

ARTICLE 12. WEIGHTS AND MEASURES

Rule 1. Commercial Weighing and Measuring Devices

410 IAC 12-1-1 Standards for weights and measures; adoption by reference (Repealed)

Sec. 1. *(Repealed by Indiana State Department of Health; emergency rule filed Sep 21, 1993, 2:00 p.m.: 17 IR 210)*

410 IAC 12-1-1.1 Weighing and measuring devices

Authority: IC 24-6-3-2

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 1.1. Handbook 44: Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, 1998 edition, adopted by the National Conference on Weights and Measures, and published by the National Institute of Standards and Technology, excluding paragraph S.5. of Section 3.30, is hereby incorporated by reference as requirements of the Indiana state department of health for weighing and measuring devices. However, paragraph UR 2.2 of Section 3.31 shall apply only to those vehicle tanks used for the measurement and delivery of petroleum products, or liquid agricultural chemicals, or for bulk delivery of water and equipped with a ticket printer on or before the effective date of this rule; and to all new vehicle tanks used for the measurement and delivery of petroleum products, or liquid agricultural chemicals, or for bulk delivery of water, after the effective date of this rule. The incorporated document is available for public view at the Indiana state department of health. Copies of the incorporated document may be obtained by request mailed to the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402-9328. *(Indiana State Department of Health; 410 IAC 12-1-1.1; emergency rule filed Sep 21, 1993, 2:00 p.m.: 17 IR 209; filed Nov 25, 1998, 4:58 p.m.: 22 IR 1072; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA)*

410 IAC 12-1-1.2 Packaging and labeling

Authority: IC 24-6-3-2

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 1.2. Section IV (A), entitled Uniform Packaging and Labeling Regulation, of Handbook 130: Uniform Laws and Regulations, 1998 edition, adopted by the National Conference on Weights and Measures and published by the National Institute of Standards and Technology, is hereby incorporated by reference as requirements of the Indiana state department of health for packaging and labeling. The incorporated document is available for public view at the Indiana state department of health. Copies of the incorporated document may be obtained by request mailed to the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402-9328. *(Indiana State Department of Health; 410 IAC 12-1-1.2; emergency rule filed Sep 21, 1993, 2:00 p.m.: 17 IR 209; filed Nov 25, 1998, 4:58 p.m.: 22 IR 1072; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA)*

410 IAC 12-1-1.3 Method of sale of commodities

Authority: IC 24-6-3-2

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 1.3. Section IV (B), entitled Uniform Regulation for the Method of Sale of Commodities, of Handbook 130: Uniform Laws and Regulations, 1998 edition, adopted by the National Conference on Weights and Measures, and published by the National Institute of Standards and Technology, excluding Section 2.20, is hereby incorporated by reference as requirements of the Indiana state department of health for the method of sale of commodities. The incorporated document is available for public view at the Indiana state department of health. Copies of the incorporated document may be obtained by request mailed to the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402-9328. *(Indiana State Department of Health; 410 IAC 12-1-1.3; emergency rule filed Sep 21, 1993, 2:00 p.m.: 17 IR 209; filed Nov 25, 1998, 4:58 p.m.: 22 IR 1073; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA)*

410 IAC 12-1-1.4 Checking the net content of packaged goods

Authority: IC 24-6-3-2

Affected: IC 16-44-2; IC 16-44-3 IC 24-6

Sec. 1.4. (a) The following are adopted by reference:

(1) NBS Handbook 133—Third Edition, Checking the Net Content of Packaged Goods, 1988 edition.

(2) NBS Handbook 133—Third Edition, Supplement, Checking the Net Content of Packaged Goods, 1990 edition.

(3) NBS Handbook 133—Third Edition, Supplement 2, Checking the Net Content of Packaged Goods, 1991 edition.

(4) NBS Handbook 133—Third Edition, Supplement 3, Checking the Net Content of Packaged Goods, 1992 edition.

(5) NBS Handbook 133—Third Edition, Supplement 4, Checking the Net Content of Packaged Goods, 1994 edition.

(b) All of the documents listed in subsection (a) are adopted by the National Conference on Weights and Measures and published by the National Institute of Standards and Technology, are hereby incorporated by reference as requirements of the Indiana state department of health for checking the net content of packaged goods. The incorporated documents are available for public view at the Indiana state department of health. Copies of the incorporated document may be obtained by request mailed to the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402-9328. (*Indiana State Department of Health; 410 IAC 12-1-1.4; emergency rule filed Sep 21, 1993, 2:00 p.m.: 17 IR 209; filed Nov 25, 1998, 4:58 p.m.: 22 IR 1073; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA*)

410 IAC 12-1-1.5 National type evaluation

Authority: IC 24-6-3-2

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 1.5. Section IV (F), entitled Uniform Regulation for National Type Evaluation, of Handbook 130: Uniform Laws and Regulations, 1998 edition, adopted by the National Conference on Weights and Measures, and published by the National Institute of Standards and Technology, is hereby incorporated by reference as requirements of the Indiana state department of health for the method of sale of commodities. The incorporated document is available for public view at the Indiana state department of health. Copies of the incorporated document may be obtained by request mailed to the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402-9328. (*Indiana State Department of Health; 410 IAC 12-1-1.5; filed Nov 25, 1998, 4:58 p.m.: 22 IR 1073; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA*)

410 IAC 12-1-2 Poultry sold by weight

Authority: IC 24-6-3-16

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 2. (1) When poultry is sold or offered for sale as "dressed poultry", on a weight basis, such sale or offer of sale shall be exclusively upon the basis of net avoirdupois weight of the poultry in the condition in which it is so sold or offered for sale.

(2) Poultry means and includes chickens, turkeys, ducks, geese, pigeons, guineas, and any other kind of domesticated bird commercially processed and sold for human consumption. (*Indiana State Department of Health; Reg WM 2; filed Feb 23, 1950, 2:00 pm: Rules and Regs. 1951, p. 175; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA*)

410 IAC 12-1-3 Specific product sold by weight

Authority: IC 24-6-3-16

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 3. When cauliflower, cabbage, head lettuce, melons, and hands or bunches of bananas are sold or offered for sale on a weight basis, such produce shall either (1) bear an accurate statement of its weight, or (2) be weighed at the time of sale. (*Indiana State Department of Health; Reg WM 3; filed Feb 23, 1950, 2:00 pm: Rules and Regs. 1951, p. 175; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA*)

410 IAC 12-1-4 Vehicle scales; approval requirements

Authority: IC 24-6-3-16

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 4. Official approval of a vehicle scale extends exclusively to the use of that scale in weighing loads whose entire wheelbase can be accommodated on the scale platform at one time. (*Indiana State Department of Health; Reg WM 4; filed Feb 23, 1950, 2:00 pm: Rules and Regs. 1951, p. 175; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA*)

410 IAC 12-1-5 Vehicle weighing restrictions

Authority: IC 24-6-3-16

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 5. All weighings of vehicles shall be made with no person in or on the vehicle or on the scale platform. (*Indiana State Department of Health; Reg WM 5; filed Feb 23, 1950, 2:00 pm: Rules and Regs. 1951, p. 175; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA*)

410 IAC 12-1-6 Weighmasters; appointment; certificates of weight

Authority: IC 24-6-3-16

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 6. The following provisions govern the appointment and prescribe the duties of weighmasters:

(a) Any county, city, town, corporation, individual, firm, association or institution in the State of Indiana, wishing to have designated as State weighmasters one or more of its employees or other suitable person or persons, shall forward written application therefor to the Director of the State Division of Weights and Measures, Indiana State Board of Health, 1098 West Michigan Street, Indianapolis, Indiana, upon such form as may be prescribed by the said Division of Weights and Measures. Such form will be furnished upon request.

(b) A certificate of appointment as a weighmaster under the law of Indiana will be issued only to an individual, natural person, and each such certificate of appointment shall be posted at the location of the scale or scales designated in the application for its issuance. Each certificate shall be open to inspection and may be revoked and canceled by the Director of the said Division of Weights and Measures after hearing, upon due notice to the appointee, for incompetency, inaccuracy, or failure to perform the duties of such weighmaster in accordance with the law. Each certificate of appointment must be returned to the Director of the State Division of Weights and Measures for cancellation when the weighmaster has lost his employment at the location for which the certificate of appointment was issued. Unless sooner revoked or canceled, each certificate of appointment as State weighmaster shall automatically expire four (4) years after the date of its issuance.

(c) Each certificate of weight or measure, issued by a State weighmaster, shall include all of the following information to be clearly shown on each such certificate issued:

(I) The date of the Weighing.

(II) The nature of the commodity weighed.

(III) The actual weight of the consignment; in the case of a certificate of weight of a commodity transported in a vehicle and not susceptible of being readily weighed by itself, both the actual gross weight and the actual tare weight must be shown, together with the net weight computed therefrom.

(IV) In any case where the weighmaster does not ascertain both gross and tare weights, the unused space therefore shall be out before certification.

(V) The name of the declared owner of the commodity.

(VI) The name of the purchaser of the commodity, if known.

(VII) The autographic signature of the weighmaster.

(d) A copy of each certificate of weight shall be retained and be kept available for official inspection at the location designated in the application for certificate of appointment as State weighmaster, for a period of not less than 12 months from the date of the weighing to which that certificate applies.

(e) No certificate of weight shall be issued by a State weighmaster under any one or more of the following conditions:

WEIGHTS AND MEASURES

- (I) When the scale at his disposal has not been officially approved by the Director of the State Division of Weights and Measures or one of his assistants, deputies or inspectors, at the last previous official examination within a period of 12 months preceding the date of weighing.
- (II) When the total length of wheelbase of the vehicle to be weighed exceeds the length of the platform of the scale at the weighmaster's disposal.
- (III) When the weight of the gross load exceeds the nominal or rated capacity of the scale at the weighmaster's disposal.
- (IV) When a vehicle is to be weighed, either empty or loaded, and any person is in or on the vehicle or on the scale platform at the time of weighing.
- (V) When the loaded or unloaded vehicle weighs less than 1,000 pounds, and the scale at the weighmaster's disposal is a vehicle scale.

(Indiana State Department of Health; Reg WM 6; filed Feb 23, 1950, 2:00 pm: Rules and Regs. 1951, p. 176; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA) NOTE: The current address of the State Division of Weights and Measures is: 1330 West Michigan Street, Indianapolis, Indiana, 46206

410 IAC 12-1-7 Schedule of civil penalties

Authority: IC 16-19-7-3; IC 24-6-3-2

Affected: IC 4-21.5-3-8; IC 16-19-7; IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 7. (a) The Indiana state department of health may commence an action under IC 16-19-7-3, IC 24-6-1, IC 24-6-2, IC 24-6-3, IC 24-6-4, IC 24-6-5, IC 24-6-6, IC 4-21.5-3-8, and to levy civil penalties against a person who:

(1) fails to comply with IC 24-6-3 or this rule; or

(2) interferes with or obstructs the Indiana state department of health or its designated agent in the performance of duties pursuant to IC 24-6-3.

(b) A civil penalty in an amount in the appropriate range specified in subsection (d) 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 for in subsection (e), all penalties shall be in accordance with the following schedule:

| VIOLATION | CODE | RANGE OF PENALTY |
|--|--------------|------------------|
| Right of entry | IC 24-6-3-9 | \$0 to \$1,000 |
| Use of standard weights and measures | IC 24-6-3-10 | \$0 to \$ 500 |
| Use of false scales or measuring devices | IC 24-6-3-11 | \$0 to \$1,000 |
| Use of dry capacity measures | IC 24-6-3-12 | \$0 to \$ 200 |
| Standard weights and measures | IC 24-6-1-1 | \$0 to \$ 200 |
| Marking of containers | IC 24-6-6-2 | \$0 to \$ 500 |
| | IC 24-6-6-3 | |
| | IC 24-6-6-4 | |
| False representation of contents | IC 24-6-6-5 | \$0 to \$1,000 |
| Articles sold by weight or count | IC 24-6-4-1 | \$0 to \$ 200 |
| Inspection of devices | IC 24-6-3-7 | \$0 to \$ 500 |
| Commodity sold by count | IC 24-6-3-10 | \$0 to \$ 200 |
| Used containers | IC 24-6-6-6 | \$0 to \$ 200 |
| Failure to take tare at time of sale | IC 24-6-3-12 | \$0 to \$1,000 |

WEIGHTS AND MEASURES

| | | |
|---|------------------|----------------|
| Weighmaster duties | 410 IAC 12-1-6 | \$0 to \$1,000 |
| Specification and tolerances of devices | 410 IAC 12-1-1.1 | \$0 to \$1,000 |
| Packaging and labeling | 410 IAC 12-1-1.2 | \$0 to \$1,000 |
| Method of sale of commodities | 410 IAC 12-1-1.3 | \$0 to \$1,000 |
| Net content of packaged goods | 410 IAC 12-1-1.4 | \$0 to \$1,000 |
| National type evaluation | 410 IAC 12-1-1.5 | \$0 to \$1,000 |
| Use of illegal device | 410 IAC 12-1-1.1 | \$0 to \$1,000 |
| Split draft weighing | 410 IAC 12-1-4 | \$0 to \$ 500 |
| Person in vehicle during weighing | 410 IAC 12-1-5 | \$0 to \$500 |

(e) After determining the appropriate penalty based on the schedule in subsection (d), the Indiana state department of health may adjust the penalty to reflect a good faith effort to comply to the following:

(1) Each individual penalty will be multiplied by the number of days the particular violation occurred. Penalties for violations occurring on two (2) consecutive inspections by the Indiana state department of health shall be assessed on the basis that the violations have remained uncorrected over the period of time between the two (2) inspections. However, if the person found in violation has requested reinspection and has produced substantive evidence that the violation(s) have been corrected, the penalties shall be assessed for the period between initial discovery of violation and the receipt of request for reinspection.

(2) Penalties for all violations will be totaled and sought under one (1) cause of action.

(f) After filing an action pursuant to IC 4-21.5, and in an attempt to resolve violations of IC 24-6-1, IC 24-6-2, IC 24-6-3, IC 24-6-4, IC 24-6-5, IC 24-6-6, IC 4-21.5-3-8, 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. (*Indiana State Department of Health; 410 IAC 12-1-7; filed Jun 18, 1991, 10:10 a.m.: 14 IR 1958; filed Dec 21, 2000, 2:21 p.m.: 24 IR 1343; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA*)

Rule 2. State Metrology Laboratory Fees

410 IAC 12-2-1 State metrology laboratory fees

Authority: IC 16-19-5-1

Affected: IC 16-19-5; IC 24-6

Sec. 1. The following are the fees for services performed by the state metrology laboratory under IC 24-6:

Standards of Mass

Procedure: Modified Substitution or

Direct Reading

OIML Class "M2"

ANSI/ASTM Class "6" and "7"

NIST Class "C", "F", and "T"

| | |
|---------------------|------|
| 25 or fewer weights | Test |
| | \$30 |

| | |
|-------------------|------|
| 26-40 weight sets | \$40 |
|-------------------|------|

| | |
|------------------------|------|
| 41 or more weight sets | \$80 |
|------------------------|------|

| | |
|------------------------------------|-----|
| Up to and including 5 lbs or 3 kgs | \$4 |
|------------------------------------|-----|

| | |
|--|-----|
| Over 5 lbs or 3 kgs and including 50 lbs or 25 kgs | \$6 |
|--|-----|

| | |
|--|-----|
| Over 50 lbs or 25 kgs and including 500 lbs or 250 kgs | \$8 |
|--|-----|

| | |
|--|------|
| Over 500 lbs or 250 kgs and including 1,000 lbs or 500 kgs | \$12 |
|--|------|

| | |
|---------------------------|------|
| Over 1,000 lbs or 500 kgs | \$20 |
|---------------------------|------|

Procedure: Modified Substitution or Double Substitution

OIML Class "F2" and "M1"

ANSI/ASTM Class "4" and "5"

WEIGHTS AND MEASURES

| | |
|--|------|
| NIST Class "P" and "Q" | Test |
| Up to and including 5 lbs or 3 kgs | \$6 |
| Over 5 lbs or 3 kgs and including 50 lbs or 25 kgs | \$10 |
| Over 50 lbs or 25 kgs and including 500 lbs or 250 kgs | \$14 |
| Over 500 lbs or 250 kgs and including 1,000 lbs or 500 kgs | \$16 |
| Over 1,000 lbs or 500 kgs | \$25 |

Procedure: Decade Design 3-1, Double Substitution Combinations
OIML Class "F1"

| | |
|--|------|
| ANSI/ASTM Class "1" and "1.1", "2", and "3" | |
| NIST Class "S" and "S-1" | Test |
| Up to and including 5 lbs or 3 kgs | \$10 |
| Over 5 lbs or 3 kgs and including 50 lbs or 30 kgs | \$20 |
| Over 50 lbs or 30 kgs and including 1,000 lbs or 500 kgs | \$30 |
| Over 1,000 lbs or 500 kgs | \$50 |

Procedure: Advanced Weighing Designs

| | |
|--|------|
| OIML Class "E1" and "E2" | |
| ANSI/ASTM Class "O" | |
| (Tests for other than Metric Weights will be considered Special Tests) | Test |
| Up to and including 1 kg | \$40 |
| Over 1 kg | \$60 |

Standards of Volume

| | |
|--|-------|
| Test Measures and Glassware | Test |
| Up to and including 5 gallons or 20 liters | \$10 |
| Over 5 gallons or 20 liters and including 50 gallons or 200 liters | \$50 |
| Over 50 gallons or 200 liters | \$100 |

Standards of Length

| | |
|-------|---|
| Tapes | \$20 per device tested, PLUS \$4 per point tested above 5 |
|-------|---|

Other Test Fees

| | |
|--|-----------------------|
| Special Tests (Not Listed in Fee Schedule) | \$15 per quarter hour |
| Cleaning of Standards (If Necessary) | \$10 per quarter hour |

Public schools and state and local government agencies are exempt from the fees established in this section. (*Indiana State Department of Health; 410 IAC 12-2-1; filed Jun 30, 2000, 4:14 p.m.: 23 IR 2709; readopted filed Sep 20, 2006, 1:39 p.m.; readopted filed Sep 20, 2006, 1:39 p.m.: 20061004-IR-410060168RFA*)

*