

Economic Impact Statement

LSA Document #22-266

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

Small businesses in Indiana are described as any business with fewer than 500 employees. Essentially all the regulated businesses described in this analysis will be considered small businesses. Based on current and projected credentialing data maintained by OISC, it is estimated that the following numbers of businesses and pesticide applicators could be subject to some portions of these rules: 3,633 commercial pesticide application businesses, 10,720 commercial pesticide applicators, 3,872 commercial pesticide technicians, 599 restricted use pesticide (RUP) dealers, and 11,090 permitted farmers.

Justification for the Rules:

These rules are largely intended to implement a federal mandate for which there is no waiver permitted. Adding distinctions between applicator competency and noncertified applicator supervision requirements for RUP users versus general use pesticide (GUP) users in [355 IAC 4-1](#) and [355 IAC 4-2](#) will allow for state rules to meet the new elevated standards for RUP applicators in 40 CFR 171 without forcing all users of GUPs to comply with those same new requirements. The additions to [355 IAC 4-1](#) and [355 IAC 4-2](#) will distinguish between hazards associated with the use and handling of RUPs and GUPs and allow for commensurate standards and requirements. New 40 CFR 171 supervision requirements that would otherwise need to be incorporated into state rule include: (1) specified annual technician training and associated record keeping for technicians; (2) generation of daily written site-specific application instructions for all technicians and associated record keeping; (3) daily equipment inspection and associated record keeping; and (4) limits on the number of technicians that can be supervised by a certified applicator. The proposed rules will allow all Indiana certified applicators to avoid being subjected to those federally identified and tedious supervision requirements. Revisions to [355 IAC 4-4](#) will standardize and consolidate all pesticide record keeping requirements from [355 IAC 4](#), [357 IAC 1-15](#), and [357 IAC 1-16](#) and will incorporate additional record keeping elements mandated in 40 CFR 171.

Estimate of Compliance Costs for Regulated Entities:

Amending [355 IAC 4-1](#) will require all users of RUPs to become fully certified applicators, as supervision of nonregistered applicators will no longer be permitted under this rule. Most RUPs are labeled for use in agriculture. Almost all agricultural applicators in Indiana, both private applicators (farmers) and commercial applicators (Category 1), will use from one to many RUPs each season. By contrast, all other major commercial applicator industries (forestry, turf, landscape, aquatics, industrial weed management, residential pest management, termite control, and mosquito management) may use only one or two RUPs annually, but most may never use a RUP at all.

OISC data shows there are currently 11,900 private applicators and 10,720 commercial applicators in Indiana. Of the 10,720 commercial applicators, 2,849 are certified in Category 1 (agricultural). Because of the proposed distinctions in the certification requirements between RUP users and GUP users, it is projected that compliance costs could decrease for most GUP users. By contrast, elevated certification standards for agricultural RUP users could increase if additional certified applicators are brought into the workforce. Fully certified commercial Category 1 applicators are required to pass two exams as opposed to the one exam required of noncertified registered technicians. However, in 2017, U.S. EPA issued a product registration for a popular and widely used soybean herbicide that requires all users of the product to be fully certified. No supervision by noncertified applicators was permitted. As a result of this registration decision, most agricultural pesticide users, both farmers and commercial applicators, found it necessary to become fully certified. Therefore, it is anticipated that only an additional 300 agricultural applicators may need to become certified.

OISC training and examination data indicates that approximately 66% of the certification candidates choose to become qualified by purchasing a training manual (\$40) and taking the exam (\$55), and 33% choose to become certified by attending exam prep training and taking the exam (\$103). The estimated cost to add 300 new agricultural applicator certifications would be calculated as (66% of 300 applicators) X (\$55 exam + \$40 manual) = \$18,810 and (33% of 300 applicators) X \$103 training plus exam = \$10,197. It is anticipated no business or farm operation would be adding more than one certified applicator each. Total industry costs for compliance with this requirement would be estimated at \$18,810 + \$10,197 = \$29,007.

Amending [355 IAC 4-2](#) will create an option for noncertified applicators to become registered technicians by creating a training-only option. This new option will be in addition to the written examination requirement that currently exists in rule. The cost for sitting for the registered technician exam is \$55. The cost of the training-only option will range from \$75 to \$103, based on where the training is taken. Although the cost of the training will be more than the cost of the exam, the training is a regulatory compliance alternative and creating this option is not creating a new regulatory requirement. Therefore, the following calculations are being provided for comparative

purposes only but will not be included in the cost of rule compliance.

There are currently 3,872 pesticide registered technicians in the state. All of them have already met the current core examination requirement, so no additional compliance expenditures will be immediately required for those individuals. OISC training and examination records suggest an average of 2,400 new registered technician candidates enter the credentialing pool every year. Approximately 1,000 of those attend PPP exam prep training prior to taking the exam and approximately 600 take the exam without training. The current cost for taking an exam to qualify as a registered technician is \$55. The cost to participate in the training option is \$103. That is a difference of $\$103 - \$55 = \$48$ for additional training costs. In consideration of increasing levels of exam anxiety demonstrated by many registered technician candidates, it is anticipated that at least 1,600 will select the proposed training-only option and the remaining 800 will choose the exam option. However, if even half of the 800 of the candidates that previously elected the exam option switched to the training-only option, the increased compliance costs to regulated businesses would be 400 candidates X \$48 training vs. exam difference = \$19,200.

Estimate of Administrative Expenses Imposed by the Rules:

Amending [355 IAC 4-4](#) to be compliant with 40 CFR 171 will require existing pesticide application record keeping be expanded to include three to five additional items readily available at the time of each pesticide application. Because the rule allows the records to be kept in any format or on any media that the pesticide applicator or business entity chooses, the cost of adding these items to the record will be negligible. The amendments will also standardize the record keeping requirements across all pesticide user groups, both in Indiana and nationwide. So even if a regulated business or applicator chooses to utilize an electronic record keeping system, there is a reasonable assurance that available record keeping tools will be compatible. All pesticide applicators using RUPs have been required to keep application records for over 30 years, so adding a limited number of additional application items should not create a measurable cost.

Estimate of any Costs Savings to Regulated Industries:

Simplification and streamlining of noncertified applicator supervision requirements in the proposed rule should result in a significant reduction of technical violations and civil penalties for failure to supervise noncertified applicators. During the period 2019 through 2021, over 200 supervision and credentialing violations were documented, resulting in civil penalty assessment of over \$50,000. Most of these were identified by OISC investigators as repetitive technical violations resulting from the challenges of complying with overly complex and technically detailed supervision regulations. Based on analysis of OISC investigation data, it is estimated that over half of those violations, or at least \$25,000 of civil penalties, could be eliminated with the simplifications in the proposal. This could result in an estimated annual cost savings of $\$25,000/3 \text{ years} = \$8,333$.

Examination of Alternatives:

Most pesticide applicator certification requirements and noncertified applicator supervision requirements mandated in 40 CFR 171 and reflected in revisions to [355 IAC 4](#) could not be addressed by alternatives, as they are largely federally specified design standards that apply to all individuals and businesses regardless of size, income, or profitability. 40 CFR 171 does allow for use of a RUP by a noncertified applicator. However, the elevated, complex, and detailed requirements for supervision of noncertified applicators, coupled with the fact that state requirements apply to both RUP and GUP users, would have resulted in supervision requirements that would have been costly for commercial applicator businesses to implement and sustain over time. Pesticide applicators and businesses have a documented history of marginal compliance with detailed and complex design standards. The alternative design standards necessary to implement the new federal mandates would result in a high rate of technical violations without the ability to measure an improved resulting level of public safety. Therefore, a determination was made to lessen the overall regulatory burden to pesticide applicators by eliminating RUP use by noncertified applicators and significantly reducing the supervision requirements for regulated GUP users. Additional consideration and weight were given to the fact that most commercial applicator industries currently use one or fewer RUPs and the fact that some of the agricultural industry RUPs are already labeled for use by certified applicators only. Therefore, the elected option will limit most of the impacts of the federal and state rule revisions to the smallest possible number of applicators and businesses.

Total Estimated Economic Impacts on All Small Businesses:

It is estimated that the collective annual impact of these rules on all regulated small businesses and persons will be considerably less than \$500,000. Based on calculations and data sources referenced above, the collective annual fiscal impacts across all regulated business entities for each of the specific major rule revisions is broken down and summarized as follows:

| Major rules | Government | Business | Totals |
|---|------------|----------|----------|
| 355 IAC 4-1 (applicator certification) | \$0 | \$29,007 | \$29,007 |
| 355 IAC 4-2 (noncertified applicator supervision) | \$0 | \$0 | \$0 |

| | | | |
|--|-----|----------|----------|
| 355 IAC 4-4 (RUP record keeping) | \$0 | \$0 | \$0 |
| Civil penalty reduction for supervision violations | \$0 | -\$8,333 | -\$8,333 |
| Totals | \$0 | \$20,674 | \$20,674 |

See the comments of support for this proposal from the Indiana Professional Lawn and Landscape Association (IPLLA) Executive Director Bob Andrews in ATTACHMENT #2. The IPLLA represents pesticide and fertilizer application businesses in Indiana with the overwhelming largest numbers of credentialed registered technicians and the highest rate of registered technician turnover annually. IPPLA also provides some context for relative cost versus benefit to for-hire pesticide businesses for the new requirements in this proposal.

Contact information for the OISC staff to answer substantive questions:

David E. Scott

Pesticide Administrator, OISC

(765) 494-1593 or (765) 413-1242 (cell)

scottd@purdue.edu

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