



STATE OF INDIANA

Eric J. Holcomb
Governor

STATE BUDGET AGENCY
212 State House
Indianapolis, Indiana 46204-2796
317/232-5610

Zachary Q. Jackson
Director

October 5, 2022

Dave Scott
Pesticide Administrator
Office of Indiana State Chemist
175 S. University St.
West Lafayette, IN 47907

Dear Mr. Scott,

Pursuant to the provisions of Executive Order 2-89 and Budget Agency Financial Management circular 2010-4, the State Budget Agency has reviewed the proposed rule that amend 355 IAC 4 (LSA #22-266), which you submitted to the State Budget Agency on August 29, 2022. After reviewing the proposed rule, the recommendation of the State Budget Agency is that the rule changes be approved.

Furthermore, the statement and analysis (attached hereto) provided by the Office of Indiana State Chemist is hereby adopted as the Office of Management and Budget's own Fiscal Impact Statement for the purpose of satisfying the requirements under IC 4-22-2-28(d). Also, it is adopted as the Office of Management and Budget's Cost Benefit Analysis under IC 4-3-22-13(a).

If you have questions concerning this action, please contact your budget analyst or SBA at 232-5610.

Sincerely,

Zachary Q. Jackson
Director

ZQJ/jnm

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

Fiscal Impact Analysis on State and Local Government

LSA# 22-AA

It is estimated that the proposed rules collectively will have minimal fiscal impact on federal, state, or local funds. Except for the below listed revisions, most of the proposed rules reflect technical correction, clarification, simplification, reorganization, increased flexibility, reduction, or elimination of regulatory requirements. While there will be some positive fiscal impacts from these regulatory reductions, the negligible impacts on local, state, and federal entities regulated by these rule revisions makes calculating those potential cost savings difficult.

a. Estimated fiscal impact on state and local government:

Amending 355 IAC 4-1 will restrict use of RUPs to certified and licensed applicators only, no longer allowing supervision of use by noncertified applicators. There are relatively few local, state, or federal entities that use RUPs. Those government entities that do use pesticides as a function of their public service, use GUPs almost exclusively, and will not be impacted by this requirement. Therefore, no additional expenditures for compliance are anticipated.

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

There are currently only about 340 total government pesticide registered technicians in the state, all of them have already met the examination requirement, so no additional compliance expenditures will be required. The breakdown of technicians across all levels of government are local 225, state 78, and federal 7. The current cost for taking an exam to qualify as a registered technician is \$55.00. The cost to participate in the training option is \$103.00. That is a difference of $\$103 - \$55 = \$48.00$ for additional training costs. OISC training and exam records reflect that at least 50% of all registered technician candidates attend training voluntarily for exam preparation. In the unlikely event that all 340 government registered technicians left government service in the same year and at least half of them choose the training option rather than the exam option, the number of government technicians seeking training would be 113 local, 39 state, and 3 federal. Maximum total additional training impact for local government would be calculated as $113 \text{ technicians} \times \$48 = \$5,424$; for state $39 \text{ technicians} \times \$48 = \$1,872$;

and for federal $3 \times \$48 = \144.00 . Most government entities have fewer than five registered technicians on staff at any one time. So even a worst-case scenario in any one year would represent a $5 @ \$48 = \240 additional annual expenditure for a local, state, or federal government organization.

OISC is charged by IC 15-16-4 and IC 15-16-5 to administer those laws and to conduct an inspection program to ensure compliance with requirements under these chapters and the rules thereunder. Annual user fees from regulated entities are collected by OISC and are deposited in dedicated accounts that are managed by Purdue University. The dedicated funds are used to support all related administrative and compliance activities required of OISC. No appropriations from state or local general funds are used to support these activities. Additional funding for pesticide compliance and program implementation is received from U.S. EPA in the form of an annual pesticide cooperative agreement. If needed, this federal funding could be used for rule revision implementation, since these state rules are, in part, required by revisions to federal regulation, specifically 40 CFR 171. All persons impacted by any of the proposed rules are already regulated and being inspected through OISC's normal routine inspection scheme. It is not anticipated that the rule changes will result in any more or any fewer regulated industries or individuals requiring services from OISC. Outreach and education necessary to communicate the new and revised requirements to regulated persons will require some effort by OISC, but OISC is already actively and routinely involved in ongoing educational efforts with regulated associations, industries, and persons. Implementation and outreach will fit seamlessly into existing annual activities with no additional direct or indirect costs. No additional OISC personnel will be required for administration, implementation, or compliance assurance. Therefore, other than elevating rule revision outreach on the priority list of topics to be communicated in the first two to three years, no fiscal impact on OISC is expected.

In addition to OISC, the only other impacted government entity responsible for some part of implementation of these rules would be the Purdue University Cooperative Extension Service/Purdue Pesticide Programs (PPP). PPP is charged by IC 15-16-5-43 with organizing and conducting programs of instruction and training for pesticide applicators. PPP is currently provided funding through IC 15-16-4-62 and 69 and IC 15-16-5-66 to implement this training. Nothing in these proposed rules should increase or decrease those funding levels. PPP also charges user fees directly to trainees that avail themselves of these largely voluntary training opportunities. Nothing in these rules will impact PPP's ability to charge user fees. Nothing in these proposed rules will change how that training and education must be provided by CES. An amendment to 355 IAC 4-2 does provide a new option for individuals to attend PPP training rather than pass an examination to qualify as a commercial registered technician. Many current technician candidates already voluntarily attend PPP training as exam preparation prior to attempting the examination. If this new training option does increase the demand for training, there should be a commensurate decrease in training for purposes of exam preparation. Therefore, nothing in these proposed rules should appreciably increase or decrease the total number of registered technicians or the overall demand for these training services. If there is an increase in training demand, any increased cost can be offset by the

established user fees charged by PPP. In addition, CES has considerable flexibility in prioritizing their expenditure of fee revenues provided to them under IC 15-16-4-62 and 69 and IC 15-16-5-66. Nothing in these rules will impact that existing flexibility. Therefore, other than shifting training from an exam preparatory focus to a technician introduction and education focus, there should be no overall fiscal impact for PPP or CES.

b. Anticipated effective date of the rules:

It is anticipated that these rules will become effective within thirty days of publication of the final rule within the Register. Because all current and proposed certification and training requirements occur on a continuous annual calendar schedule, any revisions will be implemented at the start of the first full calendar year following the year of the effective date. All other regulatory revisions will be made effective, for compliance purposes, after the first full season of outreach, education, and compliance assistance inspections by OISC for the impacted persons and industries. Because OISC engages on a continuous basis with industry outreach there will be adequate lead time before the effective date of the rules to communicate the new requirements and adequate opportunities after the effective date to provide compliance assistance.

c. Sources and expenditures of revenues affected by the rules:

It is not anticipated that the number of regulated persons or fees generated by those persons will be increased or decreased by these rules. It is not anticipated that the number or level of civil penalties assessed and collected for failure to comply with new regulatory requirements will increase or decrease, since most regulated persons routinely comply voluntarily after becoming educated on revised regulatory requirements. It is not anticipated that the overall number of compliance inspections by OISC to implement these rules will increase or decrease. Therefore, it is not anticipated that revenues or expenditures will increase or decrease from current levels. The legal citations identifying applicable revenues and expenditures include IC 15-16-4-62 and 69 and IC 15-16-5-61 and 66.

d. Administrative impact to state and local governments:

It is anticipated that there will be no measurable administrative impact to state and local governments. No additional applicator certification or pesticide application record keeping requirements are being created for government employees or government agencies. Therefore, administrative impacts will be negligible.

e. Creation of an unfunded mandate on a state agency or political subdivision:

These rules will not create an unfunded mandate on state agencies or political subdivisions. All units of government that use pesticides do so by choice rather than by legal requirement. Nothing in these rules mandate pesticide uses by any person, including units of government. Therefore, any current or proposed compliance costs will not be

required of government entities. OISC is mandated to administer and ensure compliance with the regulatory requirements. However, all implantation costs are supported by user fees. If there were a slight increase in the number of persons requiring associated regulatory services, those increased services would be offset by a commensurate increase in the number of fees collected. Likewise, the Purdue University Cooperative Extension Service (CES) is charged with training and educating pesticide applicators. Nothing in these rules dictates how that training and education must be provided by CES. Training and education are also supported by user fees paid directly to CES. Therefore, any increase in required services would be offset by a commensurate increase in assessed user fees. In addition, CES has considerable flexibility in prioritizing their expenditure of fee revenues provided to them under IC 15-16-4-62 and 69 and IC 15-16-5-66. Nothing in these rules will impact that existing flexibility.

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

Cost Benefit Analysis

LSA# 22-AA

a. Statement of Need:

Based on current and projected credentialing data maintained by the Office of the Indiana State Chemist (OISC), it is estimated that the following numbers of businesses could be subject to some portions of these rules: 3,633 commercial pesticide application businesses, 10,720 commercial pesticide applicators, 3,872 commercial pesticide technicians, 599 Restricted Use Pesticide (RUP) dealers, and 11,090 permitted farmers.

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

Both OISC and the Indiana Pesticide Review Board (IPRB) have been soliciting and facilitating public input and involvement into the proposed rules from regulated entities for over two years through quarterly public IPRB meetings, through education and outreach at regulated industry and association meetings, and through direct personal communications. Draft rules were unanimously voted on for movement into formal rulemaking at the November 17, 2021, IPRB meeting. Additional discussion on the progress of the rule making process also occurred at the February 8, 2022, May 10, 2022, and August 8, 2022, IPRB meetings. Major impacted regulated industries each have voting members on the IPRB.

b. Evaluation of Costs and Benefits:

i. Estimate of primary and direct benefits of the rules:

These rules will standardize and clarify the definitions and terminology used throughout all current state pesticide laws and rules, wherever possible. These rules will improve public and environmental safety by elevating the competency standards for restricted use pesticide applicators. These rules will simplify and reduce supervision requirements for

noncertified applicators using pesticides, especially noncertified commercial applicators using general use pesticides. These rules will clarify and standardize recordkeeping across all categories of regulated pesticide applicators, making compliance more straight forward.

ii. Estimate of secondary or indirect benefits of the rules:

These rules should increase public confidence in the benefits and consistency of the overall pesticide regulatory system and level the regulatory playing field for all commercial and large-scale pesticide users.

iii. Estimate of compliance costs for regulated entities:

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

OISC data shows there are currently 11,900 private applicators and 10,720 commercial applicators in Indiana. Of the 10,720 commercial applicators, 2849 are certified in Category 1 (agricultural). Because the proposed distinctions in the certification requirements between RUP users and GUP users, it is projected that compliance costs could decrease for most GUP users. By contrast elevated certification standards for agricultural RUP users could increase if additional certified applicators are brought into the workforce. Fully certified commercial Category 1 applicators are required to pass two exams as opposed to the one exam required of noncertified registered technicians. However, in 2017 U.S. EPA issued a product registration for a popular and widely used soybean herbicide that requires all users of the product to be fully certified. No supervision by noncertified applicators was permitted. As a result of this registration decision, most agricultural pesticide users, both farmers and commercial applicators, found it necessary to become fully certified. Therefore, it is anticipated that only an additional 300 agricultural applicators may need to become certified.

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

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

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

iv. Estimate of administrative expenses imposed by the rules:

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

v. Estimate of any costs savings to regulated industries:

Simplification and streamlining of noncertified applicator supervision requirements in the proposed rule should result in a significant reduction of technical violations and civil penalties for failure to supervise noncertified applicators. During the period 2019 through 2021, over 200 supervision and credentialing violations were documented, resulting in civil penalty assessment of over \$50,000. Most of these were identified by OISC investigators as repetitive technical violations resulting from the challenges of complying with overly complex and technically detailed supervision regulations. Based on analysis

of OISC investigation data, it is estimated that over half of those violations, or at least \$25,000 of civil penalties, could be eliminated with the simplifications in the proposal. This could result in an estimated annual cost savings of $\$25,000/3 \text{ years} = \$8,333$.

c. Examination of Alternatives:

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

d. Total Estimated Impacts on All Regulated Persons:

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

Major rules	Government	Business	Totals
355 IAC 4-1 (applicator certification)	\$0	\$29,007	\$29,007
355 IAC 4-2 (noncertified applicator supervision)	\$0	\$0	\$0
355 IAC 4-4 (RUP record keeping)	\$0	\$0	\$0
Civil penalty reduction for supervision violations	\$0	-\$8,333	-\$8,333
Totals	\$0	\$20,674	\$20,674