



TO: Fire Prevention and Building Safety Commission
FROM: Justin Guedel, General Counsel, IDHS
DATE: December 21, 2023
RE: Proposed Civil Penalty Rule for Compliance with H.E.A. 1623

Commissioners:

On January 1, 2023, SECTION 15 of [House Enrolled Act No. 1623](#) went into effect. In relevant part, this law required each fee, fine, or civil penalty imposed by an agency that was not set as a specific amount in state law, to be included in a rule that described the circumstances for which the fee, fine, or civil penalty would be imposed and to set forth the specific amount of said fee, fine, or civil penalty in one of three ways.

After a review of the fees, fines, and civil penalties imposed by the Indiana Department of Homeland Security (IDHS), it was found, in a few instances, the civil penalties imposed by the IDHS were not set as specific amounts in state law. One of these instances was the application of [Ind. Code § 22-12-7-7\(5\)](#) which permits the IDHS to impose “a civil penalty **not to exceed** two hundred fifty dollars (\$250) for each day [a] violation occurs.” Emphasis added.

As this statutory language did not set the fine amount with specificity, but simply capped the amount at \$250 per day, the IDHS identified that rules were necessary to ensure compliance with Ind. Code § 4-22-2-19.6 when issuing civil penalties under Ind. Code § 22-12-7-7(5). And, as the Fire Prevention and Building Safety Commission (Commission) is the authority to adopt rules under IC 22-12 (see Ind. Code § 10-19-3-7(c) and Ind. Code § 22-13-2-13), the IDHS has prepared the attached proposed rule for adoption by the Commission.

This rule was drafted, to the greatest extent possible, to permit the IDHS to continue its current enforcement program unchanged, while also complying with Ind. Code § 4-22-2-19.6. Additionally, the current IDHS enforcement program has been presented to the [Budget Committee](#) to permit continued utilization of Ind. Code § 22-12-7-7(5) through July 1, 2025, while these proposed rules are adopted.

For these reasons, the IDHS requests adoption of the proposed draft rule.

PROPOSED RULE

SECTION 1. 675 IAC 12-3-16 IS ADDED TO READ AS FOLLOWS:

675 IAC 12-3-16. Civil penalties

Authority: IC 22-13-2-13

Affected: IC 22-12-7-7

Sec. 16 (a) Except for penalties that are subject to administrative review by the board of firefighting personnel standards and education, this section applies to civil penalties issued under IC 22-12-7-7(5).

(b) The department shall impose civil penalties for failure to correct violations by the date ordered as follows:

(1) An initial \$250 penalty shall be issued for each violation not corrected by the date ordered.

(2) Following issuance of a civil penalty and until all violations are corrected, subsequent \$250 penalties shall be issued for each violation not corrected within thirty (30) days following the issuance of a previously issued civil penalty.

The department may extend the dates identified in this subsection for good cause shown, if a request for extension is received prior to the date to be extended.

(c) The department shall impose civil penalties without first providing an opportunity to correct as follows:

(1) A \$250 penalty shall be issued for each violation that represents intentional misconduct or fraud by a responsible person. Previous violations of the same or similar requirements within the past year is prima facie evidence of intentional misconduct.

(2) A \$250 penalty shall be issued for continuing an activity required to be permitted, licensed, or otherwise authorized by the department or the commission after the permit, license, or other authorization has expired.

(3) A \$250 penalty shall be issued for conducting an activity required to be permitted, licensed, or otherwise authorized by the department or the commission, if the activity is found to clearly require a prior permit, license, or authorization by the department or the commission.

Subsequent penalties for those identified in this subsection shall proceed as identified in (b)(2).

(d) Penalties are due within thirty (30) days of issuance. Failure to satisfy the judgment within this period may result in civil collection proceedings.

(e) Nothing in this section shall be construed as limiting the department's authority to take other actions authorized under IC 22-12-7-7.

(f) Outstanding penalties must be satisfied prior to renewing or obtaining any permit, license, registration, certification or other similar authorization from the department or the commission.