

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

Proposed Rule LSA Document #16-XXX

DIGEST

Amends 357 IAC 1-3-1 and 357 IAC 1-3-3 to make legal citation references consistent with amendments to IC 15-16-5. Amends 357 IAC 1-6-1 and 357 IAC 1-6-2 to make legal citation references consistent with amendments to IC 15-16-4 and IC 15-16-5 and to consolidate 357 IAC 1-6 and 357 IAC 1-7 into one comprehensive rule addressing civil penalties under both IC 15-16-4 and IC 15-16-5. Amends 357 IAC 1-10-3 to clarify where within a wellhead protection area pesticide storage is permitted. Amends 357 IAC 1-10-4 to clarify that immediate pesticide spill cleanup requirements apply within an isolation area. Repeals 357 IAC 1-7-1, 357 IAC 1-7-2, 357 IAC 1-7-4, 357 IAC 1-7-5, 357 IAC 1-7-6, 357 IAC 1-7-7, 357 IAC 1-7-8, and 357 IAC 1-10-6.—Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

357 IAC 1-3-1; 357 IAC 1-3-3; 357 IAC 1-6-1; 357 IAC 1-6-2; 357 IAC 1-7-1; 357 IAC 1-7-2; 357 IAC 1-7-4; 357 IAC 1-7-5; 357 IAC 1-7-6; 357 IAC 1-7-7; 357 IAC 1-7-8; 357 IAC 1-10-3; 357 IAC 1-10-4; 357 IAC 1-10-6

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

Rule 6. Civil Penalty Assessment Schedule

357 IAC 1-6-1 Definitions

Authority: IC 15-16

Affected: IC 15-16-4; IC 15-16-5

Sec. 1. The following definitions apply throughout this rule:

- (1) "Adulterated" means a product as described in ~~IC 15-3-3.5-2(2)~~. **IC 15-16-4-3.**
- (2) "Board" means the Indiana pesticide review board created by ~~IC 15-3-3.5-12~~. **IC 15-16-4-42.**
- (3) "Bulk pesticide" means a pesticide as described in ~~IC 15-3-3.5-2(32)~~. **IC 15-16-4-7.**
- (4) "Distribute" means to distribute a product, as described in ~~IC 15-3-3.5-2(8)~~. **IC 15-16-4-11.**
- (5) "Labeling" means all products labels and written, printed, or graphic material as described in ~~IC 15-3-3.5-2(18)~~. **IC 15-16-4-24.**
- (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)~~. **IC 15-16-4-25.**
- (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 daybasis.
- (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 person" means the method to be utilized for determining the civil penalty to be assessed for a violation that may involve more than one (1) person. The violation number shall remain the same when assessing civil penalties on a per person basis.**
- ~~(10)~~ (11) "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)~~ (12) "Person" has the meaning set forth in ~~IC 15-3-3.5-2(22)~~. **IC 15-16-4-28.**
- ~~(12)~~ (13) "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.
- ~~(13)~~ (14) "Product" means pesticide product as defined in ~~IC 15-3-3.5-2(38)~~. **IC 15-16-4-33.**

(14) (15) "Schedule" means the civil penalty schedule required by IC 15-3-3.5-18.3(b) IC 15-16-4-69 and IC 15-16-5-66 and as specified in section 2 of this rule.

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

(16) (17) "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; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110572RFA)

SECTION 4. 357 IAC 1-6-2 IS AMENDED TO READ AS FOLLOWS:

357 IAC 1-6-2 Schedule

Authority: IC 15-16

Affected: IC 15-16-4; IC 15-16-5

Sec. 2. (a) The schedule of civil penalties for violations of IC 15-3-3.5, the Indiana Pesticide Registration Law, IC 15-16-4 and IC 15-16-5, and the rules adopted under this law these laws is as follows:

Legal Citation	General Description of Violation	Violation Number			Violation Assessment
		1	2	3 and subsequent	
IC 15-3-3.5-3(1) IC 15-16-4-57(1) or IC 15-3-3.5-18.1(a)(1) IC 15-16-4-66(1)	Produce, distribute, display, sell, offer for sale, or transport a nonregistered pesticide product.	\$250	\$500	\$1,000	Per product and per year
IC 15-3-3.5-3(2) IC 15-16-4-57(2)	Produce, distribute, display, sell, offer for sale, or transport a pesticide product with labeling claims or directions for use different from that registered.	\$100	\$200	\$300	Per product and per year
IC 15-3-3.5-3(3) IC 15-16-4-57(3)	Produce, distribute, display, sell, offer for sale, or transport a pesticide product with composition different from that registered.	\$250	\$500	\$1,000	Per product and per year
IC 15-3-3.5-3(4) IC 15-16-4-57(4)	Produce, distribute, display, sell, offer for sale, or transport a pesticide product with incomplete or illegible label or in a container other than manufacturer's immediate, unbroken, and approved or authorized 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 15-16-4-57(5), IC 15-3-3.5-18.1(2) IC 15-16-4-66(2), or IC 15-3-3.5-18.1(3) IC 15-16-4-66(3)	Produce, distribute, display, sell, offer for sale, or transport an adulterated or misbranded pesticide product.	\$250	\$500	\$1,000	Per product and per year
IC 15-3-3.5-3(7) IC 15-16-4-57(6) or IC 15-16-4-57(9)	Produce, distribute, display, sell, offer for sale, or transport a pesticide product in a container not in compliance with container rules adopted by the board or regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.)	\$250	\$500	\$1,000	Per product, and per incident, and per year
IC 15-3-3.5-3(8) IC 15-16-4-57(7) or IC 15-16-4-59(5)	Distribute a highly volatile herbicide except on written permission by the state chemist.	\$250	\$500	\$1,000	Per product and per incident

IC 15-3-3.5-3(9) IC 15-16-4-57(8)	Produce, distribute, display, sell, offer for sale, transport, or store a bulk pesticide without an a fully compliant label affixed label to the container.	\$100	\$200	\$300	Per product and per incident
IC 15-16-4-57(9)	Produce, distribute, sell, offer for sale, or transport a pesticide that violates the Federal Insecticide, Fungicide, and Rodenticide Act (U.S.C. 136 et seq.) or regulations adopted under the Act.	\$250	\$500	\$1,000	Per product and per incident
IC 15-3-3.5-4(1) IC 15-16-4-59(1)	Detach, alter, deface, or destroy a pesticide product label or labeling, or adulterate a product.	\$250	\$500	\$1,000	Per product and per incident
IC 15-3-3.5-4(2) IC 15-16-4-59(2)	Reveal a product formula. Add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of IC 15-16-4 or IC 15-16-5.	\$250	\$500	\$1,000	Per product and per incident
IC 15-3-3.5-4(3) IC 15-16-4-59(4)	Use or cause to be used a pesticide not in compliance with use, distribution, storage, transportation, disposal, or container rules contrary to the rules adopted by the board.	\$250	\$500	\$1,000	Per product and per incident
IC 15-16-4-59(6) or IC 15-16-5-65(6)	Neglect, or after notice, refuse to comply with IC 15-16-4, IC 15-16-5, the rules adopted under these chapters, or any lawful order of the state chemist or board.	\$250	\$500	\$1,000	Per product and 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 IC 15-16-4-67 or IC 15-16-5-64	Store, display Produce, handle, transport, store, display, dispose, or distribute a pesticide product or pesticide product container in a hazardous manner that may endanger or cause injury to humans, beneficial vegetation, crops, livestock, wildlife, beneficial insects, the environment, food, feed, or other associated products.	\$250	\$500	\$1,000	Per incident
IC 15-3-3.5-34 IC 15-16-4-68	Store, discard, or Dispose of, discard, or store a pesticide product or pesticide container in a hazardous manner that may cause injury to humans, plants, animals, wildlife, lands, or waters.	\$250	\$500	\$1,000	Per incident
IC 15-16-4-73(c)	Sell, use, or remove without written permission from the state chemist or by a court order a pesticide product placed under a stop sale, use, or removal order by the state chemist.	\$250*	\$500*	\$1,000*	Per incident
IC 15-16-4-77 or IC 15-16-5-65(19)	Recklessly, knowingly, or intentionally impede or prevent the state chemist or the state chemist's agent in the performance of the state chemist's duty in connection with IC 15-16-4 or IC 15-16-5.	\$250*	\$500*	\$1,000*	Per incident
IC 15-16-5-65(1)	Make a false or fraudulent claim either verbally or through any media misrepresenting the effect of a pesticide product or a method to be used.	\$250	\$500	\$1,000	Per incident and per day

IC 15-16-5-65(2)	Recommend, use, or supervise the use of a registered pesticide product in a manner inconsistent with its labeling, or in violation of the United States Environmental Protection Agency or Indiana state restrictions on the use of that pesticide product.	\$250	\$500	\$1,000	Per incident and per day
IC 15-16-5-65(3)	Use a known ineffective or improper pesticide product or known ineffective amount of pesticide.	\$250	\$500	\$1,000	Per incident
IC 15-16-5-65(4)	Operate faulty or unsafe equipment.	\$250	\$500	\$1,000	Per incident and per day
IC 15-16-5-65(5)	Operate in a careless or negligent manner.	\$250	\$500	\$1,000	Per incident and per day
IC 15-16-5-65(7)	Refuse or neglect to keep and maintain the records required by IC 15-16-5 or to make reports and supply information when required or requested by the state chemist in the course of an investigation or inspection.	\$250	\$500	\$1,000	Per incident and per day
IC 15-16-5-65(8)	Make false or fraudulent records, invoices, or reports.	\$250	\$500	\$1,000	Per incident and per day
IC 15-16-5-65(9)	Engage in or profess to engage in the business of using a pesticide or any other product regulated under IC 15-16-5 or by rules adopted under IC 15-16-5 or making a diagnostic inspection to determine infestations of a wood destroying pest for hire on the property of another without having a pesticide business license issued by the state chemist.	\$250	\$500	\$1,000	Per day
IC 15-16-5-65(10)	Use a restricted use pesticide without having an applicator, who is licensed or permitted under IC 15-16-5, in direct supervision.	\$250	\$500	\$1,000	Per incident, per day, and per person
IC 15-16-5-65(11)	Use fraud or misrepresentation in making an application for, or renewal of, a license, permit, registration, or certification.	\$250	\$500	\$1,000	Per incident and per person
IC 15-16-5-65(12)	Refuse or neglect to comply with any limitations or restrictions on or in a duly issued license, permit, registration, or certification.	\$250	\$500	\$1,000	Per incident and per day
IC 15-16-5-65(13)	Aid or abet a person to evade IC 15-16-5, conspire with a person to evade IC 15-16-5, or allow a license, permit, registration, or certification to be used by another person.	\$250*	\$500*	\$1,000*	Per day
IC 15-16-5-65(14)	Make false or misleading statements during or after an inspection concerning any infestation or infection of pests.	\$250	\$500	\$1,000	Per incident
IC 15-16-5-65(15)	Impersonate any federal, state, county, or city inspector, investigator, or official.	\$250*	\$500*	\$1,000*	Per incident
IC 15-16-5-65(16)	Knowingly purchase or use a pesticide product that was not registered under IC 15-16-4.	\$250	\$500	\$1,000	Per incident
IC 15-16-5-65(17)	Fail to continuously maintain financial responsibility required under IC 15-16-58 or to provide proof of financial responsibility to the state chemist when requested.	\$250	\$500	\$1,000	Per day
IC 15-16-5-65(18)	Intentionally alter a duly issued license, permit, registration, or certification.	\$250*	\$500*	\$1,000*	Per incident

355 IAC 4-2-3	Fail to provide on-site supervision to a noncertified individual.	\$125	\$250	\$500	Per day
355 IAC 4-2-5	Fail to provide direct supervision.	\$125	\$250	\$500	Per day
355 IAC 4-2-6	Fail to provide technician with label, fact sheet, safety equipment, or voice communication.	\$25	\$50	\$100	Per day
355 IAC 4-2-7	Supervise more than 10 technicians.	\$100	\$100	\$100	Per day and per person
355 IAC 4-2-8	Fail to have technician credential at the work site.	\$25	\$50	\$100	Per incident
355 IAC 4-4-1	Fail to keep and maintain commercial applicator restricted use pesticide application records.	\$100	\$200	\$300	Per day
355 IAC 4-4-1.5	Fail to keep and maintain private applicator restricted use pesticide application records.	\$100	\$100	\$100	Per day
355 IAC 4-4-1 or 355 IAC 4-4-1.5	Fail to keep all required restricted use pesticide application record elements.	\$25	\$50	\$100	Per day
355 IAC 4-4-3	Fail to register as a restricted use pesticide dealer.	\$250	\$500	\$1,000	Per day
355 IAC 4-4-3	Fail to keep restricted use pesticide sale or distribution records.	\$250	\$500	\$1,000	Per day
355 IAC 4-5-2(1)	Fail to develop for hire termiticide application records.	\$100	\$200	\$300	Per day
355 IAC 4-5-2(2)	Fail to keep all required for hire termiticide application records.	\$25	\$50	\$100	Per day
355 IAC 4-5-2(3)	Fail to keep for hire termiticide application records for five years.	\$100	\$200	\$300	Per day
355 IAC 4-5-2(4)	Fail to provide label and application specifications to termite control technicians.	\$25	\$50	\$100	Per incident
355 IAC 4-5-2(5)	Fail to ensure the completed termite control customer disclosure form is issued to the customer before the application.	\$250	\$500	\$1,000	Per incident
355 IAC 4-5-2(6)	Fail to ensure that the state chemist is notified in advance of a preconstruction termiticide application.	\$250	\$500	\$1,000	Per incident
355 IAC 4-7-7	Make false or fraudulent reports or misrepresent participation in the certification or registration renewal process.	\$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 all required elements of restricted use pesticide distribution records.	\$25	\$50	\$75	Per incident
357 IAC 1-5-2(a)	Fail to place a lawn marker at the time of a commercial application for hire.	\$100	\$200	\$300	Per incident
357 IAC 1-5-2(b)	Fail to ensure the lawn marker meets all of the required specifications.	\$50	\$100	\$200	Per incident
357 IAC 1-5-3	Fail to provide written customer notification containing all required notification elements.	\$100	\$200	\$300	Per incident

357 IAC 1-10-2	Load, mix, or store a pesticide within an isolation area around a community public water supply system.	\$100	\$200	\$300	Per incident and per day
357 IAC 1-10-3	Fail to provide proper storage or containment in wellhead area.	\$100	\$200	\$300	Per day
357 IAC 1-10-4	Fail to properly and immediately clean up a pesticide spill within an isolation wellhead area.	\$250	\$500	\$1,000	Per incident and per day
357 IAC 1-11-2	Use or supervise the use of a pesticide for community-wide mosquito abatement without a category 8 license.	\$250	\$500	\$1,000	Per day
357 IAC 1-11-3	Fail to supervise a noncertified community-wide abatement applicator as required.	\$250	\$500	\$1,000	Per day
357 IAC 1-12-2	Apply a pesticide in a manner that allows it to drift from the target site in sufficient quantity to cause harm to a nontarget site.	\$250	\$500	\$1,000	Per incident
357 IAC 1-13-2	Cause the open burning of a pesticide container.	\$250	\$500	\$1,000	Per incident and per product
357 IAC 1-14-3(a)	Fail to attach the required labeling to a pesticide service container.	\$250	\$500	\$1,000	Per incident and per product
357 IAC 1-14-3(b)	Fail to have possession of a complete label copy during transport of a pesticide service container.	\$250	\$500	\$1,000	Per incident and per product
357 IAC 1-15-2	Use or supervise the use of a pesticide on a golf course without having a category 3b commercial applicator license.	\$250	\$500	\$1,000	Per day
357 IAC 1-15-3	Fail to supervise a noncertified pesticide applicator on a golf course.	\$250	\$500	\$1,000	Per day
357 IAC 1-15-4	Fail to keep and maintain all required records of a pesticide applied on the golf course.	\$250	\$500	\$1,000	Per day
357 IAC 1-16-4	Use or supervise the use of a pesticide at a school without the proper commercial applicator license.	\$250	\$500	\$1,000	Per incident
357 IAC 1-16-5	Fail to supervise a noncertified pesticide applicator at a school.	\$250	\$500	\$1,000	Per incident
357 IAC 1-16-6(a)	Apply a pesticide at a school during normal instructional hours when school is in session.	\$250	\$500	\$1,000	Per incident
357 IAC 1-16-6(c)	Allow a student to enter a pesticide treatment area during the required restricted reentry period.	\$250	\$500	\$1,000	Per incident
357 IAC 1-16-7	Store a pesticide at a school contrary to the storage requirements.	\$250	\$500	\$1,000	Per incident
357 IAC 1-16-8	Fail to provide required pesticide notification.	\$250	\$500	\$1,000	Per incident
357 IAC 1-16-9(a)	Fail to keep and maintain required pesticide application at school records.	\$250	\$500	\$1,000	Per incident
357 IAC 1-16-9(f)	Fail to provide requested pesticide application records for inspection or copying.	\$250	\$500	\$1,000	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 5-2-5	Fail to anchor a bulk storage container to prevent flotation or instability.	\$100	\$200	\$300	Per incident and per day
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 storage container security.	\$100	\$100	\$100	Per day
355 IAC 5-2-8	Fill bulk storage container beyond intended capacity.	\$100	\$200	\$300	Per incident
355 IAC 5-2-9	Fail to have proper shut-off valve on bulk storage container.	\$50	\$50	\$50	Per day
355 IAC 5-2-10	Fail to support bulk storage container appurtenances.	\$50	\$50	\$50	Per day
355 IAC 5-2-11	Fail to have a proper liquid level gauging device on a bulk storage container.	\$50	\$50	\$50	Per incident
355 IAC 5-2-12	Fail to maintain a bulk storage 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 storage 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, non-elevated, 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 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; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110572RFA*)