

# TITLE 357 INDIANA PESTICIDE REVIEW BOARD

## Final Rule

LSA Document #22-329(F)

### DIGEST

Adds 357 IAC 1-0.5 to establish definitions and to clarify the applicability of definitions in IC 15-16-4 and IC 15-16-5. Amends 357 IAC 1-5-2 to clarify commercial lawn posting responsibilities. Amends 357 IAC 1-5-3 to clarify commercial lawn customer notification responsibilities. Amends 357 IAC 1-12-2 to replace the term "harm" with the term "adverse effect" to become consistent with amendments to IC 15-16 in 2021. Amends 357 IAC 1-16-2 to clarify and limit the applicability of the rule for pesticide use in schools. Amends 357 IAC 1-17-1 to clarify which dicamba products are included as state restricted use pesticide products. Repeals 357 IAC 1-3, 357 IAC 1-5-1, 357 IAC 1-6, 357 IAC 1-8, 357 IAC 1-10, 357 IAC 1-11, 357 IAC 1-12-1, 357 IAC 1-13, 357 IAC 1-14, 357 IAC 1-15, 357 IAC 1-16-3, 357 IAC 1-16-4, 357 IAC 1-16-5, and 357 IAC 1-16-9. Effective 30 days after filing with the Publisher.

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

**357 IAC 1-0.5; 357 IAC 1-3; 357 IAC 1-5-1; 357 IAC 1-5-2; 357 IAC 1-5-3; 357 IAC 1-6; 357 IAC 1-8; 357 IAC 1-10; 357 IAC 1-11; 357 IAC 1-12-1; 357 IAC 1-12-2; 357 IAC 1-13; 357 IAC 1-14; 357 IAC 1-15; 357 IAC 1-16-2; 357 IAC 1-16-3; 357 IAC 1-16-4; 357 IAC 1-16-5; 357 IAC 1-16-9; 357 IAC 1-17-1**

SECTION 1. 357 IAC 1-0.5 IS ADDED TO READ AS FOLLOWS:

#### **Rule 0.5. Definitions**

##### **357 IAC 1-0.5-1 Applicability**

**Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-44; IC 15-16-5-45; IC 15-16-5-64**

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

**Sec. 1. In addition to the definitions in this rule, the definitions in IC 15-16-4 and IC 15-16-5 apply throughout this article. (Indiana Pesticide Review Board; 357 IAC 1-0.5-1)**

##### **357 IAC 1-0.5-2 "Drift" defined**

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

**Affected: IC 15-16-5**

**Sec. 2. "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 include the movement of a pesticide, at a time after the application has been made, by any of the following:**

- (1) Erosion.**
- (2) Volatility after deposition on the target site.**
- (3) Windblown soil particles.**

*(Indiana Pesticide Review Board; 357 IAC 1-0.5-2)*

##### **357 IAC 1-0.5-3 "Lawn" defined**

**Authority: IC 15-16-4-50; IC 15-16-5-44**

**Affected: IC 15-16-5**

**Sec. 3. "Lawn" means land area covered with turf kept closely mown or land area covered with turf, 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 an 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.**

*(Indiana Pesticide Review Board; 357 IAC 1-0.5-3)*

**357 IAC 1-0.5-4 "Nontarget site" defined**

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

**Affected: IC 15-16-5**

**Sec. 4. "Nontarget site" means a site that is not the intended target site of the pesticide application or treatment, as directed by the label of the pesticide product being used, including, but not limited to, the following:**

- (1) Personal property.**
- (2) Public property.**
- (3) A body of water.**
- (4) A person.**
- (5) An animal.**
- (6) Livestock.**
- (7) Managed pollinators.**
- (8) A commodity.**
- (9) A desirable plant.**

*(Indiana Pesticide Review Board; 357 IAC 1-0.5-4)*

**357 IAC 1-0.5-5 "Pesticide notification registry" defined**

**Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-44**

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

**Sec. 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.** *(Indiana Pesticide Review Board; 357 IAC 1-0.5-5)*

**357 IAC 1-0.5-6 "School" defined**

**Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-44; IC 15-16-5-64**

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

**Sec. 6. "School" has the meaning set forth in 355 IAC 4-0.5-8 [355 IAC 4-0.5-8 is proposed to be added at 20221019-IR-355220266PRA].** *(Indiana Pesticide Review Board; 357 IAC 1-0.5-6)*

**357 IAC 1-0.5-7 "Turf" defined**

**Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-44; IC 15-16-5-64**

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

**Sec. 7. "Turf" means the surface layer of soils created by growing plants (usually grasses) and their matted roots.** *(Indiana Pesticide Review Board; 357 IAC 1-0.5-7)*

SECTION 2. 357 IAC 1-5-2 IS AMENDED TO READ AS FOLLOWS:

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

**Authority: IC 15-16-4-50; IC 15-16-5-44**

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

**Sec. 2. (a) At the time of each commercial for hire pesticide application ~~identified by section 1(a) of this rule, the licensed applicator for hire, or~~ made intentionally to a lawn, an employee of the licensed pesticide application 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 (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; readopted filed Dec 2, 2013, 4:00 p.m.: 20140101-IR-357130491RFA; readopted filed Dec 1, 2017, 9:25 a.m.: 20171227-IR-357170359RFA*)

SECTION 3. 357 IAC 1-5-3 IS AMENDED TO READ AS FOLLOWS:

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

**Authority: IC 15-16-4-50; IC 15-16-5-44**

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

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

- (1) ~~Business Name and telephone number~~ **immediate contact information** of the licensed **pesticide application** business.
- (2) ~~Signature Name~~ and license or registration number of the ~~licensed applicator for hire or registered technician individual~~ 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, **including, but not limited to, instructions to the customer to keep humans and pets off the treated areas until the application has dried.**
- (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~~ **customer notification** required in subsection (a) shall be provided to the customer **or the customer's agent** by: ~~any of the following means:~~

- (1) ~~Leave at the residence:~~ **printed copy;**
- (2) ~~Leave with the property manager or his or her authorized representative in the case of a multiunit residence.~~ **telephone text message; or**
- (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.~~ **electronic mail.**

(*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; readopted filed Dec 2, 2013, 4:00 p.m.: 20140101-IR-357130491RFA; readopted filed Dec 1, 2017, 9:25 a.m.: 20171227-IR-357170359RFA*)

SECTION 4. 357 IAC 1-12-2 IS AMENDED TO READ AS FOLLOWS:

**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~~ **an adverse effect** to a nontarget site. (*Indiana Pesticide Review Board; 357 IAC 1-12-2; filed Mar 17, 2006, 1:00 p.m.: 29 IR 2524; readopted filed Nov 29, 2012, 9:00 a.m.: 20121226-IR-357120582RFA; readopted filed Dec 1, 2017, 9:25 a.m.: 20171227-IR-357170359RFA*)

SECTION 5. 357 IAC 1-16-2 IS AMENDED TO READ AS FOLLOWS:

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

**Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-44**

**Affected: IC 15-16-5**

Sec. 2. This rule applies to ~~all~~ **the following:**

(1) ~~Pesticides, as defined in section 3(3) of this rule; and Pesticide products, except those described in 355 IAC 4-1-1.1 (c)(3) and 355 IAC 4-1-1.1(c)(4) [355 IAC 4-1-1.1(c)(3) and 355 IAC 4-1-1.1(c)(4) are proposed to be added at 20221019-IR-355220266PRA].~~

(2) ~~Schools, administered or maintained by a school corporation, as defined in section 3(7) of this rule. 355 IAC 4-0.5-8 [355 IAC 4-0.5-8 is proposed to be added at 20221019-IR355220266PRA].~~

(*Indiana Pesticide Review Board; 357 IAC 1-16-2; filed Sep 24, 2010, 1:44 p.m.: 20101020-IR-357100336FRA; readopted filed Dec 1, 2016, 2:55 p.m.: 20161228-IR-357160453RFA; readopted filed Dec 1, 2017, 9:25 a.m.: 20171227-IR-357170359RFA*)

SECTION 6. 357 IAC 1-17-1 IS AMENDED TO READ AS FOLLOWS:

**357 IAC 1-17-1 State restricted use pesticide products**

**Authority: IC 15-16-4-50**

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

Sec. 1. Pesticide products defined by the following categories or active ingredients are designated and classified as restricted use pesticides in the state of Indiana:

(1) Any pesticide classified by the U.S. Environmental Protection Agency as a restricted use pesticide.

(2) All formulations containing methomyl (Chemical Abstracts Service Reg. No. 16752-77-5).

(3) Any dicamba containing pesticide product that:

(A) contains a dicamba active ingredient concentration greater than or equal to six and one-half percent (6.5%); and

(B) is intended for agricultural production uses but

~~(i) does not also contain 2,4-D as an active ingredient; or~~

~~(ii) is not labeled solely for use on turf or other nonagricultural use sites.~~

(*Indiana Pesticide Review Board; 357 IAC 1-17-1; filed Sep 11, 2012, 2:41 p.m.: 20121010-IR-357120135FRA; filed Oct 5, 2017, 9:30 a.m.: 20171101-IR-357170180FRA; readopted filed Dec 1, 2017, 9:25 a.m.: 20171227-IR-357170359RFA*)

SECTION 7. THE FOLLOWING ARE REPEALED: 357 IAC 1-3; 357 IAC 1-5-1; 357 IAC 1-6; 357 IAC 1-8; 357 IAC 1-10; 357 IAC 1-11; 357 IAC 1-12-1; 357 IAC 1-13; 357 IAC 1-14; 357 IAC 1-15; 357 IAC 1-16-3; 357 IAC 1-16-4; 357 IAC 1-16-5; 357 IAC 1-16-9.

**Notice of Public Hearing**