

## TITLE 357 INDIANA PESTICIDE REVIEW BOARD

### ARTICLE 1. DEFINITION; USE OF PESTICIDES

#### Rule 1. Definition of Pest (Expired)

(Expired under IC 4-22-2.5, effective January 1, 2008.)

#### Rule 2. Prescription Use Pesticides (Expired)

(Expired under IC 4-22-2.5, effective January 1, 2002.)

#### Rule 3. Distribution of Pesticide Products with Restricted Uses

##### 357 IAC 1-3-1 Definitions

Authority: IC 15-16-4-50

Affected: IC 15-16-5-7; IC 15-16-5-30

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

(1) "Business location" means the physical site of each office, warehouse, salesroom, or other establishment with a distinct mailing or electronic address at which orders for pesticide products with restricted uses are brokered or accepted from certified users.

(2) "Certified user" means the following:

(A) A private applicator (IC 15-3-3.6-2(6) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-30.]

(B) A commercial applicator (IC 15-3-3.6-2(7) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-7.]

(C) A person acting as an agent for and under the direct supervision of clause (A) or (B).

(3) "Restricted use pesticide dealer" means any business location from which restricted use pesticides are distributed or brokered to certified users.

(Indiana Pesticide Review Board; Reg 4, Sec 1; filed Jul 14, 1977, 2:26 p.m.: Rules and Regs. 1978, p. 656; filed Apr 18, 2001, 3:37 p.m.: 24 IR 2680; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; readopted filed Sep 20, 2007, 1:47 p.m.: 20071010-IR-357070485RFA)

##### 357 IAC 1-3-2 Restrictions on distribution

Authority: IC 15-16-4-50

Affected: IC 15-16-4

Sec. 2. Restricted use pesticides shall be distributed into or within Indiana only to persons who are certified users, except when such distribution is for resale by a restricted use pesticide dealer. (Indiana Pesticide Review Board; Reg 4, Sec 2; filed Jul 14, 1977, 2:26 p.m.: Rules and Regs. 1978, p. 656; filed Apr 18, 2001, 3:37 p.m.: 24 IR 2680; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; readopted filed Sep 20, 2007, 1:47 p.m.: 20071010-IR-357070485RFA)

##### 357 IAC 1-3-3 Distribution to certified users by registered dealers only

Authority: IC 15-16-4-50

Affected: IC 15-16-4; IC 15-16-5-57

Sec. 3. Restricted use pesticides shall be distributed to certified users only by restricted use pesticide dealers who are registered in accordance with IC 15-3-3.6-12 [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-57.] and in compliance with regulations pertaining thereto. (Indiana Pesticide Review Board; Reg 4, Sec 3; filed Jul 14, 1977, 2:26 p.m.: Rules and Regs. 1978, p. 656; filed Apr 18, 2001, 3:37 p.m.: 24 IR 2680; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; readopted filed Sep 20, 2007, 1:47 p.m.: 20071010-IR-357070485RFA)

##### 357 IAC 1-3-4 List of external sales representatives (Repealed)

Sec. 4. *(Repealed by Indiana Pesticide Review Board; filed Apr 18, 2001, 3:37 p.m.: 24 IR 2681)*

**357 IAC 1-3-5 Creation and retention of distribution records**

Authority: IC 15-16-4-50

Affected: IC 15-16-4

Sec. 5. (a) Records of distributions of restricted use pesticides that include all of the items in subsection (c) shall be maintained by restricted use pesticide dealers and accessible from the business location of the dealer for a period of two (2) years.

(b) All written and electronic documentation relating to the distribution of restricted use pesticides must be retained by the restricted use pesticide dealer until the distribution is recorded as specified in subsection (a).

(c) The records to be maintained under this section shall include the following:

(1) Name, certificate number of the certified user for whom the purchase is being made, and the expiration date of that certificate.

(2) Date of distribution.

(3) EPA registration number and brand name of the product.

(4) Amount of product distributed.

(5) Signature of person ordering or taking delivery of the product.

*(Indiana Pesticide Review Board; Reg 4, Sec 5; filed Jul 14, 1977, 2:26 p.m.: Rules and Regs. 1978, p. 656; filed Apr 18, 2001, 3:37 p.m.: 24 IR 2680; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; readopted filed Sep 20, 2007, 1:47 p.m.: 20071010-IR-357070485RFA)*

**Rule 4. List of Restricted Use Pesticides**

**357 IAC 1-4-1 List of restricted use pesticides (Repealed)**

Sec. 1. *(Repealed by Indiana Pesticide Review Board; filed Nov 20, 1986, 3:47 pm: 10 IR 865)*

**357 IAC 1-4-2 List of restricted use pesticide products (Repealed)**

Sec. 2. *(Repealed by Indiana Pesticide Review Board; filed Apr 20, 1990, 4:40 p.m.: 13 IR 1704)*

**357 IAC 1-4-3 Restricted use pesticide products (Expired)**

Sec. 3. *(Expired under IC 4-22-2.5, effective January 1, 2008.)*

**Rule 5. Outdoor Lawn Pesticide Applications; Notification and Posting**

**357 IAC 1-5-1 Definitions**

Authority: IC 15-16-5-44

Affected: IC 15-16-5

Sec. 1. (a) As used in this rule, "commercial application for hire" means the intentional application of pesticides for hire by any means to a lawn or any part thereof by or under the direct supervision of a licensed applicator for hire or by a registered technician.

(b) As used in this rule, "golf course" means an area designated and used primarily for the play or practice of the game of golf, including, for example, surrounding grounds, trees, and ornamental beds.

(c) As used in this rule, "lawn" means land area covered with turf kept closely mown or land area covered with turf and trees and shrubs. The term does not include the following:

(1) Land area used for research for agricultural or commercial production of turf.

(2) Land area situated exclusively within a public or private right-of-way.

(3) Land area devoted to the production of any agricultural commodity.

(4) Land area devoted to use as a golf course.

(5) Land area situated within three (3) feet of the foundation of a structure when a pesticide is applied to the area as a preventative or control measure for structural pests.

(d) As used in this rule, "lawn marker" means a sign that is placed in, or adjacent to, a lawn to serve as notification that a pesticide has been applied to that lawn.

(e) As used in this rule, "structural pest" means a pest that commonly invades or attacks man's dwellings or structures. The term includes, but is not limited to, the following:

(1) Termites.

(2) Fleas.

(3) Cockroaches.

(4) Ants.

(5) Beetles.

(6) Crickets.

(7) Spiders.

(8) Sowbugs.

(9) Pillbugs.

(10) Centipedes.

(11) Millipedes.

(f) As used in this rule, "turf" means the surface layer of soils created by growing plants (usually grasses) and their matted roots. (*Indiana Pesticide Review Board; 357 IAC 1-5-1; filed Apr 20, 1990, 4:35 p.m.: 13 IR 1701; filed Jun 9, 2000, 9:58 a.m.: 23 IR 2705; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; readopted filed Sep 20, 2007, 1:47 p.m.: 20071010-IR-357070485RFA*)

### **357 IAC 1-5-2 Posting**

Authority: IC 15-16-5-44

Affected: IC 15-16-5

Sec. 2. (a) At the time of each pesticide application identified by section 1(a) of this rule, the licensed applicator for hire, or an employee of the licensed business, shall place a lawn marker at a conspicuous point of access to the lawn.

(b) The lawn marker shall consist of a sign that:

(1) shall be at least four (4) inches by five (5) inches in size;

(2) shall be constructed of sturdy, weather resistant material;

(3) shall have a background, lettering, and symbols in contrasting colors;

(4) on the prominent side, shall read "LAWN CARE APPLICATION KEEP OFF THE GRASS" in letters of not less than three-eighths ( $\frac{3}{8}$ ) of an inch high;

(5) may display a symbol depicting the message required in subdivision (4);

(6) may display the company name and logo or other group or association affiliation; and

(7) shall be affixed to a sturdy nonmetallic support extending the bottom of the lawn marker six (6) to eighteen (18) inches above the turf.

(c) The lawn marker may be removed no sooner than the day following the pesticide application. (*Indiana Pesticide Review Board; 357 IAC 1-5-2; filed Apr 20, 1990, 4:35 p.m.: 13 IR 1702; errata, 13 IR 1861; filed Jun 9, 2000, 9:58 a.m.: 23 IR 2706; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; readopted filed Sep 20, 2007, 1:47 p.m.: 20071010-IR-357070485RFA*)

### **357 IAC 1-5-3 Customer notification**

Authority: IC 15-16-5-44

Affected: IC 15-16-5

Sec. 3. (a) At the time of each pesticide application identified by section 1(a) of this rule, the licensed applicator for hire or an employee of the licensed business shall provide the customer with a written statement containing the following information:

(1) Business name and telephone number of the licensed business.

(2) Signature and license or registration number of the licensed applicator for hire or registered technician who made the

application.

- (3) Date and time of application.
- (4) Type of pesticide application service and brand name of pesticides applied, which shall be listed, at a minimum, as one (1) or more of the following:
  - (A) Grassy weed control (brand name).
  - (B) Broadleaf weed control (brand name).
  - (C) Insect control (brand name).
  - (D) Disease control (brand name).
  - (E) Other pest control not adequately described in clauses (A) through (D) (brand name).
- (5) Post application label safety precautions for each pesticide.
- (6) Instructions to the customer to remove the lawn marker no sooner than the day following the application.
- (7) Instructions to the customer to contact the business telephone number if more specific information is desired regarding the pesticide product applied.
- (b) The written statement required in subsection (a) shall be provided to the customer by any of the following means:
  - (1) Leave at the residence.
  - (2) Leave with the property manager or his or her authorized representative in the case of a multiunit residence.
  - (3) Mail to the property manager or his or her authorized representative if management is located at a location other than the pesticide application site, within seven (7) days of the date of the pesticide application.

*(Indiana Pesticide Review Board; 357 IAC 1-5-3; filed Apr 20, 1990, 4:35 p.m.: 13 IR 1702; filed Jun 9, 2000, 9:58 a.m.: 23 IR 2706; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; readopted filed Sep 20, 2007, 1:47 p.m.: 20071010-IR-357070485RFA)*

**Rule 6. Civil Penalty Assessment Schedule; Pesticide Registration**

**357 IAC 1-6-1 Definitions**

Authority: IC 15-16-4-50; IC 15-16-4-69

Affected: IC 15-16-4; IC 15-16-4-42

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 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-3.]*
- (2) "Board" means the Indiana pesticide review board created by IC 15-3-3.5-12 *[IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-42.]*
- (3) "Bulk pesticide" means a pesticide as described in IC 15-3-3.5-2(32) *[IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-7.]*
- (4) "Distribute" means to distribute a product, as described in IC 15-3-3.5-2(8) *[IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See 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 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See 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 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See 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 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) *[IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-25.]*

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July 1, 2008. See IC 15-16-4-28.]

(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.

(13) "Product" means pesticide product as defined in IC 15-3-3.5-2(38) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-33.]

(14) "Schedule" means the civil penalty schedule required by IC 15-3-3.5-18.3(b) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-69.] 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; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110572RFA)

**357 IAC 1-6-2 Schedule**

Authority: IC 15-16-4-50; IC 15-16-4-69

Affected: IC 15-16-4

Sec. 2. (a) The schedule of civil penalties for violations of IC 15-3-3.5 [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4.], the Indiana Pesticide Registration Law, and the rules adopted under this law 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 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-57.] or IC 15-3-3.5-18.1(a)(1) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-66.] | Distribute a nonregistered product.   | \$250            | \$500 | \$1,000          | Per product and per year     |
| IC 15-3-3.5-3(2) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-57.]  | Distribute a product with labeling different from that registered.  | \$100            | \$200 | \$300            | Per product and per year     |
| IC 15-3-3.5-3(3) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-57.]  | 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) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-57.]  | 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 |

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| <p>IC 15-3-3.5-3(5) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-57.]</p>  | <p>Distribute an improperly colored product.</p>  | <p>\$250</p>  | <p>\$500</p>  | <p>\$1,000</p>  | <p>Per product and per year</p>     |
| <p>IC 15-3-3.5-3(6) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-57.], IC 15-3-3.5-18.1(2) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-66.], or IC 15-3-3.5-18.1(3) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-66.]</p> | <p>Distribute an adulterated or misbranded product.</p>   | <p>\$250</p>  | <p>\$500</p>  | <p>\$1,000</p>  | <p>Per product and per year</p>     |
| <p>IC 15-3-3.5-3(7) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-57.]</p>  | <p>Distribute a product in a container not in compliance with container rules.</p>                                      | <p>\$250</p>  | <p>\$500</p>  | <p>\$1,000</p>  | <p>Per product and per year</p>     |
| <p>IC 15-3-3.5-3(8) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-57.]</p>  | <p>Distribute a highly volatile herbicide.</p>  | <p>\$250</p>  | <p>\$500</p>  | <p>\$1,000</p>  | <p>Per product and per incident</p> |
| <p>IC 15-3-3.5-3(9) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-57.]</p>  | <p>Distribute or store a bulk pesticide without an affixed label.</p>   | <p>\$100</p>  | <p>\$200</p>  | <p>\$300</p>    | <p>Per product and per incident</p> |
| <p>IC 15-3-3.5-4(1) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-59.]</p>  | <p>Detach, alter, deface, or destroy a label or labeling or adulterate a product.</p>                                   | <p>\$250</p>  | <p>\$500</p>  | <p>\$1,000</p>  | <p>Per product and per incident</p> |
| <p>IC 15-3-3.5-4(2) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-59.]</p>  | <p>Reveal a product formula.</p>  | <p>\$250*</p> | <p>\$500*</p> | <p>\$1,000*</p> | <p>Per product and per incident</p> |
| <p>IC 15-3-3.5-4(3) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-59.]</p>  | <p>Use a pesticide not in compliance with use, distribution, storage, transportation, disposal, or container rules.</p> | <p>\$250</p>  | <p>\$500</p>  | <p>\$1,000</p>  | <p>Per incident</p>                 |

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| IC 15-3-3.5-25 [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-73.] | 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 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-67.] | Store, display, handle, transport, or distribute a product in a hazardous manner.                  | \$250  | \$500  | \$1,000  | Per incident             |
| IC 15-3-3.5-34 [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-68.] | 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                  |

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| 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 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*)

**357 IAC 1-6-3 Violation types (Repealed)**

Sec. 3. (*Repealed by Indiana Pesticide Review Board; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1693*)

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

Authority: IC 15-16-4-50; IC 15-16-4-69  
 Affected: IC 15-16-4

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 within the immediate past five (5) years of the date of the violation being addressed shall be considered.
- (2) A person's violation numbers shall accumulate as first, second, third, etc., independently for each violation 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; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110572RFA)*

**357 IAC 1-6-5 Potential penalty mitigation**

Authority: IC 15-16-4-50; IC 15-16-4-69

Affected: IC 15-16-4

Sec. 5. (a) The amount of a civil penalty may be adjusted downward to reflect particular mitigating factors. Some factors that may be considered are the following:

(1) Good faith efforts of the violator to comply.

(2) 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.

(5) The potential for damage.

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

**357 IAC 1-6-6 Notification of legal recourse**

Authority: IC 15-16-4-50; IC 15-16-4-69

Affected: IC 15-16-4

Sec. 6. The state chemist shall notify in writing each person on whom a civil penalty may be imposed of the opportunity to obtain a hearing on the proposed action by filing with the board within thirty (30) days notice of the action. *(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; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110572RFA)*

**357 IAC 1-6-7 Imposition of civil penalties**

Authority: IC 15-16-4-50; IC 15-16-4-69

Affected: IC 15-16-4

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; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110572RFA)*

**357 IAC 1-6-8 Penalty money collected**

Authority: IC 15-16-4-69  
Affected: IC 15-16-4

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; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110572RFA*)

**Rule 7. Civil Penalty Assessment Schedule; Pesticide Use and Application**

**357 IAC 1-7-1 Definitions**

Authority: IC 15-16-5-44; IC 15-16-5-66  
Affected: IC 15-16-4; IC 15-16-5-66

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

(1) "Board" means the Indiana pesticide review board created by IC 15-3-3.5-12 [*IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-42.J.*]

(2) "Legal citation" means the Indiana Code (IC) or 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.

(3) "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.

(4) "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. Violations involving separate and distinguishable acts may be assigned accumulating violation numbers.

(5) "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) different person. The violation number shall remain the same when assessing civil penalties on a per person basis.

(6) "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.

(7) "Person" has the meaning set forth in IC 15-3-3.5-2(22) [*IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-28.J.*]

(8) "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.

(9) "Product" means pesticide product as defined in IC 15-3-3.5-2(38) [*IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4-33.J.*]

(10) "Schedule" means the civil penalty schedule required by IC 15-3-3.6-14.5(a) [*IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-66.J*] and as specified in section 2 of this rule.

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

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

(*Indiana Pesticide Review Board; 357 IAC 1-7-1; 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, 1:50 p.m.: 28 IR 1685; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110573RFA*)

**357 IAC 1-7-2 Schedule**

Authority: IC 15-16-5-44; IC 15-16-5-66  
Affected: IC 15-16-5-65

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Sec. 2. (a) The schedule of civil penalties for violations of IC 15-3-3.6 [*IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5.*], the Indiana Pesticide Use and Application Law, and the rules adopted under this law, committed by a person not described in subsection (d), is as follows:

| Legal Citation   | General Description of Violation                                 | Violation Number |        |                  | Violation Assessment                   |
|--|--|------------------|--------|------------------|--|
|  |  | 1                | 2      | 3 and subsequent |  |
| IC 15-3-3.6-14(1) [ <i>IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.</i> ]  | Make false claims about pesticide or method effectiveness.       | \$250            | \$500  | \$1,000          | Per incident                           |
| IC 15-3-3.6-14(2) [ <i>IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.</i> ]  | Use a pesticide inconsistent with its label.                     | \$250            | \$500  | \$1,000          | Per incident                           |
| IC 15-3-3.6-14(3) [ <i>IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.</i> ]  | Use an ineffective or improper pesticide.                        | \$250            | \$500  | \$1,000          | Per incident                           |
| IC 15-3-3.6-14(4) [ <i>IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.</i> ]  | Use unsafe equipment.  | \$100            | \$200  | \$300            | Per incident                           |
| IC 15-3-3.6-14(5) [ <i>IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.</i> ]  | Operate in a careless manner.                                    | \$250            | \$500  | \$1,000          | Per incident                           |
| IC 15-3-3.6-14(6) [ <i>IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.</i> ]  | Fail to comply with an order of state chemist.                   | \$250            | \$500  | \$1,000          | Per incident, per product, and per day |
| IC 15-3-3.6-14(7) [ <i>IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.</i> ]  | Fail to keep records, make reports, or supply information.       | \$100            | \$100  | \$100            | Per incident                           |
| IC 15-3-3.6-14(8) [ <i>IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.</i> ]  | Make false records, invoices, or reports.                        | \$250            | \$500  | \$1,000          | Per incident                           |
| IC 15-3-3.6-14(9) [ <i>IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.</i> ]  | Engage in business for hire without a business license.          | \$250            | \$500  | \$1,000          | Per day                                |
| IC 15-3-3.6-14(10) [ <i>IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.</i> ] | Use a restricted use pesticide without applicator certification. | \$250*           | \$500* | \$1,000*         | Per incident                           |
| IC 15-3-3.6-14(11) [ <i>IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.</i> ] | Use fraud in applying for a license, permit, or registration.    | \$250*           | \$500* | \$1,000*         | Per incident                           |

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|   |   |        |        |          |                              |
|---|---|--------|--------|----------|------------------------------|
| IC 15-3-3.6-14(12) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.] | Operate beyond the scope of an issued license, permit, or registration.   | \$125  | \$125  | \$125    | Per day                      |
| IC 15-3-3.6-14(13) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.] | Aid or abet a person to evade the law.  | \$250* | \$250* | \$250*   | Per incident                 |
| IC 15-3-3.6-14(14) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.] | Make false statements about a pest infestation.   | \$250  | \$500  | \$1,000  | Per incident                 |
| IC 15-3-3.6-14(15) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.] | Impersonate a government official.  | \$250* | \$500* | \$1,000* | Per incident                 |
| IC 15-3-3.6-14(16) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.] | Knowingly purchase or use a nonregistered pesticide.  | \$100  | \$200  | \$300    | Per incident and per product |
| IC 15-3-3.6-14(17) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-65.] | Fail to maintain insurance.   | \$25   | \$50   | \$100    | Per day                      |
| 355 IAC 4-2-3   | Fail to provide on-site 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 or 355 IAC 4-4-1.5  | Fail to keep restricted use pesticide application records.  | \$100  | \$200  | \$300    | Per day                      |
| 355 IAC 4-4-1 or 355 IAC 4-4-1.5  | Fail to keep all record elements.   | \$25   | \$50   | \$100    | Per day                      |
| 355 IAC 4-5-2(1)  | Fail to keep termiticide application records.   | \$100  | \$200  | \$300    | Per day                      |
| 355 IAC 4-5-2(2)  | Fail to keep complete termiticide records.  | \$25   | \$50   | \$100    | 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 4-6-2(a)  | Fail to provide label, application address, safety equipment, supervisor identity, or communication to lawn technician. | \$25   | \$50   | \$100    | Per incident                 |
| 357 IAC 1-5-2(a)  | Fail to place a lawn marker.  | \$100  | \$200  | \$300    | Per incident                 |
| 357 IAC 1-5-2(b)  | Place an incorrect lawn marker.   | \$50   | \$100  | \$200    | Per incident                 |
| 357 IAC 1-5-3(a)  | Fail to provide lawn customer notification.   | \$100  | \$200  | \$300    | Per incident                 |
| 357 IAC 1-5-3(b)  | Provide incorrect lawn customer notification.   | \$50   | \$100  | \$200    | Per incident                 |

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|                  |   |       |       |         |              |
|------------------|---|-------|-------|---------|--------------|
| 357 IAC 1-9-4(1) | Provide pesticide selection and use advice without consultant registration.           | \$250 | \$500 | \$1,000 | Per incident |
| 357 IAC 1-9-4(2) | Fail to train consultant employees.   | \$100 | \$200 | \$300   | Per incident |
| 357 IAC 1-9-4(3) | Fail to post consultant employee notice.  | \$50  | \$100 | \$150   | Per incident |
| 357 IAC 1-9-4(4) | Fail to post consultant public notice.  | \$50  | \$100 | \$150   | Per incident |
| 357 IAC 1-10-2   | Mix, load, or store pesticides in wellhead isolation area.                            | \$100 | \$200 | \$300   | 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 spill in wellhead area.                     | \$250 | \$500 | \$1,000 | Per incident |
| 357 IAC 1-11-2   | Use any pesticide for community-wide mosquito abatement without a category 8 license. | \$250 | \$500 | \$1,000 | Per day      |

\*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 and eighty (180) incidents when assessed on a per incident basis.

(d) The schedule of civil penalties for violations of IC 15-3-3.6 [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5.], the Indiana Pesticide Use and Application Law, and the rules adopted under this law, committed by a person who is required to be certified as a private applicator, shall be the same as that listed in subsection (a) except that all listed amounts shall be one hundred dollars (\$100). (Indiana Pesticide Review Board; 357 IAC 1-7-2; 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, 1:50 p.m.: 28 IR 1686; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110573RFA)

**357 IAC 1-7-3 Violation types (Repealed)**

Sec. 3. (Repealed by Indiana Pesticide Review Board; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1689)

**357 IAC 1-7-4 Determining the violation number and count of violations to be assessed**

Authority: IC 15-16-5-44; IC 15-16-5-66

Affected: IC 15-16-5

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 within the immediate past five (5) years of the date of the violation being addressed shall be considered.

(2) A person's violation number shall accumulate as first, second, third, etc., independently for each violation 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 1-7-4; filed Jan 9, 1992, 3:00 p.m.: 15 IR 708; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1687; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110573RFA)

**357 IAC 1-7-5 Potential penalty mitigation**

Authority: IC 15-16-5-44; IC 15-16-5-66  
Affected: IC 15-16-5

Sec. 5. (a) The amount of a civil penalty may be adjusted downward to reflect particular factors that may be mitigating. Some factors that may be considered are the following:

- (1) Good faith efforts of the violator to comply.
- (2) 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.
- (5) The potential for damage.
- (6) Remedial or corrective action taken by the violator.
- (7) Unusual climatic events.

(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 1-7-5; filed Jan 9, 1992, 3:00 p.m.: 15 IR 708; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1688; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110573RFA*)

**357 IAC 1-7-6 Notification of legal recourse**

Authority: IC 15-16-5-44; IC 15-16-5-66  
Affected: IC 15-16-5-67

Sec. 6. The state chemist shall notify in writing each person on whom a civil penalty is imposed of the provisions under IC 15-3-3.6-15 [*IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-67.*] for a person's legal recourse and review by the board of any action by the state chemist that may aggrieve that person. (*Indiana Pesticide Review Board; 357 IAC 1-7-6; filed Jan 9, 1992, 3:00 p.m.: 15 IR 708; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1688; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110573RFA*)

**357 IAC 1-7-7 Imposition of civil penalties**

Authority: IC 15-16-5-44; IC 15-16-5-66  
Affected: IC 15-16-5

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 1-7-7; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1688; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110573RFA*)

**357 IAC 1-7-8 Penalty money collected**

Authority: IC 15-16-5-44; IC 15-16-5-66  
Affected: IC 15-16-5

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 1-7-8; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1689; readopted filed Nov 18, 2011, 1:21 p.m.: 20111214-IR-357110573RFA*)

## **Rule 8. Indiana Pesticide Law Violators; Public Listing**

### **357 IAC 1-8-1 Definitions**

Authority: IC 15-16-4-52; IC 15-16-4-69; IC 15-16-5-44; IC 15-16-5-65

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

Sec. 1. (a) As used in this rule, "criteria for publicly listing" means the standards on which a decision will be made by the state chemist to include the identity of a person who has violated any of the provisions of IC 15-3-3.5 [*IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4.*], IC 15-3-3.6 [*IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5.*], or the rules thereunder, on a listing prepared for ready access and publication to the general public.

(b) As used in this rule, "person" means any:

- (1) individual;
- (2) partnership;
- (3) association;
- (4) fiduciary;
- (5) corporation; or
- (6) organized groups of persons;

whether incorporated or not. (*Indiana Pesticide Review Board; 357 IAC 1-8-1; filed Sep 10, 1999, 4:47 p.m.: 23 IR 306; readopted filed Dec 2, 2005, 2:30 p.m.: 29 IR 1381*)

### **357 IAC 1-8-2 Applicability**

Authority: IC 15-16-4-52; IC 15-16-4-69; IC 15-16-5-44; IC 15-16-5-65

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

Sec. 2. The criteria for publicly listing shall be applied to all persons who have violated IC 15-3-3.5 [*IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-4.*], IC 15-3-3.6 [*IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5.*], or rules thereunder, but shall be limited to the following:

- (1) Any person who has been assessed a civil penalty by the state chemist.
- (2) Any person who has had any certification, registration, license, permit, or other required credential or status issued by the state chemist denied, revoked, canceled, or suspended as the result of the violation.

(*Indiana Pesticide Review Board; 357 IAC 1-8-2; filed Sep 10, 1999, 4:47 p.m.: 23 IR 306; readopted filed Dec 2, 2005, 2:30 p.m.: 29 IR 1381*)

## **Rule 9. Pesticide Consultants; Registration**

### **357 IAC 1-9-1 Definitions**

Authority: IC 15-16-5-53

Affected: IC 15-16-5-34

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

- (1) "Employee training" means training approved by the state chemist that is required to be provided by the registered pesticide consultant to employees to enable them to accurately convey pesticide use and safety advice to their pesticide customers.
- (2) "Public notification" means the signage that must be posted in a public area at the registered pesticide consultant establishment to notify the pesticide customer of the customer's ultimate responsibility to read and follow the directions on

the pesticide label and labeling.

(3) "Registered pesticide consultant" means a retail business establishment that sells any pesticide, except restricted use pesticides as defined in IC 15-3-3.6-2(26) [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-34.], to pesticide users and whose employees provide pesticide selection and use advice.

(Indiana Pesticide Review Board; 357 IAC 1-9-1; filed Dec 16, 1999, 4:23 p.m.: 23 IR 1103; readopted filed Aug 10, 2006, 8:44 a.m.: 20060906-IR-357060170RFA)

**357 IAC 1-9-2 Applicability**

Authority: IC 15-16-5-53

Affected: IC 15-16-5-48; IC 15-16-5-57

Sec. 2. (a) The requirement to be a registered pesticide consultant shall apply to any retail establishment that does both of the following:

(1) Sells or offers for sale any pesticide, except restricted use pesticides, to pesticide users.

(2) Has employees who provide pesticide selection and use advice to pesticide users.

(b) The requirement to be a registered pesticide consultant shall not apply to the following:

(1) Retail establishments that sell pesticides, but whose employees are not expected to provide pesticide selection and use advice.

(2) Physicians, pharmacists, and veterinarians that provide pesticide selection and use advice for pesticide products intended for use on humans or animals.

(3) An establishment with a valid Indiana pesticide business license as described in IC 15-3-3.6-6 [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-48.].

(4) An establishment with a valid Indiana restricted use pesticide dealer registration as described in IC 15-3-3.6-12 [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-57.].

(5) An establishment that has an employee at the facility who is a certified and licensed pesticide applicator.

(Indiana Pesticide Review Board; 357 IAC 1-9-2; filed Dec 16, 1999, 4:23 p.m.: 23 IR 1104; readopted filed Aug 10, 2006, 8:44 a.m.: 20060906-IR-357060170RFA)

**357 IAC 1-9-3 Registration procedures**

Authority: IC 15-16-5-53

Affected: IC 15-16-5-60

Sec. 3. (a) To become a registered pesticide consultant, a retail establishment must do the following:

(1) Submit an application on a form provided by the state chemist. This form must list at least one (1) person as the contact for the business for registered pesticide consultant matters.

(2) Submit the thirty dollar (\$30) registered pesticide consultant fee.

(b) Registration of each pesticide consultant retail establishment shall expire on December 31 unless renewed by payment of a thirty dollar (\$30) renewal fee by that date. Renewal after December 31 shall include a late fee of thirty dollars (\$30) as established by IC 15-3-3.6-12.1 [IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-60.] in addition to the thirty dollar (\$30) renewal fee.

(c) A pesticide consultant registration must be obtained for each retail establishment location at which pesticide sales, selection, and use advice is provided to customers. (Indiana Pesticide Review Board; 357 IAC 1-9-3; filed Dec 16, 1999, 4:23 p.m.: 23 IR 1104; readopted filed Aug 10, 2006, 8:44 a.m.: 20060906-IR-357060170RFA)

**357 IAC 1-9-4 Requirements**

Authority: IC 15-16-5-53

Affected: IC 15-16-5

Sec. 4. In order for the employees of a retail establishment to provide pesticide selection and use advice, the retail establishment must do the following:

(1) Register with the state chemist as a pesticide consultant.

- (2) Provide employee training to all employees who provide pesticide selection and use advice.
- (3) Post a notice in an area that employees will see to notify the employees that pesticide selection and use advice may be provided only by those employees who have completed the required pesticide consultant employee training.
- (4) Post the public notification signage as defined in section 1(2) of this rule. The public notification may indicate, if desired by the retail establishment, that the location is registered with the state chemist as a pesticide consultant and trained employees may provide pesticide selection and use advice to customers.

*(Indiana Pesticide Review Board; 357 IAC 1-9-4; filed Dec 16, 1999, 4:23 p.m.: 23 IR 1104; readopted filed Aug 10, 2006, 8:44 a.m.: 20060906-IR-357060170RFA)*

### **357 IAC 1-9-5 State chemist responsibilities**

Authority: IC 15-16-5-53

Affected: IC 15-16-5

Sec. 5. The responsibilities of the state chemist in administering this rule shall include, but may not be limited to, the following:

- (1) Maintain a listing of registered pesticide consultants.
- (2) Provide relevant pesticide safety and regulatory updates to registered pesticide consultants through the state chemist pesticide newsletter or other appropriate media.
- (3) Provide, to registered pesticide consultants, details on obtaining employee training information developed by the Purdue University Cooperative Extension Service.
- (4) Inspect registered pesticide consultants and other retail establishments that sell pesticides for compliance with this rule.

*(Indiana Pesticide Review Board; 357 IAC 1-9-5; filed Dec 16, 1999, 4:23 p.m.: 23 IR 1104; readopted filed Aug 10, 2006, 8:44 a.m.: 20060906-IR-357060170RFA)*

## **Rule 10. Regulation of Pesticides Near Community Public Water Supply System Wells**

### **357 IAC 1-10-1 Definitions**

Authority: IC 15-16-5-44; IC 15-16-5-64

Affected: IC 15-16-5

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

- (1) "Community public water supply system" or "CPWSS" means a public water supply system as referenced in 327 IAC 8-4.1-1(5) that serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.
- (2) "Discharge" means a release of a pesticide from a storage container into secondary containment.
- (3) "Impervious surface" means a surface composed of a watertight material that effectively prevents discharged pesticide from impacting the soil or ground water, and from reaching a drinking water well or dry well, storm or sanitary sewer, or septic system.
- (4) "Isolation area" means an area as referenced in 327 IAC 8-3.4-9, which is established around a CPWSS production well, to protect ground water from direct contamination by pesticides.
- (5) "Public water supply system" or "PWSS" means a public water supply as established by 326 IAC 8-4.1-1(20) for the provision to the public of piped water for human consumption if such a system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year.
- (6) "Secondary containment" means any structure, such as a dike, used to contain pesticide discharge from storage containers and prevent run-off or leaching.
- (7) "State chemist" means the Indiana state chemist or his appointed agent.
- (8) "Time of travel" or "TOT", as referenced in 327 IAC 8-4.1-1(25), means the calculated length of time that a particle of water takes to reach a CPWSS production well from a certain point.
- (9) "Time of travel threshold" means a minimum five (5) year TOT for modeled wellhead protection areas or three thousand (3,000) feet for fixed radius wellhead protection areas as delineated in 327 IAC 8-4.1-1(26).
- (10) "Wellhead protection area" or "WHPA" as referenced in 327 IAC 8-4.1-1(27) means the surface and subsurface area that contributes water to a CPWSS production well or well field and through which contaminants are likely to move and reach the

well within the TOT threshold.

*(Indiana Pesticide Review Board; 357 IAC 1-10-1; filed Apr 23, 2003, 3:45 p.m.: 26 IR 2859; readopted filed Jul 20, 2009, 7:01 a.m.: 20090819-IR-357090369RFA)*

**357 IAC 1-10-2 Prohibited activities within the isolation area**

Authority: IC 15-16-5-44; IC 15-16-5-64

Affected: IC 15-16-5

Sec. 2. (a) The following activities shall be prohibited within the isolation area, except for pesticides labeled for the intentional use in the treatment of water for drinking:

(1) Pesticide loading.

(2) Pesticide mixing.

(3) Pesticide storage.

(b) Application of pesticides within the isolation area shall be permitted unless prohibited by:

(1) the pesticide label; or

(2) a rule by the Indiana pesticide review board.

*(Indiana Pesticide Review Board; 357 IAC 1-10-2; filed Apr 23, 2003, 3:45 p.m.: 26 IR 2860; readopted filed Jul 20, 2009, 7:01 a.m.: 20090819-IR-357090369RFA)*

**357 IAC 1-10-3 Pesticide storage within the WHPA and outside of the isolation area**

Authority: IC 15-16-5-44; IC 15-16-5-64

Affected: IC 15-16-5

Sec. 3. (a) Pesticide containers with the capacity for the storage of pesticides in undivided quantities exceeding fifty-five (55) U.S. gallons or one hundred (100) pounds dry product shall be subject to the storage and containment requirements in 355 IAC 5.

(b) Pesticide containers not covered by the requirements referenced in subsection (a) shall be stored:

(1) on an impervious surface;

(2) in a covered area that is protected from precipitation; and

(3) within secondary containment when the quantity of pesticide product in all containers exceeds fifty-five (55) U.S. gallons of liquid or one hundred (100) pounds of dry product and a spill or leak is likely to enter a septic system, sanitary or storm sewer, drinking water well, or dry well.

(c) Secondary containment required in subsection (b) shall be:

(1) constructed with a capacity of a minimum of at least one hundred ten percent (110%) of the volume of the largest storage container within the contained area plus the volume displaced by all other pesticide containers, equipment, and other items in the containment vessel; and

(2) constructed, installed, and maintained so as to prevent the spill or leakage of the pesticide.

*(Indiana Pesticide Review Board; 357 IAC 1-10-3; filed Apr 23, 2003, 3:45 p.m.: 26 IR 2860; readopted filed Jul 20, 2009, 7:01 a.m.: 20090819-IR-357090369RFA)*

**357 IAC 1-10-4 Cleanup of discharged or spilled pesticide**

Authority: IC 15-16-5-44; IC 15-16-5-64

Affected: IC 15-16-5

Sec. 4. (a) Remediation and cleanup of discharged or spilled pesticide shall be performed immediately upon discovery.

(b) Clean-up procedures shall be conducted:

(1) in accordance with the procedures on the pesticide product label; and

(2) in a manner that prevents the pesticide from impacting the soil or ground water, and from reaching a drinking water well, dry well, storm sewer, sanitary sewer, or septic system.

*(Indiana Pesticide Review Board; 357 IAC 1-10-4; filed Apr 23, 2003, 3:45 p.m.: 26 IR 2860; readopted filed Jul 20, 2009, 7:01 a.m.: 20090819-IR-357090369RFA)*

**357 IAC 1-10-5 Inspection and compliance**

Authority: IC 15-16-5-44; IC 15-16-5-64  
Affected: IC 15-16-5

Sec. 5. (a) The inspection for compliance with this rule is the responsibility of the state chemist but may be delegated by the state chemist to the Indiana department of environmental management and to employees of state, county, or municipal government.

(b) The initiation of enforcement for violations of the provisions shall be the sole responsibility of the state chemist. (*Indiana Pesticide Review Board; 357 IAC 1-10-5; filed Apr 23, 2003, 3:45 p.m.: 26 IR 2861; readopted filed Jul 20, 2009, 7:01 a.m.: 20090819-IR-357090369RFA*)

**357 IAC 1-10-6 Compliance with the effective date of rule**

Authority: IC 15-16-5-44; IC 15-16-5-64  
Affected: IC 15-16-5

Sec. 6. (a) This rule shall become effective within one (1) year of the date of adoption.

(b) For newly established facilities, full compliance shall be required immediately.

(c) For existing facilities:

(1) full compliance with section 3 [of this rule] shall be required no later than two (2) years following adoption; and

(2) full compliance with all other sections of this rule shall be required immediately.

(*Indiana Pesticide Review Board; 357 IAC 1-10-6; filed Apr 23, 2003, 3:45 p.m.: 26 IR 2861; readopted filed Jul 20, 2009, 7:01 a.m.: 20090819-IR-357090369RFA*)

**Rule 11. Community-Wide Mosquito Abatement Pesticide Applicators and Technicians**

**357 IAC 1-11-1 Definitions**

Authority: IC 15-16-5-44; IC 15-16-5-64  
Affected: IC 15-16-5-52

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

(1) "Category 8" means the public health pest control certification and license category referenced in 355 IAC 4-1-3(14), which includes pesticide applicators who use or supervise the use of pesticides in mosquito abatement operations.

(2) "Commercial applicator license" means the license issued annually by the state chemist to an individual who has met the requirements established in IC 15-3-3.6-8.1 [*IC 15-3 was repealed by P.L.2-2008, SECTION 83, effective July 1, 2008. See IC 15-16-5-52.*], including the following licenses:

(A) Applicator for hire.

(B) Applicator not for hire.

(C) Public applicator.

(3) "Community-wide mosquito abatement" means any pesticide application activities, including mosquito adulticiding and larviciding, conducted wholly or in part on publicly accessible property. The term does not include pesticide applications performed for the control of mosquitoes solely on a single-family residence.

(4) "Direct supervision" means one (1) of the following:

(A) The supervision and oversight procedures for noncertified applicators, as required in 355 IAC 4-2.

(B) The supervising certified applicator is:

(i) present at the pesticide application site in close proximity to and within reasonable line of sight of the noncertified applicator; and

(ii) operating under conditions that permit direct voice contact with the noncertified applicator.

(C) For employees of a governmental agency, the supervising certified applicator:

(i) has provided the noncertified applicator with written instructions covering site-specific precautions to prevent injury to persons or the environment or damage to property at the pesticide application site; and

(ii) is operating under conditions that permit direct voice contact with the noncertified applicator.

(5) "Publicly accessible property" means public or private property to which the public or patrons have a reasonable

expectation of relatively unrestricted access.

(6) "Registered technician" means a noncertified person who, having met the requirements of 355 IAC 4-2-8, is registered by the state chemist and thereby is authorized to engage in pesticide use and related activities while working under the direct supervision of a certified and licensed applicator.

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

*(Indiana Pesticide Review Board; 357 IAC 1-11-1; filed Jan 2, 2004, 2:00 p.m.: 27 IR 1878; readopted filed Jun 11, 2010, 9:10 a.m.: 20100623-IR-357100194RFA)*

### **357 IAC 1-11-2 Applicator certification and licensing**

Authority: IC 15-16-5-44; IC 15-16-5-64

Affected: IC 15-16-5

Sec. 2. (a) Except as provided in section 3 of this rule, a person may not use or supervise the use of any pesticide for community-wide mosquito abatement activities without having obtained a commercial applicator license in Category 8 from the state chemist.

(b) Completing the certification requirements as a commercial applicator (IC 15-3-3.6-6-2(7) *[sic]*) in Category 8 shall be a qualifying requirement for each of the licenses referenced in section 1(2) of this rule.

(c) A person may satisfy the Category 8 certification requirements by either:

(1) completing the requirements established in 355 IAC 4-1 for a Category 8 applicator; or

(2) completing the requirements established in 355 IAC 4-1 for a Category 7a applicator and providing proof to the state chemist of practical community-wide mosquito abatement experience within the last five (5) years previous to the effective date of this rule.

*(Indiana Pesticide Review Board; 357 IAC 1-11-2; filed Jan 2, 2004, 2:00 p.m.: 27 IR 1878; readopted filed Jun 11, 2010, 9:10 a.m.: 20100623-IR-357100194RFA)*

### **357 IAC 1-11-3 Direct supervision of noncertified applicators**

Authority: IC 15-16-5-44; IC 15-16-5-64

Affected: IC 15-16-5

Sec. 3. (a) A person who has not obtained a commercial applicator license may use a pesticide if the person is working under the direct supervision of a certified and licensed applicator employed by the business, agency, or organization that also employs the person.

(b) An applicator using pesticides for community-wide mosquito abatement activities is subject to all of the site awareness and direct supervision provisions of 355 IAC 4-2, except as described in section 1(4)(C) of this rule. *(Indiana Pesticide Review Board; 357 IAC 1-11-3; filed Jan 2, 2004, 2:00 p.m.: 27 IR 1878; readopted filed Jun 11, 2010, 9:10 a.m.: 20100623-IR-357100194RFA)*

## **Rule 12. Pesticide Drift**

### **357 IAC 1-12-1 Definitions**

Authority: IC 15-16-5-44

Affected: IC 15-16-5-65

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

(1) "Drift" means the physical movement of a pesticide through the air at the time of application from the target site to a nontarget site. The term shall not mean the movement of a pesticide, at a time after the application has been made, by any of the following:

(A) Erosion.

(B) Volatility after deposition on the target site.

(C) Windblown soil particles.

(2) "Nontarget site" means any site that is not the intended target site of the pesticide application, including, but not limited

to, the following:

- (A) Personal property.
  - (B) Public property.
  - (C) A body of water.
  - (D) A person.
  - (E) An animal.
  - (F) Livestock.
  - (G) Managed bees.
  - (H) A commodity.
  - (I) A desirable plant.
- (3) "Standards" means the legally enforceable limits, as established by state or federal regulations.
- (4) "Sufficient quantity to cause harm" means an amount of pesticide that results in any of the following:
- (A) Pesticide residues in excess of established tolerances or standards.
  - (B) Documented:
    - (i) death;
    - (ii) illness;
    - (iii) stunting;
    - (iv) deformation;
    - (v) discoloration; or
    - (vi) other effects;that are detrimental to the nontarget site.
- (5) "Target site" means the specific site to which a pesticide was intentionally applied.
- (6) "Tolerance" means the maximum amount of a pesticide residue, as established by the U.S. Environmental Protection Agency, that may lawfully remain on or in food or animal feed.
- (7) "Volatility" means the ability of a pesticide to move to a nontarget site as a vapor rather than as a:
- (A) drift particle; or
  - (B) spray droplet.

*(Indiana Pesticide Review Board; 357 IAC 1-12-1; filed Mar 17, 2006, 1:00 p.m.: 29 IR 2523)*

**357 IAC 1-12-2 Drift restriction**

Authority: IC 15-16-5-44  
Affected: IC 15-16-5-65

Sec. 2. A person may not 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. *(Indiana Pesticide Review Board; 357 IAC 1-12-2; filed Mar 17, 2006, 1:00 p.m.: 29 IR 2524)*

**Rule 13. Open Burning of Pesticide Containers**

**357 IAC 1-13-1 Definitions**

Authority: IC 15-16-5-64  
Affected: IC 15-16-5-65

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

- (1) "Open burning" means the burning of any pesticide container wherein air contaminants resulting from combustion are emitted directly into the air, without passing through a stack or chimney from an enclosed chamber, as described in 326 IAC 4-1-0.5(6).
- (2) "Pesticide container" means any:
- (A) package;
  - (B) can;
  - (C) bottle;
  - (D) jug;

- (E) bag;
- (F) barrel;
- (G) drum;
- (H) tank; or
- (I) other containing device;

used to enclose a pesticide or pesticide-related waste. The term does not include equipment used solely for the application of a pesticide.

*(Indiana Pesticide Review Board; 357 IAC 1-13-1; filed Jun 4, 2009, 9:08 a.m.: 20090701-IR-357090058FRA)*

### **357 IAC 1-13-2 Prohibition against open burning of pesticide containers**

Authority: IC 15-16-5-64

Affected: IC 13-15; IC 13-17; IC 15-16-5-65

Sec. 2. A person may not cause the open burning of any pesticide container. *(Indiana Pesticide Review Board; 357 IAC 1-13-2; filed Jun 4, 2009, 9:08 a.m.: 20090701-IR-357090058FRA)*

## **Rule 14. Use of Pesticide Service Containers**

### **357 IAC 1-14-1 Definitions**

Authority: IC 15-16-5-64

Affected: IC 15-16

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

- (1) "Applicator" means a person who will be applying the pesticide.
- (2) "Service container" means any package, can, bottle, jug, bag, or other containing device used to transport a pesticide from a storage site to an application site. The term shall not mean any of the following:
  - (A) The original labeled container provided by the manufacturer.
  - (B) A container larger than the original labeled container provided by the manufacturer.
  - (C) A measuring device.
  - (D) Equipment used solely for the application of a pesticide.

*(Indiana Pesticide Review Board; 357 IAC 1-14-1; filed Jun 4, 2009, 9:09 a.m.: 20090701-IR-357090059FRA)*

### **357 IAC 1-14-2 Use of service containers**

Authority: IC 15-16-5-64

Affected: IC 15-16

Sec. 2. (a) Except as provided in subsection (b), an applicator may transfer a diluted or an undiluted pesticide to a service container for the purpose of transporting the pesticide from the applicator's storage site to an application site.

(b) Use of a service container shall not be permitted if the original label of the pesticide requires storage in the original container only or prohibits transfer to other containers. *(Indiana Pesticide Review Board; 357 IAC 1-14-2; filed Jun 4, 2009, 9:09 a.m.: 20090701-IR-357090059FRA)*

### **357 IAC 1-14-3 Labeling of service containers**

Authority: IC 15-16-5-64

Affected: IC 15-16

Sec. 3. (a) The applicator must securely attach to the service container labeling for the pesticide that includes the following:

- (1) The complete brand name.
- (2) The EPA registration number.
- (3) The name of the active ingredient or ingredients.
- (4) The percentage or percentages of the active ingredient or ingredients.

(b) The applicator must have in his or her possession during transport of the service container a complete representative copy of the entire label for the pesticide. (*Indiana Pesticide Review Board; 357 IAC 1-14-3; filed Jun 4, 2009, 9:09 a.m.: 20090701-IR-357090059FRA*)

**Rule 15. Applicator Certification and Licensing at Golf Courses**

**357 IAC 1-15-1 Definitions**

Authority: IC 15-16-5-44

Affected: IC 15-16-5-52

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

(1) "Any pesticide" means both restricted use and nonrestricted use pesticides.

(2) "Commercial applicator license" means the license issued annually by the state chemist to an individual who has met the requirements established in IC 15-16-5-52, including the following licenses:

(A) Applicator for hire.

(B) Applicator not for hire.

(C) Public applicator.

(3) "Direct supervision" means one (1) of the following:

(A) The supervision and oversight procedures for noncertified applicators, as required in 355 IAC 4-2.

(B) The supervising certified applicator is:

(i) present at the golf course; and

(ii) operating under conditions that permit direct voice contact with the noncertified applicator.

(C) The supervising certified applicator:

(i) has previously examined the specific application area while accompanied by the noncertified applicator;

(ii) has provided the noncertified applicator with written instructions covering site-specific precautions to prevent injury to persons or the environment at the pesticide application site; and

(iii) is operating under conditions that permit direct voice contact with the noncertified applicator.

(4) "Direct voice contact" means real time communication by two-way radio, cell phone, landline phone, or any other communication device that would allow the supervising certified applicator to effectively communicate with the noncertified applicator during the use of the pesticide or the pesticide-related emergency.

(5) "Golf course" means any turf areas designated and used primarily for the play or practice of the game of golf, including, but not limited to, the following areas:

(A) Fairways.

(B) Greens.

(C) Roughs.

(D) Tees.

(6) "State chemist" means the Indiana state chemist or his or her authorized agent.

(7) "Written instructions" means a written or printed site assessment fact sheet or similar document that shall be reviewed by the noncertified applicator prior to each pesticide application. The required elements on the site assessment fact sheet shall be developed by the state chemist in consultation with the representatives from the golf course industry.

(*Indiana Pesticide Review Board; 357 IAC 1-15-1; filed Jun 4, 2009, 9:10 a.m.: 20090701-IR-357090062FRA*)

**357 IAC 1-15-2 Applicator certification and licensing**

Authority: IC 15-16-5-44

Affected: IC 15-16-5

Sec. 2. (a) Except as provided in section 3 of this rule, a person may not use or supervise the use of any pesticide on a golf course without having obtained a commercial applicator license from the state chemist.

(b) Completing the certification requirements as a category 3b commercial applicator shall be a qualifying requirement for each of the licenses referenced in section 1(2) of this rule. (*Indiana Pesticide Review Board; 357 IAC 1-15-2; filed Jun 4, 2009, 9:10 a.m.: 20090701-IR-357090062FRA*)

**357 IAC 1-15-3 Direct supervision of noncertified applicators**

Authority: IC 15-16-5-44  
Affected: IC 15-16-5

Sec. 3. A person who has not obtained a commercial applicator license may use a pesticide on a golf course if the person is working under the direct supervision of a certified and licensed applicator affiliated with the business, agency, or organization that owns or operates that golf course or the pesticide business hired to apply pesticides on that golf course. (*Indiana Pesticide Review Board; 357 IAC 1-15-3; filed Jun 4, 2009, 9:10 a.m.: 20090701-IR-357090062FRA*)

**357 IAC 1-15-4 Golf course pesticide use records**

Authority: IC 15-16-5-44  
Affected: IC 15-16-5

Sec. 4. (a) A commercial applicator shall keep and maintain records of all applications of pesticides made on the golf course by the applicator or the noncertified individuals supervised by the applicator. The records shall provide the following:

- (1) The name or address of the golf course.
- (2) The name and certification number of the certified applicator responsible for the application.
- (3) The date and time of application.
- (4) The principal pest or pests to be controlled.
- (5) A description of the area treated, including, but not limited to, the following:
  - (A) The fairway number or numbers.
  - (B) The green number or numbers.
  - (C) The rough number or numbers.
  - (D) The tee number or numbers.
- (6) The pesticide applied, including the following:
  - (A) The name of the manufacturer.
  - (B) The U. S. Environmental Protection Agency registration number.
  - (C) The brand name.
- (7) The amount used, expressed as either:
  - (A) concentrate, giving the total quantity of formulation applied, in pounds, gallons, etc.; or
  - (B) diluted mixture (ready to use), giving the total amount applied and active ingredient concentration (percentage).

(b) Written, printed, or electronic information that includes all of the items in subsection (a) and used to create the records shall be maintained from the date of application until the collective written record required is generated.

- (c) The records to be maintained under this section shall be:
  - (1) recorded by the thirtieth day from the date of application; and
  - (2) kept and maintained for a period of two (2) years.

(*Indiana Pesticide Review Board; 357 IAC 1-15-4; filed Jun 4, 2009, 9:10 a.m.: 20090701-IR-357090062FRA*)

**357 IAC 1-15-5 Record inspection; availability**

Authority: IC 15-16-5-44  
Affected: IC 15-16-5

Sec. 5. (a) All required records and information shall, upon written or oral request, be made available for inspection and copying by the state chemist or his or her authorized agent.

(b) When a licensed health care professional determines that information required to be maintained as part of these records is necessary to provide medical treatment to an individual who may have been exposed to the pesticide, the state chemist or the commercial applicator shall provide the requested information.

(c) No licensed health care professional shall release any record or information from any record obtained under subsection (b) except as necessary to provide medical treatment to an individual who may have been exposed to the pesticide for which the record is maintained. (*Indiana Pesticide Review Board; 357 IAC 1-15-5; filed Jun 4, 2009, 9:10 a.m.: 20090701-IR-357090062FRA*)

**Rule 16. Pesticide Use at Schools**

**357 IAC 1-16-1 Purpose**

Authority: IC 15-16-5

Affected: IC 15-16-5

Sec. 1. The purpose of this rule is to minimize the potential for pesticide exposure to students at schools by ensuring the following:

- (1) Pesticides are used only by:
  - (A) a certified applicator; or
  - (B) an individual operating under the direct supervision of the certified applicator.
- (2) Pesticides are not used when students are in the pesticide application area.
- (3) Pesticides are stored in locked storage areas.
- (4) Except for immediate health threat situations, school corporations provide advance notice of pesticide applications to school parents, guardians, and staff on a notification registry.
- (5) School corporations keep records of pesticide applications.
- (6) Pesticides with lowest hazards to children are used whenever practical and effective.

*(Indiana Pesticide Review Board; 357 IAC 1-16-1; filed Sep 24, 2010, 1:44 p.m.: 20101020-IR-357100336FRA)*

**357 IAC 1-16-2 Applicability**

Authority: IC 15-16-5

Affected: IC 15-16-5

Sec. 2. This rule applies to all:

- (1) pesticides, as defined in section 3(3) of this rule; and
- (2) schools administered or maintained by a school corporation, as defined in section 3(7) of this rule.

*(Indiana Pesticide Review Board; 357 IAC 1-16-2; filed Sep 24, 2010, 1:44 p.m.: 20101020-IR-357100336FRA)*

**357 IAC 1-16-3 Definitions**

Authority: IC 15-16-5

Affected: IC 20-18-2; IC 20-21; IC 20-22; IC 20-32-8-2

Sec. 3. The following definitions apply throughout this rule:

- (1) "Commercial applicator license" means the license issued annually by the state chemist to an individual who has met the requirements established in IC 15-16-5-52, including the following:
  - (A) A licensed applicator for hire, as defined in IC 15-16-5-16.
  - (B) A licensed applicator not for hire, as defined in IC 15-16-5-17.
  - (C) A licensed public applicator, as defined in IC 15-16-5-20.
- (2) "Direct supervision" means one (1) of the following:
  - (A) The supervision and oversight procedures for noncertified applicators, as required in 355 IAC 4-2.
  - (B) The supervising certified applicator is:
    - (i) present at the pesticide application site; and
    - (ii) operating under conditions that permit direct voice contact with the noncertified applicator.
  - (C) The supervising certified applicator:
    - (i) has previously examined the pesticide application site while accompanied by the noncertified applicator;
    - (ii) has provided the noncertified applicator with written instructions covering site-specific precautions to prevent injury to persons or the environment at the pesticide application site; and
    - (iii) is operating under conditions that permit direct voice contact with the noncertified applicator.
- (3) "Pesticide" means both restricted use and nonrestricted use pesticides, as defined in IC 15-16-5-25. For purposes of this rule, the term does not include the following nonrestricted use pesticides:
  - (A) Bactericides.

- (B) Disinfectants.
  - (C) Gel or paste bait insecticides.
  - (D) Germicides.
  - (E) Manufactured enclosed insecticides.
  - (F) Personal insect repellents when self-applied.
  - (G) Sanitizing agents.
  - (H) Swimming pool chemicals.
  - (I) Water purifying chemicals.
- (4) "Pesticide application site" means the target treatment area on school property where the pesticide is intentionally applied.
- (5) "Pesticide notification registry" means the registry created and maintained by a school corporation listing the names and contact information of parents and guardians of children at the school and school staff who have requested to be notified of the details of pesticide applications at the school.
- (6) "School" means the physical buildings and grounds of an institution for the instruction of students, including the following:
- (A) A preschool.
  - (B) An elementary school as defined in IC 20-18-2-4.
  - (C) A high school as defined in IC 20-18-2-7.
- (7) "School corporation" means any of the following:
- (A) A school corporation as defined in IC 20-18-2-16.
  - (B) A nonpublic school as defined in IC 20-18-2-12.
  - (C) The Indiana School for the Blind and Visually Impaired established under IC 20-21.
  - (D) The Indiana School for the Deaf established under IC 20-22. For purposes of this rule, the term does not include any of the following
    - (i) Sunday schools and vacation Bible schools, and any other program of a religious entity except those that are accredited by the Indiana Department of Education.
    - (ii) Daycare centers.
    - (iii) Home schools.
    - (iv) Any private religious school except those that are accredited by the Indiana Department of Education.
- (8) "State chemist" means the Indiana state chemist or his or her authorized agent.
- (9) "Student", as defined in IC 20-32-8-2, means any individual who is enrolled in a school corporation.
- (10) "Use", as defined in IC 15-16-5-36, means an act of handling, releasing, or exposing individuals or the environment to a pesticide. The term includes the following:
- (A) Application or supervision of an application of a pesticide, including mixing or loading the pesticide.
  - (B) Storage of pesticides and pesticide containers.
  - (C) Transportation of pesticides and pesticide containers.
  - (D) Disposal of pesticides and pesticide containers.

*(Indiana Pesticide Review Board; 357 IAC 1-16-3; filed Sep 24, 2010, 1:44 p.m.: 20101020-IR-357100336FRA)*

**357 IAC 1-16-4 Applicator certification and licensing**

Authority: IC 15-16-5-44; IC 15-16-5-51

Affected: IC 15-16-5

Sec. 4. (a) Except as provided in section 5 of this rule, an individual may not use or supervise the use of a pesticide at a school without having obtained a commercial applicator license from the state chemist.

(b) Completing the certification procedures described in 355 IAC 4-1 shall be a qualifying requirement for a commercial applicator license.

(c) A commercial applicator license shall be issued in one (1) or more of the categories described in 355 IAC 4-1-3.

(d) The license category in subsection (c) must be relevant to the use of the pesticide at the school by the applicator. *(Indiana Pesticide Review Board; 357 IAC 1-16-4; filed Sep 24, 2010, 1:44 p.m.: 20101020-IR-357100336FRA)*

**357 IAC 1-16-5 Direct supervision of noncertified applicators**

Authority: IC 15-16-5-44; IC 15-16-5-51  
Affected: IC 15-16-5

Sec. 5. An individual who has not obtained a commercial applicator license may use a pesticide at a school if the individual is working under the direct supervision of a licensed commercial applicator affiliated with the:

- (1) school corporation; or
- (2) pesticide business hired to apply pesticides at that school.

*(Indiana Pesticide Review Board; 357 IAC 1-16-5; filed Sep 24, 2010, 1:44 p.m.: 20101020-IR-357100336FRA)*

**357 IAC 1-16-6 Pesticide use restrictions**

Authority: IC 15-16-5-44; IC 15-16-5-51  
Affected: IC 15-16-4-38; IC 15-16-5

Sec. 6. (a) Except as provided in subsection (b), a pesticide must not be applied at a school during normal instructional hours when school is in session.

(b) A pesticide may be applied at a school during periods specified in subsection (a) if applied to:

- (1) control an observed pest that poses an immediate health threat situation to the students present; or
- (2) an area outside of and not immediately adjacent to student-occupied buildings.

(c) Except as provided in subsection (d), the school corporation must not allow students to enter a pesticide treatment area after an application until the longer of the following time periods has elapsed:

- (1) The minimum reentry time specified on the pesticide label.
- (2) Four (4) hours.

(d) A rodenticide (IC 15-16-4-38) bait may be applied in areas inaccessible to students without regard to subsection (c).

*(Indiana Pesticide Review Board; 357 IAC 1-16-6; filed Sep 24, 2010, 1:44 p.m.: 20101020-IR-357100336FRA)*

**357 IAC 1-16-7 Pesticide storage restrictions**

Authority: IC 15-16-5  
Affected: IC 15-16-5

Sec. 7. Pesticides stored at schools must be in:

- (1) the original pesticide container or a clearly labeled service container, as described in 357 IAC 1-14-3;
- (2) a locked area or cabinet clearly marked as pesticide storage; and
- (3) an area separated by a solid wall from areas where:
  - (A) food is stored;
  - (B) food is served; or
  - (C) students have access.

*(Indiana Pesticide Review Board; 357 IAC 1-16-7; filed Sep 24, 2010, 1:44 p.m.: 20101020-IR-357100336FRA)*

**357 IAC 1-16-8 Pesticide notification**

Authority: IC 15-16-5-44; IC 15-16-5-51  
Affected: IC 15-16-5

Sec. 8. (a) A school corporation must invite parents, guardians, and staff to be added to a pesticide notification registry:

- (1) at the start of each school year; or
- (2) during the school year when a student:
  - (A) enrolls in; or
  - (B) transfers into;

the school.

(b) An individual may request to be added to the registry at any time during the school year.

(c) Except as provided in subsection (f), a school corporation must, by whatever means the school corporation determines to

be appropriate, provide individuals on the registry with pesticide notice.

(d) The pesticide notice must include the following:

(1) The name or address of the school.

(2) The licensed commercial applicator responsible for the application including the following:

(A) Name.

(B) License number.

(C) Telephone number.

(D) Designee for information about the pesticide application if different than the applicator.

(3) The anticipated date and time of the application.

(4) The principal target pest.

(5) A description of the application area.

(6) The pesticide or pesticides to be applied including the following:

(A) The name of the manufacturer.

(B) The United States Environmental Protection Agency registration number.

(C) The brand name.

(7) If forty-eight (48) hours advance notice is not provided, an explanation why it was not provided.

(e) The pesticide notice must be provided at least forty-eight (48) hours in advance of a pesticide application at the school.

(f) A pesticide notice is not required for a pesticide application:

(1) made more than forty-eight (48) hours before a scheduled school day; or

(2) described in section 6(b) of this rule.

*(Indiana Pesticide Review Board; 357 IAC 1-16-8; filed Sep 24, 2010, 1:44 p.m.: 20101020-IR-357100336FRA)*

### **357 IAC 1-16-9 Pesticide record keeping**

Authority: IC 15-16-5

Affected: IC 15-16-5

Sec. 9. (a) Except as provided in subsection (b), a school corporation must keep and maintain records of all pesticide applications made at the school.

(b) A licensed for-hire applicator hired by the school corporation to apply pesticides may by written agreement keep and maintain the application records for the school corporation.

(c) The pesticide application records must include the following:

(1) The name or address of the school.

(2) The licensed commercial applicator responsible for the application including the following:

(A) Name.

(B) License number.

(C) The actual applicator if different than the individual named in clause (A).

(3) The date and time of the application.

(4) The principal target pest.

(5) A description of the application area.

(6) The pesticide or pesticides applied including the following:

(A) The name of the manufacturer.

(B) The United States Environmental Protection Agency registration number.

(C) The brand name.

(7) The amount used, expressed as either:

(A) concentrate, giving the total quantity of formulation applied, in pounds, gallons, etc.; or

(B) diluted mixture (ready to use), giving the total amount applied and active ingredient concentration (percentage).

(d) Written, printed, or electronic information that includes all of the items in subsection (c) and used to create the records must be maintained from the date of application until the collective written record required is generated.

(e) The records to be maintained under this section must be:

(1) recorded by the thirtieth day from the date of application; and

(2) kept and maintained for a period of two (2) years from the date of application.

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(f) All required records and information must, upon written or oral request, be made available by the school corporation for inspection and copying. (*Indiana Pesticide Review Board; 357 IAC 1-16-9; filed Sep 24, 2010, 1:44 p.m.: 20101020-IR-357100336FRA*)

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