

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #03-213

DIGEST

Adds 312 IAC 18-3-15 to govern the release of a “beneficial organism” or a “pest or pathogen”. Adds 312 IAC 18-3-16 to list and regulate kudzu as a pest or pathogen. Adds 312 IAC 18-3-17 to clarify the authority of the division director (also known as the state entomologist) to establish and dissolve technical committees that assist in evaluating issues pertaining to the release of beneficial organisms or pests or pathogens. Amends 312 IAC 18-5-2 to establish a fee and acreage surcharge for the performance of voluntary certification of florist premises and greenhouses. Effective 30 days after filing with the secretary of state.

312 IAC 18-3-15 **312 IAC 18-3-17**
312 IAC 18-3-16 **312 IAC 18-5-2**

SECTION 1. 312 IAC 18-3-15 IS ADDED TO READ AS FOLLOWS:

312 IAC 18-3-15 Release of a beneficial organism or a pest or pathogen

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 15. (a) A person or a federal agency must not release a beneficial organism or a pest or pathogen in Indiana without a permit issued by the division director under this section.

(b) Before a permit is issued under this section, a person or a federal agency must demonstrate, to a reasonable certainty, that the release of a beneficial organism or a pest or pathogen would do none of the following:

- (1) Harm a nontarget plant or animal.**
- (2) Interfere with normal management and production practices in agriculture, horticulture, viticulture, silviculture, nursery production, or greenhouse production.**
- (3) Disturb the ecological stability of an Indiana native organism or its environments.**

(c) An application for release must be prepared on a commission form and must include each of the following:

- (1) The current scientific name of the beneficial organism or pest or pathogen, as well as prior synonyms and taxonomic placements.**
- (2) The life stages to be considered for release, including any genetic recombinations.**
- (3) A listing of all known foods or hosts of the beneficial organism or pest or pathogen. The listing must identify the target organism, if applicable. The listing must be documented by published scientific literature with peer review.**
- (4) The known distribution of the beneficial organism or pest or pathogen, including habitat preferences and tolerances. This information must be documented by scientific literature, regulatory survey, or expert testimony.**
- (5) The method of release of the beneficial organism or pest or pathogen.**
- (6) The life cycle of the beneficial organism or pest or pathogen.**
- (7) The place of origin of the beneficial organism or pest or pathogen.**
- (8) The ecological classification of the beneficial organism or pest or pathogen. Examples of an ecological classification include predator, pollinator, parasite, pathogen, hyperparasite, and herbivore.**
- (9) Documentation of any known pest or predator of the beneficial organism or pest or pathogen.**
- (10) The number of beneficial organisms or pests or pathogens to be released.**

(11) The location of the proposed release.

(12) Clearly readable copies of scientific literature regarding the beneficial organism or pest or pathogen. Any literature supporting and not supporting the applicant's application must be made available to the division.

(13) Upon request by the division director, additional information reasonably necessary to demonstrate compliance with this article and IC 14-24. As a prerequisite to the consideration of a permit, the division director may require information consistent with an environmental assessment under 329 IAC 5-1 or an environmental impact statement under 329 IAC 5-2.

(14) The division director shall respond to the applicant within thirty (30) days with one (1) of the following notifications:

(A) Deny the permit.

(B) Approve the permit.

(C) Approve the permit with conditions.

(D) Request the applicant to provide additional information within a stated period with an explanation that, if information is not provided as requested, the permit would be denied.

(15) If the division director fails to make a timely response under subdivision (14), the applicant may treat the application as denied and seek administrative review.

(d) The division director may establish a listing of organisms that are exempted or that may be released under a general license. The division director shall submit the listing to the commission for its approval.

(e) A person must not sell, barter, offer for sale or distribution, or release a beneficial organism or pest or pathogen without first obtaining a permit from the division.

(f) A person must not mislabel a beneficial organism or pest or pathogen.

(g) A person must not misrepresent data or submit incomplete data that could mislead an investigator or the division director in considering the merits of a permit application. (*Natural Resources Commission; 312 IAC 18-3-15*)

SECTION 2. 312 IAC 18-3-16 IS ADDED TO READ AS FOLLOWS:

312 IAC 18-3-16 Control of kudzu (*Pueraria lobata*)

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 16. (a) Kudzu (*Pueraria lobata*) is a pest or pathogen. This section governs the standards for the control of kudzu in Indiana.

(b) A person must not sell, distribute, offer for sale or distribution, give away, barter, or exchange or plant any life stage or reproductive material or recombined genes of kudzu.

(c) The division may enter a property in which kudzu is thought to exist, or in which kudzu has been detected or reported, for the purpose of verifying its presence and the extent to which it has become established.

(d) Data regarding the location, area infested, habitat, and related data about the site may be recorded in a division data base.

(e) A site in which kudzu is found to be established may be monitored.

(f) Any property owner who is known to have kudzu on the owner's property must take efforts to eliminate this species in such a manner as is consistent with federal and state law.

(g) This section shall be construed so as not to conflict with the authority of the Indiana state seed commissioner or with the laws administered by that office in regulating noxious weeds.

(h) The division may regulate a site under section 2 of this rule until it is cleared to prevent further infestations.

(i) This section does not preclude the division director from issuing any permit under this rule for the study of kudzu. *(Natural Resources Commission; 312 IAC 18-3-16)*

SECTION 3. 312 IAC 18-3-17 IS ADDED TO READ AS FOLLOWS:

312 IAC 18-3-17 Technical committees

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 17. The division director may convene and use technical committees in evaluating the release into the environment of a beneficial organism or a pest or pathogen. The committee may include any of the following:

(1) The division director or the division director's designee.

(2) Any technical expert.

(3) A representative of a university, college, or private research institution with expertise in the organism considered.

(4) A representative of an affected industry.

(5) A representative of an affected or participating federal or state agency.

(6) Any other technical representative.

(Natural Resources Commission; 312 IAC 18-3-17)

SECTION 4. 312 IAC 18-5-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 18-5-2 Florist or greenhouse stock; voluntary certification

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 2. (a) The owner or operator of a florist or greenhouse may seek a certification as required by **federal law or by another state** for the shipment into ~~that another~~ state of **nursery stock plants**, corms, tubers, field vegetables, or flower seeds. This certificate is not required by IC 14-24.

(b) **The fee for this certification is fifty dollars (\$50) plus three dollars (\$3) per acre or any portion of an acre of inspected plants.** *(Natural Resources Commission; 312 IAC 18-5-2; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 24, 2003 at 10:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W295 (Oil and Gas Conference Room), Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed rules concerning the release of beneficial organisms, pests, or pathogens, the listing and regulating of kudzu as a pest or pathogen, the authority of the division director (also known as the state entomologist) to establish and dissolve technical committees that assist in evaluating issues pertaining to the release of beneficial organisms or pests or pathogens, and the establishment of a fee and acreage surcharge for the performance of voluntary certification of florist premises and greenhouses. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission