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**TITLE 410 INDIANA STATE DEPARTMENT OF
HEALTH**

Proposed Rule
LSA Document #02-317

DIGEST

Adds 410 IAC 7-23 to establish a schedule of civil penalties for violations of the retail and wholesale food establishment rules. Repeals 410 IAC 7-19. Effective 30 days after filing with the secretary of state.

410 IAC 7-19

410 IAC 7-23

SECTION 1. 410 IAC 7-23 IS ADDED TO READ AS FOLLOWS:

Rule 23. Retail and Wholesale Food Establishment; Schedule of Civil Penalties for Violations

410 IAC 7-23-1 Schedule of civil penalties

Authority: IC 16-19-3-4; IC 16-42-5-28

Affected: IC 4-21.5-3-8; IC 16-42

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, IC 16-42-1, IC 16-42-2, 410 IAC 7-20, or 410 IAC 7-21; 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, IC 16-42-1, IC 16-42-2, 410 IAC 7-20, or 410 IAC 7-21.

(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) The 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-\$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-\$500
IC 16-42-5-8; IC 16-42-5-9; IC 16-42-5-10; IC 16-42-4-16; IC 16-42-5-22	\$0-\$100

(e) 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 7-20, then they shall be assessed in accordance with the following:

SECTIONS OF 410 IAC 7-20	PENALTY RANGE
98; 107; 117; 118; 124; 136; 161; 340; 382; 427	\$0-\$500
94; 97; 114; 119; 120; 121; 122; 123; 125; 126; 127; 128; 129; 130; 132; 135; 137; 138; 140; 141; 158(a); 162; 163; 164; 167; 171; 173; 175; 177; 180; 181; 182(d); 183; 184; 254; 257; 261; 276; 291; 292; 293; 297; 301; 302; 304; 307; 308; 310; 311; 315; 317; 318(a); 335; 337; 402; 407; 408; 409; 410; 411; 412; 413; 414; 415; 416; 417; 418; 420; 428; 429; 430; 431	\$0-\$250
95; 100; 105; 106; 109; 112; 113; 116; 131; 159; 160; 172; 174; 182(a); 182(b); 182(c); 195; 198; 219; 232; 264(a); 265; 275; 294; 329; 383; 406	\$0-\$100
96; 99; 108; 110; 111; 115; 133; 134; 139; 142; 143; 144; 146; 147; 148; 149; 150; 151; 152; 153; 154; 155; 156; 157; 158(b); 158(c); 165; 166; 168; 169; 170; 178; 179; 185; 186; 187; 188; 189; 190; 191; 192; 193; 194; 196; 197; 199; 200; 201; 202; 203; 204; 205; 206; 207; 208; 209; 210; 211; 212; 213; 214; 215; 216; 217; 218; 220; 221; 222; 223; 224; 225; 226; 227; 228; 229; 230; 233; 234; 235; 236; 237; 238; 239; 240; 241; 242; 243; 244; 245; 247; 248; 249; 250; 251; 252; 253; 255; 256; 258; 259; 260; 262; 263; 264(b); 264(c); 266; 267; 268; 269; 270; 271; 272; 273; 274; 277; 278; 279; 280; 281; 282; 283; 284; 285; 286; 287; 288; 289; 290; 295; 296; 298; 299; 300; 303; 305; 306; 309; 312; 313; 314; 316; 318(b); 319; 320; 321; 322; 323; 324; 325; 326; 327; 328; 330; 332; 333; 336; 338; 339; 341; 342; 343; 344; 345; 346; 347; 348; 349; 350; 351; 352; 353; 354; 355; 356; 357; 358; 359; 360; 361; 362; 363; 364; 365; 366; 367; 368; 369; 370; 371; 372; 373; 374; 375; 376; 377; 378; 379; 380; 381; 384; 385; 386; 387; 388; 389; 390; 391; 392; 393; 394; 395; 396; 397; 398; 399; 400; 401; 403; 404; 405; 419; 421; 422; 423; 425	\$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; 39(b)(8); 40; 41; 42(b); 45(c)(1); 45(c)(2); 45(c)(3); 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; 42; 44(l); 45; 45(d); 47; 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)(A); 47(1)(B); 47(8); 49; 50(b); 51(b)	\$0-\$250
36(9); 43; 44; 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. (*Indiana State Department of Health; 410 IAC 7-23-1*)

SECTION 2. 410 IAC 7-19 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 25, 2003 at 2:00 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Rice Auditorium, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on proposed new rules to establish a schedule of civil penalties for retail and manufactured food production and processing. Copies of these rules are now on file at the Health Care Regulatory Services Commission, Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gregory A. Wilson, M.D.
State Health Commissioner
Indiana State Department of Health