 4-6-5 Recording criteria

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 5. (a) Each employer required by this rule to keep records of fatalities, injuries, and illnesses must record each fatality, injury, and illness that:

(1) is work related;
(2) is a new case; and
(3) meets one (1) or more of the general recording criteria listed in section 8 of this rule or the application to specific cases of sections 9 through 13 of this rule.

(b) The following sections of this rule address each topic:

(1) Section 6 of this rule addresses the determination of work relatedness.
(2) Section 7 of this rule addresses the determination of a new case.
(3) Section 8 of this rule addresses general recording criteria.
(4) Sections 9 through 13 of this rule address additional criteria for cases including:
(A) needlestick and sharps injury cases;
(B) tuberculosis cases;
(C) hearing loss cases;
(D) medical removal cases; and
(E) musculoskeletal disorder cases.

(c) If no employee has experienced an injury or illness, no record is required. If an employee has experienced an injury or an illness, but the injury or illness is not work related, then the employer is not required to record the injury or illness. If an employee has experienced a work related injury or illness, and the injury or illness is not a new case, the employer is required to update the

previously recorded injury or illness entry if necessary. If an employee experiences a work related injury or illness and the injury or illness is a new case, the employer should consult section 8 of this rule and determine if general recording criteria are met. If so, the employer is required to record the injury or illness. *(Department of Labor; 610 IAC 4-6-5; filed Sep 26, 2002, 11:22 a.m.: 26 IR 355)*

610 IAC 4-6-6 Determination of work relatedness

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 6. (a) Basic requirements for determining work relatedness are that employers must consider an injury or illness to be work related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a preexisting injury or illness. Work relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in subsection (b)(2) specifically applies.

(b) Implementation of this section is as follows:

(1) The work environment is defined as the establishment and other locations where one (1) or more employees are working or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of his or her work.

(2) An injury or illness occurring in the work environment that falls under one (1) of the following exceptions is not work related, and therefore is not recordable:

(A) At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee.

(B) The injury or illness involves signs or symptoms that surface at work but result solely from a nonwork related event or exposure that occurs outside the work environment.

(C) The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity, such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball.

(D) The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption (whether bought on the employer's premises or brought in). For example, if the employee is injured by choking on a sandwich while in the employer's establishment, the case would not be considered work related. However, if the employee is made ill by ingesting food that has been contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case is considered work related.

(E) The injury or illness is solely the result of an employee doing personal tasks, unrelated to their employment, at the establishment outside of the employee's assigned working hours.

(F) The injury or illness is solely the result of personal grooming, self medication for a nonwork related condition, or is intentionally self-inflicted.

(G) The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work.

(H) The illness is the common cold or flu. However, contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work related if the employee is infected at work.

(I) The illness is a mental illness. Mental illness will not be considered work related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (including psychiatrist, psychologist, psychiatric nurse) stating that the employee has a mental illness that is work related.

(3) If it is not obvious whether the precipitating event or exposure occurred in the work environment or occurred away from work, the employer must evaluate the employee's work duties and environment to decide whether or not one (1) or more events or exposures in the work environment either caused or contributed to the resulting condition or significantly aggravated a preexisting condition.

(4) A preexisting injury or illness has been significantly aggravated, for purposes of Occupational Safety and Health Administration (OSHA) injury and illness record keeping, when an event or exposure in the work environment results in any of the following:

(A) Death, provided that the preexisting injury or illness would likely not have resulted in death but for the occupational

event or exposure.

(B) Loss of consciousness, provided that the preexisting injury or illness would likely not have resulted in loss of consciousness but for the occupational event or exposure.

(C) One (1) or more days away from work, days of restricted work, or days of job transfer that otherwise would not have occurred but for the occupational event or exposure.

(D) Medical treatment in a case where no medical treatment was needed for the injury or illness before the workplace event or exposure, or a change in medical treatment was necessitated by the workplace event or exposure.

(5) An injury or illness is a preexisting condition if it resulted solely from a nonwork related event or exposure that occurred outside the work environment.

(6) Injuries and illnesses that occur while an employee is on travel status are work related if, at the time of the injury or illness, the employee was engaged in work activities in the interest of the employer. Examples of such activities include travel to and from customer contacts, conducting job tasks, and entertaining or being entertained to transact, discuss, or promote business (work related entertainment includes only entertainment activities being engaged in at the direction of the employer). Injuries or illnesses that occur when the employee is on travel status do not have to be recorded if they meet one (1) of the following exceptions:

(A) If the employee while traveling has taken up temporary residence, for example, in a hotel, motel, inn, or other paid lodging, for one (1) or more days, the employer must evaluate the employee's activities in the same manner as the employer must evaluate the activities of a nontraveling employee. When the employee checks into the temporary residence, the employee has left the work environment. When the employee begins work each day, the employee reenters the work environment. The employer does not need to consider injuries or illnesses work related if they occur while the employee is commuting between the temporary residence and the job location.

(B) If the employee has taken a detour for personal reasons. Injuries or illnesses are not considered work related if they occur while the employee is on a personal detour from a reasonably direct route of travel.

(7) Injuries and illnesses that occur while an employee is working at home, including work in a home office, will be considered work related if the injury or illness occurs while the employee is performing work for pay or compensation in the home, and the injury or illness is directly related to the performance of work rather than to the general home environment or setting. For example, if an employee:

(A) drops a box of work documents and injures his or her foot, the case is considered work related;

(B) has a fingernail that is punctured by a needle from a sewing machine used to perform garment work at home, becomes infected and requires medical treatment, the injury is considered work related;

(C) is injured because he or she trips on the family dog while rushing to answer a work phone call, the case is not considered work related; or

(D) is working at home and is electrocuted because of faulty home wiring, the injury is not considered work related.

(Department of Labor; 610 IAC 4-6-6; filed Sep 26, 2002, 11:22 a.m.: 26 IR 356)

610 IAC 4-6-7 Determination of new cases

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 7. (a) Employers must consider an injury or illness to be a new case if either of the following occur:

(1) The employee has not previously experienced a recorded injury or illness of the same type that affects the same part of the body.

(2) The employee previously experienced a recorded injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and symptoms had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the sign or symptoms to reappear.

(b) Implementation for determination of new cases is as follows:

(1) For occupational illnesses where the signs or symptoms may recur or continue in the absence of an exposure in the workplace, the case must only be recorded once. Examples may include occupational cancer, asbestosis, byssinosis, and silicosis.

(2) When an episode or recurrence was caused by an event or exposure in the workplace, the incident must be treated as a

new case.

(3) Employers are not required to seek the advice of a physician or other licensed health care professional. However, if an employer does seek such advice, the employer must follow the physician or other licensed health care professional's recommendation about whether the case is a new case or a recurrence. If the employer receives recommendations from two (2) or more physicians or other licensed health care professionals, the employer must decide which recommendation is the most authoritative (best documented, best reasoned, or most authoritative), and record the case based upon that recommendation.

(Department of Labor; 610 IAC 4-6-7; filed Sep 26, 2002, 11:22 a.m.: 26 IR 357)

610 IAC 4-6-8 General recording criteria

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 8. (a) Employers must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in any of the following:

(1) Death.
(2) Days away from work.
(3) Restricted work or transfer to another job.
(4) Medical treatment beyond first aid.
(5) Loss of consciousness.

Employers must also consider a case to meet the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

(b) Implementation for general recording criteria is as follows:

(1) A work related injury or illness must be recorded if it results in one (1) or more of the following:

(A) Death, see subdivision (2).
(B) Days away from work, see subdivision (3).
(C) Restricted work or transfer to another job, see subdivision (4).
(D) Medical treatment beyond first aid, see subdivision (5).
(E) Loss of consciousness, see subdivision (6).
(F) A significant injury or illness diagnosed by a physician or other licensed health care professional, see subdivision (7).

(2) Employers must record an injury or illness that results in death by entering a check mark on the Occupational Safety and Health Administration (OSHA) 300 Log in the space for cases resulting in death. Employers must also report any work related fatality to the Indiana occupational safety and health administration as required by section 23 of this rule.

(3) When an injury or illness involves one (1) or more days away from work, you must record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away and an entry of the number of calendar days away from work in the number of days column. If the employee is out for an extended period of time, the employer must enter an estimate of the days that the employee will be away and update the day count when the actual number of days is known. Requirements for counting days shall be as follows:

(A) Employers must begin counting days away on the day after the injury occurred or the illness began.

(B) Employers must record these injuries and illnesses on the OSHA 300 Log using the check box for cases with days away from work and enter the number of calendar days away recommended by the physician or other licensed health care professional. If a physician or other licensed health care professional recommends days away, the employer should encourage his or her employee to follow that recommendation. However, the days away must be recorded whether the injured or ill employee follows the physician or licensed health care professional's recommendation or not. If the employer receives recommendations from two (2) or more physicians or other licensed health care professionals, the employer may decide which recommendation is the most authoritative and record the case based upon that recommendation.

(C) When a physician or other licensed heath care professional recommends that the worker return to work but the

employee stays at home, the employer must end the count of days away from work on the date the physician or other licensed health care professional recommends that the employee return to work.

(D) The employer must count the number of calendar days the employee was unable to work as a result of the injury or illness, regardless or whether or not the employee was scheduled to work on those days. Weekend days, holidays, vacation days, or other days off are included in the total number of days recorded if the employee would not have been able to work on those days because of a work related injury or illness.

(E) In cases in which a worker is injured or becomes ill on a Friday and reports to work on a Monday, and was not scheduled to work on the weekend, the employer must record this case only if the employer receives information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the weekend. If so, the employer must record the injury or illness as a case with days away from work or restricted work and enter the day counts, as appropriate.

(F) In cases in which a worker is injured or becomes ill on the days before scheduled time off such as a holiday, a planned vacation, or a temporary plant closing, the employer must record a case of this type only if the employer receives information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the scheduled time off. If so, the employer must record the injury or illness as a case with days away from work or restricted work and enter the day counts, as appropriate.

(G) The employer may "cap" the total days away at one hundred eighty (180) calendar days. The employer is not required to keep track of the number of calendar days away from work if the injury or illness resulted in more than one hundred eighty (180) calendar days away from work or days of job transfer or restriction. In such a case, entering one hundred eighty (180) in the total days away column will be considered adequate.

(H) If the employee leaves the employer's company for some reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, the employer may stop counting days away from work or days of restriction/job transfer. If the employee leaves the employer's company because of the injury or illness, the employer must estimate the total number of days away or days of restriction/job transfer and enter the day count on the OSHA 300 Log.

(I) If a case occurs in one (1) year but results in days away during the next calendar year, the employer must only record the injury or illness once. The employer must enter the number of calendar days away for the injury or illness on the OSHA 300 Log for the year in which the injury or illness occurred. If the employee is still away from work because of the injury or illness when the employer prepares the annual summary, the employer shall estimate the total number of calendar days the employer expects the employee to be away from work, use this number to calculate the total for the annual summary, and then update the initial log entry later when the day count is known or reaches the one hundred eighty (180) day cap.

(4) When an injury or illness involves restricted work or job transfer but does not involve death or days way from work, the employer must record the injury or illness on the OSHA 300 Log by placing a check mark in the space for job transfer or restriction and an entry of the number of restricted or transferred days in the restricted workdays column, based upon the following:

(A) Restricted work occurs when, as the result of a work related injury or illness:

(i) the employer keeps the employee from performing one (1) or more of the routine functions of his or her job, or from working the full workday that he or she would otherwise have been scheduled to work; or

(ii) a physician or other licensed health care professional recommends that the employee not perform one (1) or more of the routine functions of his or her job, or not work the full workday that he or she would otherwise have been scheduled to work.

(B) For record keeping purposes, an employee's routine functions are those work activities the employee regularly performs at least once per week.

(C) Employers do not have to record restricted work or job transfers if the employer, or the physician or other licensed health care professional, imposes the restriction or transfer only for the day on which the injury occurred or the illness began.

(D) A recommended work restriction is recordable only if it affects one (1) or more of the employee's routine job functions. To determine whether this is the case, the employer must evaluate the restriction in light of the routine

functions of the injured or ill employee's job. If the restriction from the employer or the physician or other licensed health care professional keeps the employee from:

(i) performing one (1) or more of his or her routine job functions; or

(ii) working the full workday that the injured or ill employee would otherwise have worked;

the employee's work has been restricted and the employer must record the case.

(E) A partial day of work is recorded as a day of job transfer or restriction for record keeping purposes, except for the day on which the injury occurred or the illness began.

(F) If the injured or ill worker produces fewer goods or services than he or she would have produced prior to the injury or illness, but otherwise performs all of the routine functions of his or her work, then the case is considered restricted work only if the worker does not work the full shift that he or she would otherwise have worked.

(G) If the employer is not clear about the physician or other licensed health care professional's recommendation, the employer may ask that person whether the employee can do all of his or her routine job functions and work all of his or her normally assigned work shift. If the answer to both of these questions is "Yes", then the case does not involve a work restriction and does not have to be recorded as such. If the answer to one (1) or both of these questions is "No", the case involves restricted work and must be recorded as a restricted work case. If the employer is unable to obtain the additional information from the physician or other licensed health care professional who recommended the restriction, the employer must record the injury or illness as a case involving restricted work.

(H) If a physician or other licensed health care professional recommends a job restriction meeting IOSHA's definition, but the employee does all of his or her routine job functions anyway, the employer must record the injury or illness on the OSHA 300 Log as a restricted work case. If a physician or other licensed health care professional recommends a job restriction, the employer should ensure that the employee complies with that restriction. If the employer receives recommendations from two (2) or more physicians or other licensed health care professionals, the employer may decide which recommendation is the most authoritative and record the case based upon that recommendation.

(I) If the employer assigns an injured or ill employee to a job other than his or her regular job for part of the day, the case involves transfer to another job. This does not include the day on which the injury or illness occurred.

(J) Both job transfer and restricted work cases are recorded in the same box on the OSHA 300 Log. For example, if the employer assigns, or a physician or other licensed health care professional recommends that the employer assign an injured or ill worker to his of her routine job duties for part of the day and to another job for the rest of the day, the injury or illness involves a job transfer. Employers must record an injury or illness that involves a job transfer by placing a check in the box for job transfer.

(K) The employer must count days of job transfer or restriction in the same way the employer counts days away from work, using subdivision (3)(A) through (3)(H), above. The only difference is that, if the employer permanently assigns the injured or ill employee to a job that has been modified or permanently changed in a manner that eliminates the routine functions the employee was restricted from performing, the employer may stop the day count when the modification is made permanent. The employer must count at least one (1) day of restricted work or job transfer for such cases.

(5) If a work related injury or illness results in medical treatment beyond first aid, the employer must record it on the OSHA 300 Log. If the injury or illness did not involve death, one (1) or more days away from work, one (1) or more days of restricted work, or one (1) or more days of job transfer, the employer shall enter a check mark in the box for cases where the employee received medical treatment but remained at work and was not transferred or restricted, based upon the following:

(A) As used in this rule, "medical treatment" means the management and care of a patient to combat disease or disorder. For purposes of this rule, the term does not include any of the following:

(i) Visits to a physician or other licensed health care professional solely for observation or counseling.

(ii) The conduct of diagnostic procedures, such as x-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes, for example, eye drops to dilate pupils.

(iii) "First aid" as defined in clause (B) below.

(B) As used in this rule, "first aid" means the following:

(i) Using a nonprescription medication at nonprescription strength (for medications available in both prescription and nonprescription form, a recommendation by a physician or other licensed health care professional to use a nonprescription medication at prescription strength is considered medical treatment for record keeping purposes).

(ii) Administering tetanus immunizations (other immunizations, such as hepatitis B vaccine or rabies vaccine, are considered medical treatment).
(iii) Cleaning, flushing, or soaking wounds on the surface of the skin.
(iv) Using wound coverings, such as bandages, Band-Aids™, or gauze pads, or using butterfly bandages or Steri-Strips™ (other wound closing devices, such as sutures or staples, are considered medical treatment).
(v) Using hot or cold therapy.
(vi) Using any nonrigid means of support, such as elastic bandages, wraps, nonrigid back belts (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for record keeping purposes).
(vii) Using temporary immobilization devices while transporting an accident victim, for example, splints, slings, neck collars, or backboards.
(viii) Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister.
(ix) Using eye patches.
(x) Removing foreign bodies from the eye using only irrigation or a cotton swab.
(xi) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs, or other simple means.
(xii) Using finger guards.
(xiii) Using massages (physical therapy or chiropractic treatment are considered medical treatment for record keeping purposes).
(xiv) Drinking fluids for relief of heat stress.

(C) Clause (B) contains a complete list of all treatments considered first aid for purposes of this rule.
(D) IOSHA considers the treatments listed in clause (B) to be first aid regardless of the professional status of the person providing the treatment. Even when these treatments are provided by a physician or other licensed health care professional, they are considered first aid for the purposes of this rule. Similarly, IOSHA considers treatment beyond first aid to be medical treatment even when it is provided by someone other than a physician or other licensed health care professional.
(E) If a physician or other licensed health care professional recommends medical treatment, the employer should encourage the injured or ill employee to follow that recommendation. However, the employer must record the case even if the injured or ill employee does not follow the physician or other licensed health care professional's recommendation.

(6) Employers must record a work related injury or illness if the worker becomes unconscious, regardless of the length of time the employee remains unconscious.
(7) Work related cases involving cancer, chronic irreversible disease, a fractured or cracked bone, or a punctured eardrum must always be recorded under the general criteria at the time of diagnosis by a physician or other licensed health care professional. These are "significant" diagnosed injuries or illnesses that are recordable even if they do not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

(Department of Labor; 610 IAC 4-6-8; filed Sep 26, 2002, 11:22 a.m.: 26 IR 357)

610 IAC 4-6-9 Recording criteria for needlestick and sharps injuries

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 9. (a) The employer must record all work related needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (as defined by 29 CFR 1910.1030(b)). The employer must enter the case on the Occupational Safety and Health Administration (OSHA) 300 Log as an injury. To protect the employee's privacy, the employer may not enter the employee's name on the OSHA 300 Log (see the requirements for privacy cases in section 14 of this rule).

(b) Implementation of needlestick and sharps injuries recording is as follows:
(1) As used in this rule, "other potentially infectious materials" has the meaning as set forth in the OSHA Bloodborne Pathogens standard at 29 CFR 1910.1030(b), including the following:
(A) Human bodily fluids, tissues, and organs.

(B) Other materials infected with the HIV or hepatitis B (HBV) virus, such as laboratory cultures or tissues from experimental animals.

(2) The employer must record cuts, lacerations, punctures, and scratches only if they are work related and involve contamination with another person's blood or other potentially infectious material. If the cut, laceration, or scratch involves a clean object, or a contaminant other than blood or other potentially infectious material, the employer must record the case only if it meets one (1) or more of the recording criteria in section 8 of this rule.

(3) If an employer records an injury and the employee is later diagnosed with an infectious bloodborne disease, then the employer must update the classification of the case on the OSHA 300 Log if the case results in death, days away from work, restricted work, or job transfer. The employer must also update the description to identify the infectious disease and change the classification of the case from an injury to an illness.

(4) If one (1) of an employer's employees is splashed or exposed to blood or other potentially infectious material without being cut or scratched, the employer needs to record such an incident on the OSHA 300 Log as an illness if it:

(A) results in the diagnosis of a bloodborne illness, such as HIV, hepatitis B, or hepatitis C; or

(B) meets one (1) or more of the recording criteria in section 8 of this rule.

(Department of Labor; 610 IAC 4-6-9; filed Sep 26, 2002, 11:22 a.m.: 26 IR 360)

610 IAC 4-6-10 Recording criteria for cases involving medical removal under OSHA standards

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 10. (a) If an employee is medically removed under the medical surveillance requirements of an Occupational Safety and Health Act (OSHA) standard, the employer must record the case on the OSHA 300 Log.

(b) The employer shall record cases involving medical removal as follows:

(1) The employer must enter each medical removal case on the OSHA 300 Log as either a case involving days away from work or a case involving restricted work activity, depending on how the employer decides to comply with the medical removal requirement. If the medical removal is the result of a chemical exposure, the employer must enter the case on the OSHA 300 Log by checking the "poisoning" column.

(2) Not all of OSHA's standards have medical removal provisions. Some OSHA standards, such as the standards covering bloodborne pathogens and noise, do not have medical removal provisions. Many OSHA standards that cover specific chemical substances have medical removal provisions. These standards include, but are not limited to, lead, cadmium, methylene chloride, formaldehyde, and benzene.

(3) The employer does not need to record the case on the OSHA 300 Log if the case involves voluntary medical removal before the medical removal levels required by an OSHA standard.

(Department of Labor; 610 IAC 4-6-10; filed Sep 26, 2002, 11:22 a.m.: 26 IR 361)

610 IAC 4-6-11 Recording criteria for cases involving occupational hearing loss

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 11. (a) If an employee's hearing test (audiogram) reveals that a work-related standard threshold shift (STS) has occurred in one (1) or both ears, and the employee's total hearing level is twenty-five (25) decibels or more above audiometric zero in the same ear as the STS (averaged at two thousand (2,000), three thousand (3,000), and four thousand (4,000) hertz), the employer must record the case on the Occupational Safety and Health Administration (OSHA) 300 Log.

(b) Implementation of this section shall be as follows:

(1) As used in this rule, "STS" has the meaning as set forth in the occupational noise exposure standard at 29 CFR 1910.95(g)(10)(i) as a change in hearing threshold, relative to the baseline audiogram of an average of ten (10) decibels or more at two thousand (2,000), three thousand (3,000), and four thousand (4,000) hertz in one (1) or both ears.

(2) Employers shall evaluate the current audiogram to determine whether an employee has an STS and a twenty-five (25) decibels hearing level as follows:

(A) If the employee has never previously experienced a recordable hearing loss, the employer must compare the

employee's current audiogram with that employee's baseline audiogram. If the employee has previously experienced a recordable hearing loss, the employer must compare the employee's current audiogram with the employee's revised baseline audiogram (the audiogram reflecting the employee's previous recordable hearing loss case).

(B) Audiometric test results reflect the employee's overall hearing ability in comparison to audiometric zero. Therefore, using the employee's current audiogram, the employer must use the average hearing level at two thousand (2,000), three thousand (3,000), and four thousand (4,000) hertz to determine whether or not the employee's total hearing level is twenty-five (25) decibels or more.

(3) When comparing audiogram results, the employer may adjust the results for the employee's age when the audiogram was taken using Table F-1 or F-2, as appropriate, in Appendix F of 29 CFR 1910.95. The employer may not use an age adjustment when determining whether the employee's total hearing level is twenty-five (25) decibels or more above audiometric zero.

(4) If the employer retests the employee's hearing within thirty (30) days of the first test, and the retest does not confirm the recordable STS, the employer is not required to record the hearing loss case on the OSHA 300 Log. If the retest confirms the STS, the employer must record the hearing loss illness within seven (7) calendar days of the retest. If subsequent audiometric testing performed under the testing requirements of the noise standard indicates that an STS is not persistent, the employer may erase or strike out the recorded entry.

(5) Hearing loss is presumed to be work related if an event or exposure in the work environment either caused or contributed to the hearing loss or significantly aggravated a preexisting hearing loss. Employers must use the rules contained in section 6 of this rule to determine whether hearing loss is work related.

(6) If a physician or other licensed health care professional determines that the hearing loss is not work related or has not been significantly aggravated by occupational noise exposure, the employer is not required to consider the case work related or to record the case on the OSHA 300 Log.

(7) Employers must check the 300 Log column for hearing loss when entering a recordable hearing loss case on the OSHA 300 Log.

(Department of Labor; 610 IAC 4-6-11; filed Sep 26, 2002, 11:22 a.m.: 26 IR 361; filed Jan 27, 2004, 7:00 p.m.: 27 IR 1879)

610 IAC 4-6-12 Recording criteria for work related tuberculosis cases

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 12. (a) If any employee has been occupationally exposed to anyone with a known case of active tuberculosis (TB), and that employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, the employer must record the case on the Occupational Safety and Health Administration 300 Log by checking the "respiratory condition" column.

(b) Work related tuberculosis cases shall be recorded based on the following:

(1) The employer does not have to record a positive TB skin test result obtained at a preemployment physical because the employee was not occupationally exposed to a known case of active tuberculosis in the workplace.

(2) The employer may line-out or erase from the OSHA 300 Log a recorded TB case not caused by occupational exposure under the following circumstances:

(A) The worker is living in a household with a person who has been diagnosed with active TB.

(B) The public health department has identified the worker as a contact of an individual with a case of active TB unrelated to the workplace.

(C) A medical investigation shows that the employee's infection was caused by exposure to TB away from work or proves that the case was not related to the workplace TB exposure.

(Department of Labor; 610 IAC 4-6-12; filed Sep 26, 2002, 11:22 a.m.: 26 IR 362)

610 IAC 4-6-13 Recording criteria for cases involving work related musculoskeletal disorders (Repealed)

Sec. 13. *(Repealed by Department of Labor; filed Apr 30, 2004, 3:45 p.m.: 27 IR 2728)*

610 IAC 4-6-14 Forms

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 14. (a) Employers must use Occupational Safety and Health Administration (OSHA) 300, 300-A, and 301 forms, or equivalent forms, for recordable injuries and illnesses. The OSHA 300 form is called the Log of Work Related Injuries and Illnesses, the 300-A is the Summary of Work Related Injuries and Illnesses, and the OSHA 301 form is called the Injury and Illness Incident Report.

(b) Employers shall use the forms based on the following:

(1) To complete the OSHA 300 Log, the employer must enter information about the employer's business at the top of the OSHA 300 Log, enter a one (1) or two (2) line description for each recordable injury or illness, and summarize this information on the OSHA 300-A at the end of the year.

(2) The employer must complete an OSHA 301 Incident Report form, or an equivalent form, for each recordable injury or illness entered on the OSHA 300 Log.

(3) The employer must enter each recordable injury or illness on the OSHA 300 Log and 301 Incident Report within seven (7) calendar days of receiving information that a recordable injury or illness has occurred.

(4) An equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces. Many employers use an insurance form instead of the OSHA 301 Incident Report, or supplement an insurance form by adding any additional information required by OSHA.

(5) Records may be kept by computer, provided the computer can produce equivalent forms when they are needed, as described under sections 20 and 24 of this rule.

(6) There are situations where employers do not put the employee's name on the forms for privacy reasons. If an employer has a privacy concern case, the employer may not enter the employee's name on the OSHA 300 Log. Instead, the employer must enter "privacy case" in the space normally used for the employee's name. This will protect the privacy of the injured or ill employee when another employee, a former employee, or an authorized employee representative is provided access to the OSHA 300 Log under section 20(b)(2) of this rule. The employer must keep a separate, confidential list of the case numbers and employee names for the employer's privacy concern cases so the employer can update the cases and provide the information to the government if asked to do so.

(7) The employer must consider the following injuries or illnesses to be privacy concern cases:

(A) An injury or illness to an intimate body part or the reproductive system.

(B) An injury or illness resulting from a sexual assault.

(C) Mental illnesses.

(D) HIV infection, hepatitis, or tuberculosis.

(E) Needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (see section 9 of this rule for definitions).

(F) Other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log.

(G) Beginning January 1, 2003, musculoskeletal disorders are not considered privacy concern cases.

(H) This subdivision is a complete list of all injuries and illnesses considered privacy concern cases for purposes of this rule.

(8) If an employer has a reasonable basis to believe that information describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, the employer may use discretion in describing the injury or illness on both the OSHA 300 and 301 forms. The employer must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but the employer does not need to include details of an intimate or private nature. For example, a sexual assault case could be described as injury from assault, or an injury to a reproductive organ could be described as lower abdominal injury.

(9) If an employer decides to voluntarily disclose the Forms 300 and 301 to persons other than government representatives, employees, former employees, or authorized representatives (as required by sections 20 and 24 of this rule), the employer must remove or hide the employees' names and other personally identifying information, except for the following cases. The employer may disclose the forms with personally identifying information only to:

(A) an auditor or consultant hired by the employer to evaluate the safety and health program;

(B) the extent necessary for processing a claim for workers' compensation or other insurance benefits; and

(C) a public health authority or law enforcement agency for uses and disclosures for which consent, authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, 45 CFR 164.512.

(Department of Labor; 610 IAC 4-6-14; filed Sep 26, 2002, 11:22 a.m.: 26 IR 363)

610 IAC 4-6-15 Multiple business establishments

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 15. (a) Employers must keep a separate Occupational Safety and Health Administration (OSHA) 300 Log for each establishment that is expected to be in operation for one (1) year or longer.

(b) Implementation of the record keeping requirements for multiple business establishments is as follows:

(1) Employers must keep OSHA injury and illness records for short term establishments, that is, establishments that will exist for less than one (1) year. However, the employer does not have to keep a separate OSHA 300 Log for each such establishment. The employer may keep one (1) OSHA 300 Log that covers all of the employer's short term establishments. The employer may also include the short term establishments' recordable injuries and illnesses on an OSHA 300 Log that covers short term establishments for individual company divisions or geographic regions.

(2) The employer may keep the records for an establishment at a headquarters or other central location if the employer can:

(A) transmit information about the injuries and illnesses from the establishment to the central location within seven (7) calendar days of receiving information that a recordable injury or illness has occurred; and

(B) produce and send the records from the central location to the establishment within the time frames required by sections 20 and 24 of this rule when the employer is required to provide records to a government representative, employees, former employees, or employee representatives.

(3) When recording cases for employees who work at several different locations or who do not work at any of an employer's establishments at all, the employer must link each of its employees with one (1) of its establishments for record keeping purposes. The employer must record the injury and illness on the OSHA 300 Log of the injured or ill employee's establishment, or on an OSHA 300 Log that covers that employee's short term establishment.

(4) The following governs recording an injury or illness when an employee of one (1) of the employer's establishments is injured or becomes ill while visiting or working at another of the employer's establishments, or while working away from any of the employer's establishments:

(A) If the injury or illness occurs at one (1) of the employer's establishments, the employer must record the injury or illness on the OSHA 300 Log of the establishment at which the injury or illness occurred.

(B) If the employee is injured or becomes ill and is not at one (1) of the employer's establishments, the employer must record the case on the OSHA 300 Log at the establishment at which the employee normally works.

(Department of Labor; 610 IAC 4-6-15; filed Sep 26, 2002, 11:22 a.m.: 26 IR 364)

610 IAC 4-6-16 Covered employees

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 16. (a) The employer must record on the Occupational Safety and Health Administration (OSHA) 300 Log the recordable injuries and illnesses of all employees on the employer's payroll, whether they are labor, executive, hourly, salary, part-time, seasonal, or migrant workers. The employer must also record the recordable injuries and illnesses that occur to employees who are not on the employer's payroll if the employer supervises these employees on a day-to-day basis. If the employer's business is organized as a sole proprietorship or partnership, the owner or partners are not considered employees for record keeping purposes.

(b) Employee coverage is based on the following:

(1) If a self-employed person is injured or becomes ill while doing work at an employer's business, the employer does not need to record the injury or illness. Self-employed individuals are not covered by the Indiana occupational safety and health

act (IOSHA) or this rule.

(2) The employer must record the injuries and illnesses of employees obtained from a temporary help service, leasing service, or supply service, if the employer supervises these employees on a day-to-day basis.

(3) When an injury or illness occurs to a contractor's employee at the employer's establishment, recording is governed by the following:

(A) If the contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness.

(B) If another employer supervises the contractor employee's work on a day-to-day basis, the supervising employer must record the injury or illness.

(4) The personnel supply service, temporary help service, employee leasing service, or contractor need not also record the injuries or illnesses occurring to temporary, leased, or contract employees that another employer supervises on a day-to-day basis. The employer and the temporary help service, employee leasing service, personnel supply service, or contractor should coordinate their efforts to make sure that each injury and illness is recorded only once, either on the employer's OSHA 300 Log (if the employer provides day-to-day supervision) or on the other employer's OSHA 300 Log (if that company provides day-to-day supervision).

(Department of Labor; 610 IAC 4-6-16; filed Sep 26, 2002, 11:22 a.m.: 26 IR 364)

610 IAC 4-6-17 Annual summary

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 17. (a) At the end of each calendar year, the employer must do the following:

(1) Review the Occupational Safety and Health Administration (OSHA) 300 Log to verify that the entries are complete and accurate and make corrections to any deficiencies identified.

(2) Create an annual summary of injuries and illnesses recorded on the OSHA 300 Log.

(3) Certify the summary.

(4) Post the annual summary.

(b) Implementation of the annual summary requirements is as follows:

(1) The employer must review the OSHA 300 Log entries at the end of the year as extensively as necessary to make sure that they are complete and correct.

(2) To complete the annual summary, employers must do the following:

(A) Total the columns on the OSHA 300 Log (if the employer had no recordable cases, enter zeros for each column total).

(B) Enter the following:

(i) The calendar year covered.

(ii) The company's name.

(iii) The establishment name.

(iv) The establishment address.

(v) The annual average number of employees covered by the OSHA 300 Log.

(vi) The total hours worked by all employees covered by the OSHA 300 Log.

(C) If the employer is using an equivalent form other than the OSHA 300-A summary form, as permitted under section 7(b)(4) of this rule, the summary used must also include the employee access and employer penalty statements found on the OSHA 300-A Summary form.

(3) A company executive must certify that he or she has examined the OSHA 300 Log and that he or she reasonably believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete.

(4) The company executive who certifies the log must be one (1) of the following persons:

(A) An owner of the company (only if the company is a sole proprietorship or partnership).

(B) An officer of the corporation.

(C) The highest ranking company official working at the establishment.

(D) The immediate supervisor of the highest ranking company official working at the establishment.

(5) The employer must post a copy of the annual summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. The employer must ensure that the posted annual summary is not altered, defaced, or covered by other material.

(6) The employer must post the summary no later than February 1 of the year following the year covered by the records and keep the posting in place until April 30.

(Department of Labor; 610 IAC 4-6-17; filed Sep 26, 2002, 11:22 a.m.: 26 IR 365)

610 IAC 4-6-18 Retention and updating

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 18. (a) Employers must save each of the following for five (5) years following the end of the calendar year that these records cover:

(1) The Occupational Safety and Health Administration (OSHA) 300 Log.

(2) The privacy case list (if one exists).

(3) The annual summary.

(4) The OSHA 301 Incident Report forms.

(b) The employer shall retain and update records as follows:

(1) During the five (5) year storage period, the employer must update the employer's stored OSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, the employer must remove or line out the original entry and enter the new information.

(2) The employer is not required to update the annual summary, but may do so.

(3) The employer is not required to update the OSHA 301 Incident Reports, but may do so.

(Department of Labor; 610 IAC 4-6-18; filed Sep 26, 2002, 11:22 a.m.: 26 IR 365)

610 IAC 4-6-19 Change in business ownership

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 19. If an employer's business changes ownership, that employer is responsible for recording and reporting work related injuries and illnesses only for that period of the year during which that employer owned the establishment. The employer must transfer the records required under this rule to the new owner. The new owner must save all records of the establishment kept by the prior owner, as required by section 18 of this rule, but need not update or correct the records of the prior owner. *(Department of Labor; 610 IAC 4-6-19; filed Sep 26, 2002, 11:22 a.m.: 26 IR 365)*

610 IAC 4-6-20 Employee involvement

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 20. (a) An employer's employees and their representatives must be involved in the record keeping system in the following ways:

(1) The employer must inform each employee of how he or she is to report an injury or illness to the employer.

(2) The employer must provide limited access to the employer's injury and illness records for the employees and their representatives.

(b) The employer must do the following to make sure that employees report work related injuries and illnesses to the employer:

(1) The employer must set up a way for employees to report work related injuries and illnesses promptly.

(2) The employer must tell each employee how to report work related injuries and illnesses to the employer.

(c) The employer's employees, former employees, their personal representatives, and their authorized employee representatives

have the right to access the Occupational Safety and Health Administration (OSHA) injury and illness records, with some limitations, pursuant to the following:

(1) An authorized employee representative is an authorized collective bargaining agent of employees.

(2) A personal representative of an employee or former employee is:

(A) any person that the employee or former employee designates as such, in writing; or

(B) the legal representative of a deceased or legally incapacitated employee or former employee.

(3) When an employee, former employee, personal representative, or authorized employee representative asks for copies of an employer's current or stored OSHA 300 Log for an establishment the employee or former employee has worked in, the employer must give the requester a copy of the relevant OSHA 300 Log by the end of the next business day.

(4) Removing the names of the employees or any other information from the OSHA 300 Log before the employer gives copies to an employee, former employee, or employee representative is prohibited. The employer must leave the names on the 300 Log. However, to protect the privacy of injured and ill employees, the employer may not record the employee's name on the OSHA 300 Log for certain privacy concern cases, as specified in section 14 of this rule.

(5) The employer must provide requested access to the OSHA 301 Incident Report in the following cases:

(A) When an employee, former employee, or personal representative asks for a copy of the OSHA 301 Incident Report describing an injury or illness to that employee or former employee, the employer must give the requester a copy of the OSHA 301 Incident Report containing that information by the end of the next business day.

(B) When an authorized employee representative asks for copies of the OSHA 301 Incident Reports for an establishment where the agent represents employees under a collective bargaining agreement, the employer must give copies of those forms to the authorized employee representative within seven (7) calendar days. The employer is only required to give the authorized employee representative information from the OSHA 301 Incident Report section titled "Tell us about the case". The employer must remove all other information from the copy of the OSHA 301 Incident Report or the equivalent substitute form that it gives to the authorized employee representative.

(6) Charging for the copies is prohibited. The employer may not charge for these copies the first time they are provided. However, if one (1) of the designated persons asks for additional copies, the employer may assess a reasonable charge for retrieving and copying the records.

(Department of Labor; 610 IAC 4-6-20; filed Sep 26, 2002, 11:22 a.m.: 26 IR 366)

610 IAC 4-6-21 Prohibition against discrimination

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-38.1

Sec. 21. Section 11(c) of the federal Occupational Safety and Health Act (OSHA) and IC 22-8-1.1-38.1 prohibit the employer from discriminating against an employee for reporting a work related fatality, injury, or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the records required in this rule, or otherwise exercises any rights afforded by the OSHA. *(Department of Labor; 610 IAC 4-6-21; filed Sep 26, 2002, 11:22 a.m.: 26 IR 366)*

610 IAC 4-6-22 Keeping alternative records

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 22. (a) If a private sector employer wishes to keep records in a different manner from the manner prescribed by this rule, the employer may submit a petition to the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210. The Indiana occupational safety and health administration (IOSHA) will recognize permission to vary records issued by the federal Occupational Safety and Health Administration.

(b) A public sector employer who wishes to keep records in a different manner from the manner prescribed by this rule may submit a petition to the commissioner of the Indiana department of labor (commissioner). The employer can obtain permission to keep different records only if the employer shows that the alternative record keeping system:

(1) collects the same information as this rule requires;

(2) meets the purposes of the Indiana and federal Occupational Safety and Health Acts; and

(3) does not interfere with the administration of the Occupational Safety and Health Acts.

(c) Implementation of the rules governing the keeping of different records:

(1) The employer must include the following items in the petition to keep different records:

(A) Employer's name and address.

(B) The address or addresses of the business establishment or establishments involved.

(C) A description of why the employer is seeking a different record keeping system.

(D) A description of the different record keeping procedures the employer proposes to use.

(E) A description of how the proposed procedures will collect the same information as would be collected under this rule and achieve the purpose of the Acts.

(F) A statement that the employer has informed his or her employees of the petition by giving them or their authorized representative a copy of the petition and by posting a statement summarizing the petition in the same way as notices are posted under 610 IAC 4-3-2(a).

(2) The commissioner will take the following steps to process the petition:

(A) The commissioner will offer the employer's employees and their authorized representatives an opportunity to submit written data, views, and arguments about the employer's petition to keep different records.

(B) The commissioner may allow the public to comment on the petition by publishing the petition in the Indiana Register. If the petition is published, the notice will establish a public comment period and may include a schedule for a public meeting on the petition.

(C) After reviewing the petition to keep different records and any comments from the employees and the public, the commissioner will decide whether or not the proposed record keeping procedures will meet the purposes of the Indiana Occupational Safety and Health Act, and will not otherwise interfere with that Act, and will provide the same information as this rule provides. If the employer's procedures meet the criteria, the commissioner will obtain the advice of the federal Occupational Safety and Health Administration (OSHA) concerning the petition. If federal OSHA declines to grant approval for the different records, such decision shall be binding on the commissioner.

(D) If the employer's procedures meet the criteria and are approved by federal OSHA, the commissioner may allow the different records subject to such conditions as he or she finds appropriate.

(E) If the commissioner allows the keeping of different records, the Indiana occupational safety and health administration (IOSHA) will publish a notice in the Indiana Register to announce the grant of the petition. The notice will include the practices the commissioner allows the employer to use, any conditions that apply, and the reasons for allowing the employer to keep records that vary.

(3) Use of proposed record keeping procedures during the application process is prohibited. If an employer applies for permission to keep different records, the employer may not use his or her proposed record keeping procedures while the commissioner is processing the petition. Alternative record keeping practices are only allowed after the different record keeping method is approved. Employers must comply with the requirements of this rule while the commissioner is reviewing the petition to keep different records.

(4) The petition to keep different records affects previous record keeping citations and penalties as follows. If an employer has already been cited by IOSHA for not following this rule, his or her petition will have no effect on the citation and penalty. In addition, the commissioner may elect not to review an employer's petition to keep different records if it includes an element for which the employer has been cited and the citation is still under review by a court or the IOSHA Board of Safety Review.

(5) Revocation of the right to keep different records at a later date is permitted. The commissioner may revoke an employer's different record keeping procedures if he or she has good cause. The procedures for revoking permission to keep different records will follow the same process as outlined in subsection (b)(2). Except in cases of willfulness or where necessary for public safety, the commissioner will:

(A) notify the employer in writing of the facts or conduct that may warrant revocation of an employer's permission to keep different records; and

(B) provide the employer, the employer's employees, and authorized employee representatives with an opportunity to participate in the revocation procedures.

(See sections 24 through 25 of this rule).

(Department of Labor; 610 IAC 4-6-22; filed Sep 26, 2002, 11:22 a.m.: 26 IR 366)

610 IAC 4-6-23 Reporting fatalities and multiple hospitalization incidents

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 23. (a) Within eight (8) hours after the death of any employee from a work-related incident or the inpatient hospitalization of three (3) or more employees as a result of a work-related incident, the employer must orally report the fatality or multiple hospitalization by telephone or in person to the Indiana occupational safety and health administration (IOSHA). The employer shall contact IOSHA by calling 1-317-232-2693. The employer may also use the federal Occupational Safety and Health Administration toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

(b) The employer must report fatalities and multiple hospitalization incidents as follows:

(1) Reporting the incident by leaving a facsimile transmission or e-mail is prohibited. If IOSHA is closed and the employer cannot talk to a person at IOSHA, the employer must report the fatality or multiple hospitalization incident by calling 1-317-232-2693 or 1-800-321-OSHA.

(2) The employer must give IOSHA the following information for each fatality or multiple hospitalization incident:

(A) The establishment name.
(B) The location of the incident.
(C) The time of the incident.
(D) The number of fatalities or hospitalized employees.
(E) The names of any injured employees.
(F) The employer's contact person and his or her phone number.
(G) A brief description of the incident.

(3) The employer does not have to report all fatality or multiple hospitalization incidents resulting from a motor vehicle accident. If the motor vehicle accident occurs on a public street or highway and does not occur in a construction work zone, the employer does not have to report the incident to IOSHA. However, these injuries must be recorded on the employer's OSHA injury and illness records if the employer is required to keep such records.

(4) Reporting a fatality or multiple hospitalization incident that occurs on a commercial or public transportation system is not required. Employers do not have to call IOSHA to report a fatality or multiple hospitalization incident if it involves a commercial airplane, train, subway, or bus accident. However, these injuries must be recorded on the employer's IOSHA injury and illness records if the employer is required to keep such records.

(5) Reporting a fatality caused by a heart attack at work is required. IOSHA will then decide whether to investigate the incident depending on the circumstances of the heart attack.

(6) Reporting a fatality or hospitalization that occurs long after the incident is not required. The employer must only report each fatality or multiple hospitalization incident that occurs within thirty (30) days of an incident.

(7) If an employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under this section, the employer must make the report within eight (8) hours of the time the incident is reported to the employer or to any of the employer's agents or employees.

(Department of Labor; 610 IAC 4-6-23; filed Sep 26, 2002, 11:22 a.m.: 26 IR 367; filed Apr 30, 2004, 3:45 p.m.: 27 IR 2728)

610 IAC 4-6-24 Providing records to government representatives

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 24. (a) When an authorized government representative asks for the records kept under this rule, the employer must provide copies of the records within four (4) business hours.

(b) Providing records to government representatives is governed by the following:

(1) The government representatives authorized to receive the records required under this rule are the following:

(A) A representative of the commissioner of labor conducting an inspection or investigation under the Indiana Occupational Safety and Health Act.
(B) A representative of the federal Occupational Safety and Health Administration.
(C) A representative of the Secretary of Health and Human Services (including the National Institute for Occupational

Safety and Health–NIOSH) conducting an investigation under Section 20(b) of the Occupational Safety and Health Act.

(2) The federal Occupational Safety and Health Administration and the Indiana occupational safety and health administration will consider the employer's response to be timely if the employer gives the records to the government representative within four (4) business hours of the request. If an employer maintains the records at a location in a different time zone, the employer may use the business hours of the establishment at which the records are located when calculating the deadline.

(Department of Labor; 610 IAC 4-6-24; filed Sep 26, 2002, 11:22 a.m.: 26 IR 368)

610 IAC 4-6-25 Requests from the Bureau of Labor Statistics for data

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 25. (a) If an employer receives a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS), or a BLS designee, he or she must promptly complete the form and return it following the instructions contained on the survey form.

(b) Employers shall respond to requests from the Bureau of Labor Statistics as follows:

(1) Not every employer must send data to the BLS. Each year, the BLS sends injury and illness survey forms to randomly selected employers and uses the information to create the nation's occupational injury and illness statistics. In any year, some employers will receive a BLS survey form and others will not. An employer does not have to send injury and illness data to the BLS unless he or she receives a survey form.

(2) If an employer receives a Survey of Occupational Injuries and Illnesses Form from the BLS, or a BLS designee, he or she must promptly complete the form and return it, following the instructions contained on the survey form.

(3) An employer must respond to a BLS survey form even if he or she is normally exempt from keeping OSHA injury and illness records. Even if an employer is exempt from keeping injury and illness records under sections 2 through 4 of this rule, the BLS may inform the employer in writing that it will be collecting injury and illness information from the employer in the coming year. If the employer receives such a letter, the employer must keep the injury and illness records required by sections 6 through 14 of this rule and make a survey report for the year covered by the survey.

(4) All employers who receive a survey form must respond to the survey.

(Department of Labor; 610 IAC 4-6-25; filed Sep 26, 2002, 11:22 a.m.: 26 IR 368)

610 IAC 4-6-26 Retention and updating of old forms

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 26. Each employer must save the employer's copies of the Occupational Safety and Health Administration 200 and 101 forms for five (5) years following the year to which they relate, and continue to provide access to the data as though these forms were the OSHA 300 and 301 forms. The employer is not required to update the old 200 and 101 forms. *(Department of Labor; 610 IAC 4-6-26; filed Sep 26, 2002, 11:22 a.m.: 26 IR 369)*

610 IAC 4-6-27 Definitions

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-1

Sec. 27. (a) The Indiana OSH Act (IOSHA) means the Indiana Occupational Safety and Health Act codified at IC 22-8-1.1 et seq. The definitions found in IC 22-8-1.1-1 and related interpretations apply to such terms when used in this rule.

(b) The federal Occupational Safety and Health Act means the Occupational Safety and Health Act of 1970 codified at 29 U.S.C. 651 et seq.

(c) The Acts means both the Indiana Occupational Safety and Health Act and the federal Occupational Safety and Health Act as described in subsections (a) and (b).

(d) An establishment is a single physical location where business is conducted or where services or industrial operations are performed. For activities where employees do not work at a single physical location, such as construction, transportation,

communications, electric, gas, and sanitary services, and similar operations, the establishment is represented by main or branch offices, terminals, or stations, that either supervise such activities or are the base from which personnel carry out these activities as follows:

(1) Normally, one (1) business location has only one (1) establishment. Under limited conditions, the employer may consider two (2) or more separate businesses that share a single location to be separate establishments. An employer may divide one (1) location into two (2) or more establishments only when the following occur:

(A) Each of the establishments represents a distinctly separate business.

(B) Each business is engaged in a different economic activity.

(C) No one (1) industry description in the Standard Industrial Classification Manual (1987) applies to the joint activities of the establishments.

(D) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, the employer may consider each business to be a separate establishment.

(2) An establishment can include more than one (1) physical location, but only under certain conditions. An employer may combine two (2) or more physical locations into a single establishment only when the following occur:

(A) The employer operates the locations as a single business operation under common management.

(B) The locations are all located in close proximity to each other.

(C) The employer keeps one (1) set of business records for the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one (1) manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(3) If an employee telecommutes from home, his or her home is not considered a separate establishment and a separate 300 Log is not required. Employees who telecommute must be linked to one (1) of your establishments under section 15 of this rule.

(e) An injury or illness is an abnormal condition or disorder. Injuries include cases, such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. (Note: Injuries and illnesses are recordable only if they are new, work related cases that meet one (1) or more of the recording criteria contained in this rule).

(f) A physician or other licensed health care professional is an individual whose legally permitted scope of practice, that is, license, registration, or certification, allows him or her to independently perform, or be delegated the responsibility to perform, the activities described by this rule.

(g) "Employer" means any individual or type of organization, including the state and all its political subdivisions, that has in its employ one (1) or more individuals. *(Department of Labor; 610 IAC 4-6-27; filed Sep 26, 2002, 11:22 a.m.: 26 IR 369)*

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