

## TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

## Final Rule

LSA Document #09-683(F)

## DIGEST

Amends [355 IAC 2-1-5](#) to add the nutrient nickel (Ni) as an accepted element to be claimed on a fertilizer label. Adds [355 IAC 2-1-8](#) to provide criteria for reviewing waiver requests relevant to the preemptive authority specified under [IC 15-16-2-50](#). Effective 30 days after filing with the Publisher.

**[355 IAC 2-1-5](#); [355 IAC 2-1-8](#)**

SECTION 1. [355 IAC 2-1-5](#) IS AMENDED TO READ AS FOLLOWS:

**[355 IAC 2-1-5](#) Additional plant nutrients; registration and guarantee; warning on label**

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2-31](#); [IC 15-16-2-32](#)

Sec. 5. (a) Additional plant nutrients besides nitrogen (N), phosphate ( $P_2O_5$ ), and soluble potash ( $K_2O$ ), when mentioned or claimed on the:

- (1) tag or label;
- (2) container; or
- (3) written or printed statement that accompanies delivery;

shall be registered and guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed shall be shown on the application for registration.

(b) When claims for such nutrients are made on the label, container, or application for registration, the minimum percentages that will be accepted for registration are as follows:

Element	Percentage
Calcium (Ca)	1.00
Magnesium (Mg)	0.50
Sulfur (S)	1.00
Boron (B)	0.02
Chlorine (Cl)	0.10
Cobalt (Co)	0.0005
Copper (Cu)	0.05
Iron (Fe)	0.10
Manganese (Mn)	0.05
Molybdenum (Mo)	0.0005
<b>Nickel (Ni)</b>	<b>0.0010</b>
Sodium (Na)	0.10
Zinc (Zn)	0.05

(c) Guarantees or claims for the additional plant nutrients listed in subsection (b) are the only ones that will be accepted. Proposed labels and directions for use of the fertilizer shall be furnished with the application for registration upon request. Warning or caution statements are required on the label for any product that contains three-hundredths percent (0.03%) or more of boron in a water-soluble form or one-thousandth percent (0.001%) or more of molybdenum. Any of the elements listed in subsection (b) that are guaranteed shall appear in the order listed, immediately following guarantees for the primary nutrients, nitrogen, phosphorus, and potassium.

*(State Chemist of the State of Indiana; Fertilizer Law Rule 5; filed Sep 14, 1953, 7:00 a.m.: Rules and Regs. 1954, p. 7; filed Aug 15, 1958, 12:00 p.m.: Rules and Regs. 1959, p. 4; filed Oct 6, 1961, 3:45 p.m.: Rules and Regs. 1962, p. 76; filed Apr 23, 1998, 9:20 a.m.: 21 IR 3359, eff one hundred twenty (120) days after filing with secretary of state; readopted filed Jun 20, 2001, 3:20 p.m.: 24 IR 3822; readopted filed Apr 27, 2007, 2:03 p.m.: [20070509-IR-355070039RFA](#); filed Feb 26, 2010, 2:41 p.m.: [20100324-IR-355090683FRA](#))*

SECTION 2. [355 IAC 2-1-8](#) IS ADDED TO READ AS FOLLOWS:

**[355 IAC 2-1-8](#) Request for hearing by political subdivision for waiver for fertilizer material use**

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2-50](#)

Sec. 8. (a) For a hearing requested under [IC 15-16-2-50](#), the petitioner must present evidence that supports the request for a waiver to adopt an ordinance. All evidence shall be received fourteen (14) days prior to the hearing date. The applicant has the burden of showing the need for the requested waiver. The evidence must include, but is not limited to, the following:

- (1) A clear, detailed statement of the problem being addressed.
- (2) The special circumstances that exist that warrant a waiver.
- (3) The political entity that will be covered by the request (township, city, county, etc.).
- (4) The resource or resources of the state that would be protected by the request (specific stream, river, lake, or pond).
- (5) Current site specific scientific data, including applicable soil and water tests, that support the request.
- (6) Previous mitigation methods or steps implemented.
- (7) Educational efforts undertaken to address the concern.
- (8) A copy of the proposed ordinance.

(b) In reaching a decision to approve or deny the waiver, the state chemist shall consider the following:

- (1) Whether the scientific evidence supports the claims being made in the petition.
- (2) Whether the measures proposed in the petition will likely correct the purported problem or significantly reduce environmental impacts.
- (3) Whether the proposed ordinance corrects the problem in the narrowest scope possible.
- (4) Whether the ordinance will impose an undue burden upon the persons regulated.
- (5) Whether scientifically based maintenance levels of nutrient applications would still be allowed by the ordinance.
- (6) Acceptable fertilizer management practices.

(c) The state chemist shall not consider the following factors in making a decision on whether to approve or deny the waiver:

- (1) The economic impact.
- (2) The odor.

(d) In reaching a decision on whether to approve or deny the waiver, the state chemist may consult, in addition to the material received from the petitioner, the following:

- (1) The Indiana fertilizer advisory board.
- (2) Scientifically based materials provided by the College of Agriculture at Purdue University.
- (3) Other sources deemed necessary by the state chemist.

The state chemist shall prepare a written decision, with stated reasons, either allowing or denying the waiver within ninety (90) days after review.

(State Chemist of the State of Indiana; [355 IAC 2-1-8](#); filed Feb 26, 2010, 2:41 p.m.: [20100324-IR-355090683FRA](#))

LSA Document #09-683(F)

Notice of Intent: [20090826-IR-355090683NIA](#)

Proposed Rule: [20091007-IR-355090683PRA](#)

Hearing Held: November 17, 2009

Approved by Attorney General: February 8, 2010

Approved by Governor: February 23, 2010

Filed with Publisher: February 26, 2010, 2:41 p.m.

Documents Incorporated by Reference: None Received by Publisher

*Small Business Regulatory Coordinator: Michael R. Hancock, Fertilizer Administrator, Office of Indiana State Chemist, 175 S. University St., West Lafayette, IN 47907-2063, (765) 494-1547, Fax: (765) 494-4331, [hancockmr@purdue.edu](mailto:hancockmr@purdue.edu)*

*Posted: 03/24/2010 by Legislative Services Agency*

An [html](#) version of this document.