

**Regulatory Analysis
For IOSHA Penalty Rule**

**TITLE 610 Department of Labor
LSA Document #25-159**

I. Description of Rule

a. History and Background of the Rule

HEA 1623 was passed by the Indiana legislature in 2023 which required, among other things, that the method by which the Indiana Occupational Safety and Health Administration (IOSHA) division of the Indiana Department of Labor (IDOL) calculates civil penalties be promulgated in a rule. Minimum and maximum penalties are set by statute found in IC 22-8-1.1-27.1, but the methods by which penalties are calculated are set forth in the IOSHA Field Operations Manual (IFOM). Federal OSHA created the penalty structure used by IOSHA for many years and it requires IOSHA to follow it. In fact, the IFOM closely mirrors the Federal OSHA Field Operations Manual (FOM) that contains essentially the same penalty calculating procedures. The current revision of the IFOM has been in place since October 25, 2021. It was updated to the IFOM in 2015 to better align with the Federal OSHA FOM. Prior to that it was called the IOSHA Field Inspection Reference Manual (IFIRM) with a similar penalty calculation structure. The IDOL did not keep a good record of the history of the IFIRM, but it had been in place for many years prior to 2015.

b. Scope of the Rule

There is no existing rule that describes how to calculate IOSHA civil penalties. This proposed rule does not seek to change the way that IOSHA has been assessing penalties for many years, but only seeks to promulgate the current process for calculating those penalties into a rule to comply with Indiana law.

c. Statement of Need

The Federal OSHA civil penalty structure that IOSHA has adopted and utilizes has always been in place as a deterrent to future violations of safety and health standards. IOSHA is required by agreement with Federal OSHA to have a program to enforce safety and health compliance that is at least as effective as Federal OSHA's program. IOSHA considers citations and penalties issued against an employer to have a major impact on improving the health and safety of Hoosier workers. Hence, to comply with the new Indiana law, IOSHA is proposing to promulgate its existing procedures for calculating civil penalties into the proposed rule.

d. Statutory Authority for the Proposed Rule

IC 22-1-1-11 gives the Commissioner general rule making authority and IC 22-8-1.1-27.1 gives the Commissioner authority to assess civil penalties for violations of the IOSH Act. IC 4-22-2-19.6 requires the proposed rule for how to determine said penalties.

e. Fees, Fines, and Civil Penalties

The proposed rule does not add or increase any IOSHA civil penalties. The proposed rule does not create any additional burden of compliance for constituents.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule

The anticipated effective date of the proposed rule is by June 30, 2025.

b. Estimated Fiscal Impact on State and Local Government

IC 22-8-1.1-27.1 gives the Commissioner authority to assess civil penalties for violations of the IOSH Act. This proposed rule in and of itself does not have any fiscal impact on any regulated entity. The purpose of this rule simply describes how IOSHA penalties are calculated for compliance with HEA 1623. Furthermore, IOSHA's policy is to vacate civil monetary penalties assessed against public sector entities provided the employer timely abates the violative condition(s).

c. Sources of Expenditures or Revenues Affected by the Rule

This proposed rule does not have any fiscal impact. This rule is merely being proposed by the agency to comply with the requirements of HEA 1623. While this proposed rule does not have a fiscal impact, it should be noted that penalties collected by the agency for violations under the IOSH Act are deposited to the State General Fund. In State Fiscal Year 2024, IOSHA assessed a total of \$2,347,040 in civil penalties for violations of the IOSH Act.

III. Impacted Parties

As the rule is being proposed to be compliant with HEA 1623, the only party impacted by this proposed rule is the agency itself, the Indiana Department of Labor and the Indiana Occupational Safety and Health Administration Division, for promulgating the rule. While there is no direct change to the agency's constituents by this proposed rule for compliance with HEA 1623, the regulated business community and Hoosier workers are impacted by the assessment of IOSHA civil penalties for violations of occupational safety and health standards. The federal Bureau of Labor Statistics estimates there are more than 180,000 private sector employment establishments representing approximately 2.786 million Hoosier workers.

IV. Changes in Proposed Rule

There is no existing rule that is being changed; the proposed rule is new. However, the proposed rule represents the current process of calculating IOSHA civil penalties without any changes. This process is currently documented in the IOSHA Field Operations Manual (IFOM) and has been slightly condensed and re-worded to better comply with Indiana rule drafting requirements. The new proposed rule contains the following sections:

610 IAC 9-4-1	Adds the general penalty policy to clarify when and how penalties will be enforced, including minimum penalty requirements and factors to consider when not to apply penalty adjustments.
610 IAC 9-4-2	Adds how to determine gravity, severity, and probability of a violation to calculate

	the base penalty amount. Adds tables for calculating the penalties for Serious and Non-Serious violations.
610 IAC 9-4-3	Adds how to calculate penalty reduction factors for an employer's size, good faith, and history and apply them to the various classifications of violations.
610 IAC 9-4-4	Adds how to calculate the penalty increases for Repeat classified violations from Serious or Non-Serious determinations and apply any applicable reduction for size only.
610 IAC 9-4-5	Adds how to calculate penalty amounts for Knowing classified violations as Serious or Non-Serious determinations using penalty reduction factors and tables.
610 IAC 9-4-6	Adds when to apply and how to calculate daily proposed penalty amounts for failure to correct previous Serious or Non-Serious violations. Adds when and how to apply reductions for size and partial abatement.
610 IAC 9-4-7	Adds how to calculate penalties and apply reductions specifically for violations of regulatory requirements found in 29 CFR 1903 and 1904 for posting and record-keeping of health and safety information and for abatement verification.
610 IAC 9-4-8	Adds how to calculate penalties specifically when an employer fails to provide access to medical and exposure records as required by 29 CFR 1910.1020.

V. Benefit Analysis

a. Estimate of Primary and Direct Benefits of the Rule

The rule does not require any additional level of compliance by the regulated entities. The rule only serves to provide additional levels of transparency for the manner in which civil penalties assessed for violations of occupational safety and health standards are calculated. An indirect benefit of the rule is the ease in which the regulated entities and other stakeholders have access to information regarding the calculation of said penalties.

b. Estimate of Secondary or Indirect Benefits of the Rule

None.

c. Estimate of Any Cost Savings to Regulated Industries

This proposed rule does not add or increase a fee, fine, or civil penalty. Therefore, there are no potential costs or savings of such costs for the regulated industries. The non-monetary benefit or indirect benefit to the regulatory community is better public access to how penalties are calculated. The IFOM has always been available for anyone to request, but the rulemaking process and publishing in the Indiana Register will create better public exposure.

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities

This proposed rule does not add or increase a fee, fine, or civil penalty. The procedures for calculating civil penalties to be assessed by IOSHA that are represented in the rule are determined by Federal OSHA, and IOSHA follows them to assure it is at least as effective as Federal OSHA in enforcement of safety and health regulations as required. Therefore, this proposed rule does not seek to change the way that IOSHA has been assessing penalties for many years, but only seeks to promulgate the current process for calculating those penalties into a rule to comply with Indiana law (HEA 1623).

b. Estimate of Administrative Expenses Imposed by the Rules

This proposed rule does not add or increase a fee, fine, or civil penalty. The procedures for calculating civil penalties to be assessed by IOSHA that are represented in the rule are determined by Federal OSHA, and IOSHA follows them to assure it is at least as effective as Federal OSHA in enforcement of safety and health regulations as required. Therefore, this proposed rule does not seek to change the way that IOSHA has been assessing penalties for many years, but only seeks to promulgate the current process for calculating those penalties into a rule to comply with Indiana law (HEA 1623).

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6

The agency has considered the following:

1. Whether the violation has a major or minor impact on the health, safety, or welfare of a person, the health or safety of animals or natural resources, or other facts set forth in the agency's rule:

IOSHA violations are only concerned with the health and safety of employees in the state of Indiana, so we consider citations and penalties issued by IOSHA against an employer to have a major impact on improving the health and safety of Hoosier workers.

2. The number of previous violations committed by the offender of laws, rules, or programs administered by the agency:

The history of health and safety violations previously assessed against an employer is one of the factors used to calculate penalties assessed for violations of IOSHA health and safety standards. A reduction in penalty may be given if certain requirements are met, but a history of egregious violations or failure to correct hazards could result in higher penalties. These considerations are part of the current IOSHA penalty calculations that will need to be put into a rule.

3. The need for deterrence of future violations:

The Federal OSHA penalty structure that IOSHA has adopted has always been in place as a deterrent to future violations of health and safety standards.

4. Whether the conduct, if proved beyond a reasonable doubt, would constitute a criminal offense, and the level of penalty set by law for the criminal offense:

The IOSHA penalty structure does not consider criminal offenses when calculating and assessing penalties for health and safety violations; however, based on the type and circumstances of knowledge and intent (*mens rea*) the employer had concerning the violations, a referral to a local prosecutor to investigate and prosecute any criminal activity may be considered if warranted. In such a case, the IOSH Act provides for a Class B misdemeanor with only a maximum of \$1,000 fine, but it also may include up to 180 days jail time.

VII. Sources of Information

a. Independent Verifications or Studies

No studies were conducted or relied upon for this rule. The reason the agency did not conduct an independent verification, or study is because the penalty minimum and maximums are already established in statute, and as such, a study is not necessary for the development of this rule.

b. Sources Relied Upon in Determining and Calculating Costs and Benefits

The agency did not consult with industry groups or associations or conduct a survey of the regulated parties regarding the costs and benefits of this rule. IC 22-8-1.1-27.1 gives the Commissioner authority to assess civil penalties for violations of the IOSH Act. The reason the agency did not consult with external parties is because the penalty minimum and maximums are already established in statute and the regulated community already has access to such information. The agency seeks to promulgate a rule for compliance with IC 4-22-2-19.6, which will better communicate how IOSHA calculates its penalties.

VIII. Regulatory Analysis

Again, this rule is being proposed exclusively for the agency to be in compliance with HEA 1623. There are no additional fees or costs incurred by the regulated public, nor are there any additional requirements or regulatory burdens for them.

IX. Contact Information of Staff to Answer Substantive Questions

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Additional Information for OMB and SBA Review

X. Redline Draft of Proposed Rules

The proposed rule is provided in a separate Word file. It is not redlined because there is no existing rule being changed. It will be a new rule.

XI. Resubmission Information (if applicable)

This is an initial submission. There is no resubmission.