

TITLE 410 INDIANA DEPARTMENT OF HEALTH

Notice of First Public Comment Period

LSA Document # **25-xxx**

FOOD ESTABLISHMENT OPERATIONS; SANITARY STANDARDS

PURPOSE OF NOTICE

The Indiana Department of Health (department) is soliciting public comment on amending rules at [410 IAC 7-23-1](#) concerning civil penalties for sanitary standards at operating food establishments. The department seeks comment on the affected citations listed and any other provisions of Title 410 that may be affected by this rulemaking.

CITATIONS AFFECTED: [410 IAC 7-23-1](#);

AUTHORITY: [IC 16-42-5-5](#)

OVERVIEW

Basic Purpose and Background

The proposed rule will revise the civil penalty schedule for retail food establishments in violation of rule provisions in 410 IAC 7-26. This rule was amended in March by LSA #24-375 as part of the 410 IAC 7-26 adoption. However, civil penalties for provisions of 410 IAC 7-26 that did not previously exist in 410 IAC 7-24 were not included in that rulemaking as part of the Indiana Department of Health's commitment to educating retail food establishments on new sanitary standards before enforcement actions occurred. This rule is tentatively scheduled to be effective in March of 2026, which will ensure that retail food establishments have sufficient time to be trained on the new provisions of 410 IAC 7-26 before the imposition of any new civil penalties.

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Kian Hoss
Indiana Department of Health
2 North Meridian Street
Indianapolis, IN 46204
(463) 207-5082
kihoss@health.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Matthew Jaworowski
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204

(317) 650-0126
majaworowski@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

REQUEST FOR PUBLIC COMMENT

The department is soliciting public comment on the proposed rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #25-xxx Food Establishment Operations; Sanitary Standards

ATTN: Kian Hoss

Indiana Department of Health

2 North Meridian Street

Indianapolis, IN 46204

(2) By email to rulepubliccomments@health.in.gov. PLEASE NOTE: Email comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.

(3) Attend scheduled public hearing.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than **October 3, 2025**.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Indiana Department of Health, 2 North Meridian Street, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the Indiana Department of Health office.

If the department does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

PROPOSED RULE

SECTION 1. 410 IAC 7-23-1 IS AMENDED AS FOLLOWS:

410 IAC 7-23-1 Schedule of civil penalties

Authority: IC 16-42-5-5

Affected: IC 4-21.5; IC 16-42-5

Sec. 1. (a) The department 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, 410 IAC 7-21, or 410 IAC 7-26; or
- (2) interferes with or obstructs the department in the performance of duties under IC 16-42-5, 410 IAC 7-21, or 410 IAC 7-26.

(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) Unless a determination is made that there is an imminent risk to the public health or safety, a regulatory authority may not issue a civil penalty against a retail food establishment under this rule unless the regulatory authority has notified the retail food establishment of the violation and afforded the retail food establishment an opportunity to enter into a corrective plan in a manner that complies with IC 4-21.5-2.5-6 through IC 4-21.5-2.5-10.

(1) A retail food establishment that refuses to agree to a corrective plan with a regulatory authority or fails to complete a corrective plan as determined by a regulatory authority may be issued a civil penalty consistent with this rule.

(2) The time period for any correction plan must be consistent with 410 IAC 7-26-475 and 410 IAC 7-26-476.

(d) In determining the seriousness of the violation and the specific amount of the civil penalty to be sought for each violation, the Indiana department of health (department) 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.

(e) Unless adjusted as provided in subsections (h) and (i), and if penalties are to be assessed to a food establishment, as defined in IC 16-42-5, they shall be assessed in accordance with the following:

| INDIANA CODE SECTION | PENALTY RANGE |
|---|----------------|
| IC 16-42-5-6; IC 16-42-5-11; IC 16-42-5-19; IC 16-42-5-21 | \$0 to \$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 to \$500 |
| IC 16-42-5-8; IC 16-42-5-9; IC 16-42-5-10; IC 16-42-5-16; IC 16-42-5-22 | \$0 to \$100 |

(f) Unless adjusted as provided in subsections (h) and (i), and if penalties are to be assessed to a retail food establishment, as defined in 410 IAC 7-26, then they shall be assessed in accordance with the following:

| SECTIONS OF 410 IAC 7-26 | PENALTY RANGE |
|---|---------------|
| 138; 142; 155, 198; 211; 213; 215; 427; 490; | \$ 250-\$500 |
| 134; 135; 136; 137, 139, 140, 141 152; 154; 156; 157; 158; 159; 160; 161; 162; 163; 164; 165; 166; 167; 169; 170; 170; 171; 172; 173; 174; 175; 177; 178; 180; 182; 188; 195; 196; 199; 200; 201; 202; 203; 206; 207; 216; 217; 218; 223; 224; 225; 226; 237; 258; 274; 292; 299; 303; 307; 316; 317; 318; 334; 335; 336; 337; 338; 339; 345; 348; 349; 354; 355; 356; 359; 361; 362; 385; 461; 473; 483; 484; | \$150-\$250 |
| 143; 144; 145; 147; 148 149; 151; 176; 179; 181; 189; 193; 197; 204; 210; 212; 214; 221; 222; 228; 229; 230; 235; 238; 246; 247; 259; 260; 263; 264; 265, 272; 273; 278; 279; 280; 281; 282; 283; 284; 294; 295; 296; 297; 301; 302; 306; 317; 318; 329;; 341; 342; 343; 344; 346; 347; 351; 352; 360; 363; 364; 370; 371 372; 373; 374; 375; 377; 379; 380; 382; 383; 392; 421; 428; 429; 430; 434; 435; 441; 446; 450; 451; 453; 454; 455; 456; 457; 458; 459; 460; 462; 463; 464; 465; 466; 467; 468; 469; 470; 471; 475; 476; 477; 478; 479; 480; 481; 485; 486; 488; 489; | \$100-\$150 |
| 146; 150; 168, 183; 184; 185; 186; 187; 190 191; 192; 194; 205; 208; 209; 219; 220; 227; 231; 232; 233; 234; 236; 239; 240; 241; 242; 243; 244; 245; 248; 249; 250; 251; 252; 253; 254; 255; 256; 257; 261; 262; 266; 267; 268; 269; 270; 271; 275; 276; 277; 285; 286; 287; 288; 289; 290; 291; 293; 298; 300; 304; 305; 308; 309; 310; 311; 312; 313; 314; 315; 319; 320; 321; 322; 323; 324; 325; 326; 327; 328; 330; 331; 332; 333; 340; 350; 353; 357; 358; 361; 365; 366; 367; 368; 369; 376; 378; 381; 384; 386; 387; 388; 389; 390; 391; 393; 394; 395; 396; 397; 398; 399; 400; 401; 402; 403; 404; 405; 406; 407; 408; 409; 410; 411; 412; 413; 414; 415; 416; 417; 418; 419; 420; 422; 423; 424; 425; 426; 431; 432; 433; 436; 437; 438; 439; 440; 442; 443; 444; 445; 447; 448; 449; 452; 472; | \$0-\$100 |

(g) Except as provided in subsections (h) and (i), if penalties are to be assessed to a

wholesale food establishment, as defined in 410 IAC 7-21, the penalties shall be assessed as follows:

| SECTIONS OF 410 IAC 7-21 | PENALTY RANGE |
|--|---------------|
| 35; 36(1) through 36(5); 39(b)(8); 40; 41; 42(b); 45(c); 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(a); 39(b)(1) through 39(b)(7); 42(a); 42(d); 42(e); 44(i); 45(a); 45(b); 45(d) through 45(m); 45(o); 45(s); 47(2) through 47(7); 47(9)(A); 47(9)(C); 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); 47(8); 49(a) through 49(c); 50(b); 51(b) | \$0-\$250 |
| 36(9); 43(a); 43(e); 44(a); 44(b); 44(d); 44(f); 44(g); 45(t); 47(10) through 47(15) | \$0-\$100 |

(h) After reinspection and determining the appropriate penalty based on the schedule in subsection (e), (f), or (g), or any combination thereof, the department 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 department.
- (2) Penalties for violations documented in two (2) consecutive inspections by the department shall be assessed on the basis that the violations have remained uncorrected over the period between the two (2) inspections.
- (3) If the person found in violation has requested reinspection and produced substantive evidence that the violation or violations have been corrected, the penalties shall be assessed for the period between initial discovery of the violation and receiving the 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.

(i) After filing an action under IC 4-21.5, and in an attempt to resolve violations of IC 16-42 and this rule without conducting a hearing, the department 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 Department of Health; 410 IAC 7-23-1; filed Dec 4, 2003, 3:05 p.m.: 27 IR 1167; filed Oct 13, 2004, 11:25 a.m.: 28 IR 908; readopted filed Jul 15, 2010, 12:12 p.m.: 20100728-IR-410100261RFA; readopted filed Nov 10, 2016, 8:45 a.m.: 20161207-IR-410160371RFA; errata filed Jul 28, 2021, 9:35 a.m.: 20210811-IR-410210313ACA*)