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**TITLE 357 INDIANA PESTICIDE REVIEW
BOARD**

LSA Document #04-160(F)

DIGEST

Amends 357 IAC 1-6 to address civil penalties for violations of IC 15-3-3.5, the Indiana Pesticide Registration Law, and the rules adopted under that law, to add definitions of new terms introduced as the result of listing each violation individually on the civil penalty schedule rather than grouping the violations by type, to clarify which penalties are to be assessed on a per product, per incident, per day, or per year basis, to add a penalty assessment cap of 180 incidents or 180 days for repetitive violations, to clarify the factors to be considered when mitigating penalties, to clarify that civil penalties are not required nor the sole enforcement action for every violation, and to clarify that the civil penalty money collected is to be used by the Purdue University Cooperative Extension Service solely for providing education about pesticides. Effective 30 days after filing with the secretary of state.

357 IAC 1-6-1	357 IAC 1-6-5
357 IAC 1-6-2	357 IAC 1-6-6
357 IAC 1-6-3	357 IAC 1-6-7
357 IAC 1-6-4	357 IAC 1-6-8

SECTION 1. 357 IAC 1-6-1 IS AMENDED TO READ AS FOLLOWS:

357 IAC 1-6-1 Definitions

Authority: IC 15-3-3.5-10; IC 15-3-3.5-18.3

Affected: IC 15-3-3.5-2; IC 15-3-3.5-12

Sec. 1. (a) As used in The following definitions apply throughout this rule: “penalty range” means the civil penalty dollar amount range for each violation type listed in the schedule as specified in section 2 of this rule:

- (1) “Adulterated” means a product as described in IC 15-3-3.5-2(2).
 - (2) “Board” means the Indiana pesticide review board created by IC 15-3-3.5-12.
 - (3) “Bulk pesticide” means a pesticide as described in IC 15-3-3.5-2(32).
 - (4) “Distribute” means to distribute a product, as described in IC 15-3-3.5-2(8).
 - (5) “Labeling” means all products labels and written, printed, or graphic material as described in IC 15-3-3.5-2(18).
 - (6) “Legal citation” means the Indiana Code (IC) or the Indiana Administrative Code (IAC) section or subsection cited on the schedule to describe the relevant portion of a pesticide law or rule that has been violated.
 - (7) “Misbranded” means a product as described in IC 15-3-3.5-2(19).
 - (8) “Per day” means the method to be utilized for determining the civil penalty to be assessed for a violation that is of a continuing nature but may be the result of one (1) distinguishable act or failure to act. The violation number shall remain the same when assessing civil penalties for multiple counts of violation on a per day basis.
 - (9) “Per incident” means the method to be utilized for determining the violation number for a violation that is usually not of a continuing nature and is the result of a separate and distinguishable act or failure to act. Violations involving separate and distinguishable acts may be assigned accumulating violation numbers.
 - (10) “Per product” means the method to be utilized for determining the violation number for a violation that may involve more than one (1) different product. Violations involving multiple products will be assigned accumulating violation numbers.
 - (11) “Person” has the meaning set forth in IC 15-3-3.5-2(22).
 - (12) “Per year” means the method to be utilized for determining the violation number for a violation that may be documented on several dates or at several locations but is the result of one (1) distinguishable act or failure to act.
- (b) As used in this rule; (13) “Product” means pesticide product as defined in IC 15-3-3.5-2(38).
- (c) As used in this rule; (14) “Schedule” means the civil penalty schedule required by IC 15-3-3.5-18.3(b) and as specified in

section 2 of this rule.

(15) "State chemist" means the Indiana state chemist or his or her appointed agent.

(16) "Violation assessment" means the scheme to be utilized for determining the violation number and the count of violations eligible to be assessed civil penalties on the schedule. This scheme includes the concept of assessing civil penalties on a per incident, per day, per product, and per year basis as indicated on the schedule.

(Indiana Pesticide Review Board; 357 IAC 1-6-1; filed Jan 9, 1992, 3:00 p.m.: 15 IR 706; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1689)

SECTION 2. 357 IAC 1-6-2 IS AMENDED TO READ AS FOLLOWS:

357 IAC 1-6-2 Schedule

Authority: IC 15-3-3.5-10; IC 15-3-3.5-18.3

Affected: IC 15-3-3.5

Sec. 2. (a) The schedule of civil penalties for violations of IC 15-3-3.5, the Indiana Pesticide Registration Law, and the rules adopted under this law is as follows:

Violation number	Product registration	Product adulteration, misbranding, and packaging	Product handling, storage, and disposal	Stop sale, use, or removal order
1	\$250*	\$0-\$250	\$0-\$250	\$250
2	\$0-\$500	\$0-\$500	\$0-\$500	\$500
3	\$0-\$1,000	\$0-\$1,000	\$0-\$1,000	\$1,000
Subsequent	\$0-\$1,000	\$0-\$1,000	\$0-\$1,000	\$1,000

Legal Citation	General Description of Violation	Violation Number			Violation Assessment
		1	2	3 and subsequent	
IC 15-3-3.5-3(1) or IC 15-3-3.5-18.1(a)(1)	Distribute a nonregistered product.	\$250	\$500	\$1,000	Per product and per year
IC 15-3-3.5-3(2)	Distribute a product with labeling different from that registered.	\$100	\$200	\$300	Per product and per year
IC 15-3-3.5-3(3)	Distribute a product with composition different from that registered.	\$250	\$500	\$1,000	Per product and per year
IC 15-3-3.5-3(4)	Distribute a product with incomplete or illegible label or in a container other than manufacturer's immediate unbroken container.	\$250	\$500	\$1,000	Per product and per incident
IC 15-3-3.5-3(5)	Distribute an improperly colored product.	\$250	\$500	\$1,000	Per product and per year
IC 15-3-3.5-3(6), IC 15-3-3.5-18.1(2), or IC 15-3-3.5-18.1(3)	Distribute an adulterated or misbranded product.	\$250	\$500	\$1,000	Per product and per year
IC 15-3-3.5-3(7)	Distribute a product in a container not in compliance with container rules.	\$250	\$500	\$1,000	Per product and per year
IC 15-3-3.5-3(8)	Distribute a highly volatile herbicide.	\$250	\$500	\$1,000	Per product and per incident
IC 15-3-3.5-3(9)	Distribute or store a bulk pesticide without an affixed label.	\$100	\$200	\$300	Per product and per incident
IC 15-3-3.5-4(1)	Detach, alter, deface, or destroy a label or labeling or adulterate a product.	\$250	\$500	\$1,000	Per product and per incident
IC 15-3-3.5-4(2)	Reveal a product formula.	\$250*	\$500*	\$1,000*	Per product and per incident

IC 15-3-3.5-4(3)	Use a pesticide not in compliance with use, distribution, storage, transportation, disposal, or container rules.	\$250	\$500	\$1,000	Per incident
IC 15-3-3.5-25	Sell, use, or remove without permission a product placed under a stop sale, use, or removal order.	\$250*	\$500*	\$1,000*	Per incident
IC 15-3-3.5-33	Store, display, handle, transport, or distribute a product in a hazardous manner.	\$250	\$500	\$1,000	Per incident
IC 15-3-3.5-34	Store, discard, or dispose a product or container in a hazardous manner.	\$250	\$500	\$1,000	Per incident
357 IAC 1-3-2	Distribute a restricted use pesticide to a noncertified user.	\$250*	\$500*	\$1,000*	Per incident
357 IAC 1-3-3	Distribute a restricted use pesticide without a dealer registration.	\$250	\$500	\$1,000	Per incident
357 IAC 1-3-5(a)	Fail to keep restricted use pesticide distribution records.	\$100	\$200	\$300	Per incident
357 IAC 1-3-5(c)	Fail to keep complete distribution records.	\$25	\$50	\$75	Per incident
355 IAC 5-2-1 or 355 IAC 5-2-4	Store a pesticide in a bulk container made of improper design or materials.	\$100	\$200	\$300	Per incident and per day
355 IAC 5-2-2	Store a pesticide in an underground bulk container.	\$250	\$500	\$1,000	Per incident and per day
355 IAC 5-2-3	Abandon a bulk storage container improperly.	\$250	\$500	\$1,000	Per incident
355 IAC 5-2-6	Fail to vent a bulk storage container.	\$100	\$100	\$100	Per incident
355 IAC 5-2-7	Fail to provide bulk container security.	\$100	\$100	\$100	Per day
355 IAC 5-2-8	Fill bulk container beyond intended capacity.	\$100	\$200	\$300	Per incident
355 IAC 5-2-9	Fail to have proper shut-off valve on bulk container.	\$50	\$50	\$50	Per day
355 IAC 5-2-10	Fail to support bulk container appurtenances.	\$50	\$50	\$50	Per day
355 IAC 5-2-11	Fail to have proper liquid level gauging device on bulk container.	\$50	\$50	\$50	Per incident
355 IAC 5-2-12	Fail to maintain bulk container.	\$100	\$100	\$100	Per day
355 IAC 5-3-1(a)	Fail to carry out operational area activities within contained area.	\$250*	\$500*	\$1,000*	Per incident
355 IAC 5-3-1(b) or 355 IAC 5-3-1(d)	Operate operational area containment with improper design, construction, capacity, or drainage.	\$100	\$200	\$300	Per incident and per day
355 IAC 5-3-1(e)	Fail to remove liquids promptly from operational area containment.	\$100	\$200	\$300	Per day
355 IAC 5-3-1(f)	Fail to protect storage containers and appurtenances from damage by vehicles.	\$250	\$500	\$1,000	Per incident
355 IAC 5-3-1(h)	Fail to maintain operational area containment.	\$100	\$200	\$300	Per day
355 IAC 5-4-1(a)	Store a bulk container outside of secondary containment.	\$250*	\$500*	\$1,000*	Per day
355 IAC 5-4-1(b)	Fail to separate pesticide secondary containment from other materials.	\$100	\$200	\$300	Per day

355 IAC 5-4-1(c)	Fail to maintain required capacity for secondary containment.	\$100	\$200	\$300	Per day
355 IAC 5-4-1(f)	Operate secondary containment with tile drainage within or under the containment.	\$100	\$200	\$300	Per day
355 IAC 5-4-2	Operate secondary containment with improperly constructed or sealed walls.	\$100	\$200	\$300	Per day
355 IAC 5-4-3	Operate secondary containment with improperly constructed or sealed base.	\$100	\$200	\$300	Per day
355 IAC 5-4-4	Operate secondary containment with a relief outlet, valve, or improper pump.	\$100	\$200	\$300	Per day
355 IAC 5-4-7	Operate an improperly designed, constructed, or maintained elephant ring.	\$100	\$200	\$300	Per day
355 IAC 5-4-8(a)	Fail to maintain secondary containment.	\$100	\$200	\$300	Per day
355 IAC 5-4-8(b)	Fail to maintain secondary containment free of debris and foreign matter.	\$25	\$50	\$100	Per day
355 IAC 5-5-1	Store dry bulk pesticide in improper, nonelevated, uncovered, or unsecured container or manner.	\$250	\$500	\$1,000	Per day
355 IAC 5-8-1	Fail to notify the state chemist annually of the bulk storage facility location and status.	\$50	\$100	\$150	Per year

* This penalty shall **not** be imposed if the responsible person does not register the product within seven (7) business days of the date of receipt of written notification from the state chemist: **subject to the potential for mitigation listed in section 5 of this rule.**

(b) Each penalty for each violation, if the violation is of a continuing nature, shall not be imposed for more than one hundred eighty (180) days when assessed on a per day basis.

(c) Each penalty for each violation, if the violation is of an identical repetitive nature, shall not be imposed for more than one hundred eighty (180) incidents when assessed on a per incident basis. *(Indiana Pesticide Review Board; 357 IAC 1-6-2; filed Jan 9, 1992, 3:00 p.m.: 15 IR 706; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1690)*

SECTION 3. 357 IAC 1-6-4 IS AMENDED TO READ AS FOLLOWS:

357 IAC 1-6-4 Determining the violation number and count of violations to be assessed

Authority: IC 15-3-3.5-10; IC 15-3-3.5-18.3

Affected: IC 15-3-3.5

Sec. 4. For purposes of imposing civil penalties, the state chemist shall comply with the following when determining the violation number **and the count of violations:**

~~(1) Only violations committed after the effective date of this rule shall be considered.~~

~~(2) (1) Only violations committed within the immediate past five (5) years of the date of the violation being addressed shall be considered.~~

~~(3) (2) A person's violation numbers shall accumulate as first, second, third, etc., independently for each violation type listed on the schedule.~~

(3) When multiple different but similar or related violations are committed by a single distinguishable act or failure to act, only one (1) of those violations may be subject to a civil penalty for that act. This subdivision is intended to avoid duplicating civil penalty assessment for violation of multiple provisions of the statute or rule that may be essentially the same or closely related. This subdivision is not intended to limit in any way civil penalty assessment for violations that are the result of more than one (1) distinguishable unrelated act or failure to act or a violation of a continuing or repetitive nature.

(4) When civil penalty assessment procedures outlined in subdivision (3) are being followed, the state chemist will utilize the appropriate violation with the highest penalty listed on the schedule.

(Indiana Pesticide Review Board; 357 IAC 1-6-4; filed Jan 9, 1992, 3:00 p.m.: 15 IR 706; readopted filed Oct 29, 2001, 4:41 p.m.:

25 IR 936; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1692)

SECTION 4. 357 IAC 1-6-5 IS AMENDED TO READ AS FOLLOWS:

357 IAC 1-6-5 Potential penalty mitigation

Authority: IC 15-3-3.5-10; IC 15-3-3.5-18.3

Affected: IC 15-3-3.5

Sec. 5. (a) The amount of a civil penalty may be adjusted ~~within the range listed on the schedule~~ **downward** to reflect particular **mitigating** factors. ~~which may be aggravating or mitigating.~~ Some factors that may be considered are the following:

- (1) Good faith efforts of the violator to comply.
- (2) ~~Intent of~~ **Cooperation by** the violator ~~with the state chemist during the investigation process.~~
- (3) ~~The~~ violator's history of compliance.
- (4) Whether ~~the~~ violation involved a restricted use pesticide. ~~or a nonclassified pesticide.~~
- (5) ~~Extent of deviation from the statutory or rule requirement.~~
- (6) ~~(5)~~ **The** potential for damage.
- (7) ~~Economic benefit to the violator for noncompliance.~~
- (8) ~~(6)~~ **(6)** Remedial or corrective action taken by the violator.

(b) Failure to pay the full amount of any previously mitigated civil penalty by the date prescribed by the state chemist may subject the violator to the full amount of the nonmitigated civil penalty. (*Indiana Pesticide Review Board; 357 IAC 1-6-5; filed Jan 9, 1992, 3:00 p.m.: 15 IR 707; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1692*)

SECTION 5. 357 IAC 1-6-6 IS AMENDED TO READ AS FOLLOWS:

357 IAC 1-6-6 Notification of legal recourse

Authority: IC 15-3-3.5-10; IC 15-3-3.5-18.3

Affected: IC 15-3-3.5

Sec. 6. The state chemist shall notify in writing each person on whom a civil penalty may be imposed of the ~~following:~~ **opportunity to obtain a hearing on the proposed action by filing with the board within thirty (30) days notice of the action.**

- (1) ~~The provision under IC 15-3-3.5-18.3(c) that requires the board to approve the imposition of the civil penalty for a person's first violation.~~
- (2) ~~The provisions under IC 15-3-3.5-19 for a person's opportunity to present the person's views, either orally or in writing, with regard to the contemplated proceedings.~~

(*Indiana Pesticide Review Board; 357 IAC 1-6-6; filed Jan 9, 1992, 3:00 p.m.: 15 IR 707; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1693*)

SECTION 6. 357 IAC 1-6-7 IS ADDED TO READ AS FOLLOWS:

357 IAC 1-6-7 Imposition of civil penalties

Authority: IC 15-3-3.5-10; IC 15-3-3.5-18.3

Affected: IC 15-3-3.5

Sec. 7. (a) Nothing in this rule shall require the state chemist to impose a civil penalty for a violation.

(b) The state chemist may initiate any of the following enforcement actions for a violation instead of or in addition to a civil penalty:

- (1) **A warning.**
- (2) **A citation.**
- (3) **A license, permit, registration, or certification:**
 - (A) **denial;**
 - (B) **modification;**
 - (C) **suspension; or**
 - (D) **revocation.**

(4) Referral for criminal prosecution.

(5) Referral to the U.S. Environmental Protection Agency or other appropriate agency.

(Indiana Pesticide Review Board; 357 IAC 1-6-7; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1693)

SECTION 7. 357 IAC 1-6-8 IS ADDED TO READ AS FOLLOWS:

357 IAC 1-6-8 Penalty money collected

Authority: IC 15-3-3.5; IC 15-3-3.5-18.3

Affected: IC 15-3-3.5

Sec. 8. (a) The state chemist shall credit all money collected for civil penalties to the Purdue University Cooperative Extension Service.

(b) The Purdue University Cooperative Extension Service shall use the money solely for the purpose of providing education about pesticides. *(Indiana Pesticide Review Board; 357 IAC 1-6-8; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1693)*

SECTION 8. 357 IAC 1-6-3 IS REPEALED.

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