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**TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH**

LSA Document #00-60(F)

DIGEST

Amends 410 IAC 12-1-7 to add penalties for violations in packaging and labeling, method of sale of commodities, and the net content of packaged goods. Effective 30 days after filing with the secretary of state.

**410 IAC 12-1-7**

SECTION 1. 410 IAC 12-1-7 IS AMENDED TO READ AS FOLLOWS:

**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 ~~board~~ **department** of health may commence an action under ~~IC 16-5-1~~, **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 ~~board~~ **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 ~~board~~ **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
<del>Method of sale of bakery products</del>	<del>IC 16-6-2-1</del>	\$0 to \$ 200
Standard weights and measures	IC 24-6-1-1	\$0 to \$ 200

Marking of containers	IC 24-6-6-2 IC 24-6-6-3 IC 24-6-6-4	\$0 to \$ 500
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
<del>Use of grain moisture equipment without seal</del>	<del>IC 16-5-2-5</del>	<del>\$0 to \$ 500</del>
Weighmaster duties	410 IAC 12-1-6	\$0 to \$1,000
Specification and tolerances of devices	<del>410 IAC 12-1-1</del> <b>410 IAC 12-1-1.1</b>	\$0 to \$1,000
<b>Packaging and labeling</b>	<b>410 IAC 12-1-1.2</b>	<b>\$0 to \$1,000</b>
<b>Method of sale of commodities</b>	<b>410 IAC 12-1-1.3</b>	<b>\$0 to \$1,000</b>
<b>Net content of packaged goods</b>	<b>410 IAC 12-1-1.4</b>	<b>\$0 to \$1,000</b>
<b>National type evaluation</b>	<b>410 IAC 12-1-1.5</b>	<b>\$0 to \$1,000</b>
Use of illegal device	<del>410 IAC 12-1-1</del> <b>410 IAC 12-1-1.1</b>	\$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 ~~board~~ **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 ~~board~~ **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 16-5-2~~, 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 ~~board~~ **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*)

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