

SCHEDULE OF CIVIL PENALTIES

AS AMENDED

TITLE 410 IAC 7-23

**INDIANA STATE DEPARTMENT OF
HEALTH**

Effective November 13, 2004

Indiana State Department of Health
2 North Meridian Street
Indianapolis, IN 46204

Preface

In 2001 the Indiana General Assembly enacted Senate Bill 404 to provide additional statutory authority and to clarify other statutes for the Indiana State Department of Health. Heretofore, the Indiana State Department of Health could assess civil penalties only for adulterated food products. Senate Bill 404 added Indiana Code 16-19-3-4 and IC 16-42-5-28 that gives the department authority to promulgate rules establishing civil penalties for any type of food violation. The law also gives all local health departments authority to assess these civil penalties in local enforcement actions against violators of food law.

Local health departments are prohibited from establishing separate civil penalties for violations of state food rules and statutes once this rule became effective. This rule was developed in close cooperation with the food industry and local health departments. For any violation listed under the schedule, the regulatory authority may seek civil penalties as part of an enforcement action. A range of civil penalties is established to allow flexibility for the health authority and the courts.

This rule was amended in 2004 to accommodate the new Indiana State Department of Health rule 410 IAC 7-24, Retail Food Establishment Sanitation Requirements.

It is anticipated that having the ability to seek civil penalties will assist with the enforcement of recalcitrant violators of food law and will provide further protection against the spread of foodborne disease. It should be noted that violations of food law that have a higher public health significance are assigned a broader range of potential civil penalties with a maximum of \$1,000. These violations, if left uncorrected, have a much higher probability of causing illness or injury to the public. The ability to seek civil penalties should assure improved compliance, and better protection for consumers against foodborne disease.

410 IAC 7-23

Schedule of Civil Penalties as Amended

Rule 23. Food Establishment: Schedule of Civil Penalties for Violations

410 IAC 7-23-1 Schedule of civil penalties

Sec. 1. (a) The Indiana state department of health may commence an action under IC 4-21.5-3-8 to levy civil penalties against a person who:

- (1) Fails to comply with IC 16-42-5, 410 IAC 7-21, or 410 IAC 7-24; or
- (2) Interferes with or obstructs the Indiana state department of health or its designated agent in the performance of duties pursuant to IC 16-42-5, 410 IAC 7-21, or 410 IAC 7-24.

(b) A civil penalty in an amount in the appropriate range specified in subsection (d), (e), or (f), or any combination thereof, may be sought for each day of each violation.

(c) In determining the seriousness of the violation and the specific amount of the civil penalty to be sought for each violation, the Indiana state department of health will consider, but is not limited to, the following:

- (1) The potential for harm or imminent threat to public health.
- (2) The extent of deviation from statutory or regulatory requirements.
- (3) Degree of willfulness or negligence.
- (4) History of noncompliance.

The absence of direct harm will not result in assessment of a lower penalty for a violation.

(d) Unless adjusted as provided in subsections (g) and (h), and if penalties are to be assessed to a food establishment, as defined in IC 16-42-5, then they shall be assessed in accordance with the following:

| INDIANA CODE (IC) SECTION | PENALTY RANGE |
|---|----------------|
| IC 16-42-5-6; IC 16-42-5-11; IC 16-42-5-19; IC 16-42-5-21 | \$0 to \$1,000 |
| IC 16-42-5-7; IC 16-42-5-12; IC 16-42-5-13; IC 16-42-5-14; IC 16-42-5-15; IC 16-42-5-17; IC 16-42-5-18; IC 16-42-5-20 | \$0 to \$500 |
| IC 16-42-5-8; IC 16-42-5-9; IC 16-42-5-10; IC 16-42-5-16; IC 16-42-5-22 | \$0 to \$100 |

Unless adjusted as provided in subsections (g) and (h), and if penalties are to be assessed to a retail food establishment, as defined in 410 IAC 7-24, then they shall be assessed in accordance with the following:

| SECTIONS OF 410 IAC 7-24 | PENALTY RANGE |
|---|---------------|
| 107; 121, 129; 139; 142; 165; 171; 182; 269; 376; 423; | \$0-\$500 |
| 108; 109; 110; 111; 114; 117; 120; 137; 141(d); 143; 144; 146; 147; 149; 150; 151; 153; 154; 155; 157; 160; 162; 164; 166; 167; 168; 169; 172; 173; 181(a); 183; 186; 187; 188; 189; 193; 195; 196; 205; 241; 274; 294; 303; 320; 321; 322; 323; 324(a)(1); 325; 329; 334; 336; 337; 339; 343; 344; 350; 357; 375; 377; 415; 437; 438; 439; 440; 441; 442; 443; 444; 445; 446; 447; 448; 450 | \$0-\$250 |
| 113; 115; 118; 123; 128; 131; 132; 135; 136; 141(a); 141(b); 141(c); 152; 156; 190; 191; 201; 204; 229; 240; 259; 264; 295(a); 296; 297; 326; 368; 424; 435; 436 | \$0-\$100 |
| 119; 122; 130; 133; 134; 138; 140; 145; 148; 158; 159; 161; 163; 170; 174; 175; 176; 177; 178; 179; 180; 181(b); 181(c); 185; 197; 198; 199; 202; 203; 206; 207; 208; 209; 210; 211; 212; 213; 214; 215; 216 ; 217; 218; 219; 220; 221; 222; 223; 224; 225; 226; 227; 228; 230; 231; 232; 233; 234; 235; 236; 237; 238; 239; 242; 243; 244; 245; 246; 247; 248; 249; 250; 251; 252; 253; 254; 255; 256; 257; 258; 260; 261; 262; 263; 265; 266; 267; 268; 270; 271; 272; 273; 275; 276; 277; 278; 279; 280; 281; 282; 283; 284; 285; 286; 287; 288; 289; 290; 291; 292; 293; 295(b); 295(c); 298; 301; 302; 304; 305; 306; 307; 308; 309; 310; 311; 312; 313; 314; 315; 316; 317; 318; 324(a)(2); 327; 328; 330; 331; 332; 333; 335; 338; 340; 341; 342; 345; 346; 347; 348; 349; 351; 352; 353; 354; 355; 356; 358; 359; 360; 361; 362; 363; 364; 365; 366; 367; 369; 371; 372; 373; 378; 379; 380; 381; 382; 383; 384; 385; 386; 387; 388; 389; 390; 391; 392; 393; 394; 395; 396; 397; 398; 399; 400; 401; 402; 403; 404; 405; 406; 407; 408; 409; 410; 411; 412; 413; 414; 416; 417; 418; 419; 420; 421; 425; 426; 427; 428; 429; 430; 431; 432; 433; 434; 449; 451 | \$0-\$50 |

(f) Unless adjusted as provided in subsections (g) and (h), and if penalties are to be assessed to a wholesale food establishment, as defined in 410 IAC 7-21, then they shall be assessed in accordance with the following:

| SECTIONS OF 410 IAC 7-21 | PENALTY RANGE |
|---|----------------------|
| 35; 36(1); 36(2); 36(3); 36(4); 36(5); 39(b)(8); 40; 41; 42(b); 45(c); 45(n); 45(p); 45(q); 45(r); 46; 47(9)(B); 48; 49(d); 49(e); 50(d) | \$0-\$1,000 |
| 36(8); 37; 38; 39(a); 39(b)(1); 39(b)(2); 39(b)(3); 39(b)(4); 39(b)(5); 39(b)(6); 39(b)(7); 42(a); 42(d); 42(e); 44(i); 45(a); 45(b); 45(d); 45(e); 45(f); 45(g); 45(h); 45(i); 45(j); 45(k); 45(l); 45(m); 45(o); 45(s); 47(2); 47(3); 47(4); 47(5); 47(6); 47(7); 47(9)(A); 47(9)(C); 50(c); 50(f); 51(a); 51(c); 51(d) | \$0-\$500 |
| 36(6); 36(7); 42(c); 43(b); 43(c); 43(d); 44(c); 44(e); 44(h); 47(1); 47(8); 49(a); 49(b); 49(c); 50(b); 51(b) | \$0-\$250 |
| 36(9); 43(a); 43(e); 44(a); 44(b); 44(d); 44(f); 44(g); 45(t); 47(10); 47(11); 47(12); 47(13); 47(14); 47(15) | \$0-\$100 |

(g) After reinspection and determining the appropriate penalty based on the schedule in subsection (d), (e), or (f), or any combination thereof, the Indiana state department of health, or its authorized representative, may adjust the penalty to reflect a good faith effort to comply as follows:

(1) Each individual penalty will be multiplied by the number of days the particular violation has been documented by the Indiana state department of health, or its authorized representative.

(2) Penalties for violations documented in two (2) consecutive inspections by the Indiana state department of health, or its authorized representative, shall be assessed on the basis that the violations have remained uncorrected over the period of time between the two (2) inspections.

(3) If the person found in violation has requested reinspection and has produced substantive evidence that the violation or violations have been corrected, the penalties shall be assessed for the period between initial discovery of violation and the receipt of request for reinspection.

(4) Penalties for all violations documented in an inspection or series of inspections at an establishment will be totaled and sought under one (1) cause of action.

(h) After filing an action pursuant to IC 4-21.5, and in an attempt to resolve violations of said Indiana Code and this rule without resort to a hearing, the Indiana state department of health may negotiate and enter into agreed orders. An agreed order may suspend all or part of the civil penalty calculated under the requirements and deadlines established in the agreed order.