

Scott, David E

From: Scott, David E
Sent: Thursday, February 16, 2017 2:14 PM
To: 'sbarules@gov.in.gov'
Cc: Waltz, Robert D
Subject: Request for an exception to the Regulatory Moratorium
Attachments: LSA# 17-XX.pdf

Consistent with FMC #2015-1 and EO #13-03, The State Chemist is hereby requesting an exception to the regulatory moratorium for the attached proposed revision to 355 IAC 5. The proposed revision is consistent with item 3(b) of the FMC in that it will reduce the regulatory impact of an existing rule. Documentation has been attached. Please let me know if you have any additional questions.

Dave Scott
Pesticide Administrator
Office of Indiana State Chemist
scottde@purdue.edu
765-494-1593



Office of
INDIANA STATE CHEMIST AND SEED COMMISSIONER

Protecting Indiana's Agriculture and Environment - Feed, Fertilizer, Pesticide and Seed

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Robert D. Waltz, Ph.D.
*State Chemist &
Seed Commissioner*

February 16, 2017

Brian E. Bailey
Indiana State Budget Agency
200 West Washington St.
Room 212
Indianapolis, IN 46204

Dear Mr. Bailey:

Enclosed for your review and approval are the following documents submitted for the draft rule amending 355 IAC 5-1 (LSA #17-XX).

- ❖ SBA Rule Promulgation Submission Form
- ❖ Draft Proposed Rule
- ❖ Fiscal Impact Analysis on State and Local Government
- ❖ Cost Benefit Analysis (IC 4-3-22-13, IC 4-22-2-28)
- ❖ Notice of Intent to Adopt a Rule (IC 4-22-2-23)
- ❖ Economic Impact Statement (IC 4-22-2.1-1)

We greatly appreciate your assistance in expediting our request. If you have any questions about this material please feel free to contact me at scottde@purdue.edu or (765) 494-1593.

Sincerely,

David E. Scott
Pesticide Administrator

Enclosures

State Budget Agency Rule Promulgation Submission Form

1. Notice of Intent File Date:

2. LSA Document Number:

3. Primary Point of Contact:

Name:

Agency:

Phone:

Email:

4. Statutory Authority for Rule Promulgation:

IC 15-16-4-52

5. Agency requests an expedited review of the proposed rule. See page 5 of FMC 2010-4 for more information regarding the expedited review process.

Yes No

Explain reason(s) an expedited review is necessary, including any relevant dates associated with external deadlines:

The Indiana Pesticide Review Board (IC 15-16-4-42) meets quarterly. This is a state chemist rule, but the state chemist coordinates all rulemaking activities with the Governor appointed Board to insure broad public input. Timely review would allow coordination & communication at the next quarterly Board meeting.

6. Submit to SBA/OMB via SBARules@sba.in.gov. Please include supporting materials listed below

Submission Checklist:

- SBA Rule Promulgation Submission Form (this form)
- Cover letter
- Proposed or Draft Rule
- Fiscal Impact Analysis on State and Local Government (FMC 2010-4)
- Cost Benefit Analysis (IC 4-3-22-13, IC 4-22-2-28, FMC 2010-4)
- The Notice of Intent (IC 4-22-2-23) or, if applicable, the relevant notice from IC 13-14
- Small Business Economic Impact Statement (IC 4-22-2.1-1)

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

Proposed Rule LSA Document #17-XX

DIGEST

Adds 355 IAC 5-1-1.25 to include the definition of “antimicrobial pesticide”. Amends 355 IAC 5-1-6 to revise the definition of “liquid pesticide” to exempt from the scope of the rule end users of antimicrobial pesticides that store products for use in containers designed to hold more than fifty-five (55) gallons of liquid. Effective 30 days after filing with the Publisher.

355 IAC 5-1

SECTION 1. 355 IAC 5-1-1 IS AMENDED TO READ AS FOLLOWS:

ARTICLE 5. STORAGE AND SECONDARY CONTAINMENT OF PESTICIDES

SECTION 1. 355 IAC 5-1 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-1-1.25 “Antimicrobial pesticide” defined

Authority: IC 15-16-4-52

Affected: IC 15-16-4-58; IC 15-16-4-67

Sec. 1-1.25. (a) As used in this article, “antimicrobial pesticide” means a pesticide that:

(1)(A) is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbial organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) in the intended use is exempt from, or otherwise not subject to, a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (21U.S.C. 346a and 348) or a food additive regulation under section 409 of such Act.

(b) The term does not include:

(1) a wood preservative or antifouling paint product for which a claim of pesticidal activity other than or in addition to an activity described in paragraph (1) is made;

(2) an agricultural fungicide product; or

(3) an aquatic herbicide product.

355 IAC 5-1-6 “Liquid pesticide” defined

Authority: IC 15-16-4-52

Affected: IC 15-16-4-58; IC 15-16-4-67

Sec. 6. (a) As used in this article, "liquid pesticide" means pesticide in liquid form, including solutions, emulsions, suspensions, and slurries contained in an undivided quantity exceeding fifty-five (55) U.S. gallons.

(b) The term does not include an antimicrobial pesticide stored by a person that:

(1) does not distribute or re-distribute the antimicrobial pesticide; and

(2) is solely an end user of the antimicrobial pesticide. *(State Chemist of the State of Indiana; 355 IAC 5-1-6; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1401, eff sixty (60) days after filing with secretary of state)*

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

Fiscal Impact Analysis on State and Local Government

LSA Document #17-XX

The proposed rule will have **no fiscal impact** on state and local government. Some units of state and local government may currently be engaged in storing and using bulk quantities of antimicrobial pesticides for purposes of disinfecting public water supplies and waste water treatment. Therefore, some of those government entities may be storing in bulk quantities.

Under current regulatory requirements established by 355 IAC 5, these bulk pesticide users would be required to construct both impermeable secondary containment structures (dikes) around their storage containers and impermeable operational pads to load and unload these storage tanks. While many government entities, for their own financial, personal, or environmental safety reasons, have chosen to construct dikes for their bulk chemical storage, many of them have been unable to comply with the requirement for a permanent operational pad to contain all delivery vehicles and plumbing running to and from the storage tanks.

The decision to relieve regulatory burden from this category of pesticide user is being based on the following: 1) One of the principal purposes of requiring secondary containment of bulk pesticides is to protect Indiana's water resources from irreparable harm by releases into the environment. Most of these antimicrobial pesticides are intended for use in treating certain water resources for safe human use. Therefore, release of these water treatment chemicals into the environment should pose no long term or unanticipated human or environmental impacts. 2) The Office of Indiana State Chemist (OISC) is the state agency charged with the administration and implementation of 355 IAC 5. These rules have been in place since 1988. In the period since initial implementation, OISC has recorded no incidents of problematic releases of bulk antimicrobial pesticides from end user storage facilities. 3) The U.S. Environmental Protection Agency (EPA) implemented federal bulk pesticide storage and containment regulations in 2006. The EPA exempted antimicrobial pesticides from most of the federal storage and containment requirements. This rule revision would more closely align the state and federal regulations.

In summary, the revisions to this rule should not negatively impact the intended purposes of the rule of human and environmental protection from bulk pesticide storage and handling practices, but could relieve some government entities from some regulatory and fiscal burden.

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

Cost Benefit Analysis LSA Document #17-XX

This proposed rule would exempt certain low risk antimicrobial pesticide users from current regulatory requirements to build and maintain secondary containment structures for their bulk chemical storage. Therefore, there would be no costs to new or existing bulk antimicrobial pesticide users. Likewise, there would be no associated costs to the State Chemist for implementing this exemption. By way of justification and explanation, the fiscal impact analysis, which would apply to both government and private users of bulk antimicrobial pesticides that would be exempted, has been included in this analysis below.

The proposed rule will have **no fiscal impact** on state and local government. Some units of state and local government may currently be engaged in storing and using bulk quantities of antimicrobial pesticides for purposes of disinfecting public water supplies and waste water treatment. Therefore, some of those government entities may be storing in bulk quantities.

Under current regulatory requirements established by 355 IAC 5, these bulk pesticide users would be required to construct both impermeable secondary containment structures (dikes) around their storage containers and impermeable operational pads to load and unload these storage tanks. While many government entities, for their own financial, personal, or environmental safety reasons, have chosen to construct dikes for their bulk chemical storage, many of them have been unable to comply with the requirement for a permanent operational pad to contain all delivery vehicles and plumbing running to and from the storage tanks.

The decision to relieve regulatory burden from this category of pesticide user is being based on the following: 1) One of the principal purposes of requiring secondary containment of bulk pesticides is to protect Indiana's water resources from irreparable harm by releases into the environment. Most of these antimicrobial pesticides are intended for use in treating certain water resources for safe human use. Therefore, release of these water treatment chemicals into the environment should pose no long term or unanticipated human or environmental impacts. 2) The Office of Indiana State Chemist (OISC) is the state agency charged with the administration and implementation of 355 IAC 5. These rules have been in place since 1988. In the period since initial implementation, OISC has recorded no incidents of problematic releases of bulk antimicrobial pesticides from end user storage facilities. 3) The U.S. Environmental Protection Agency (EPA) implemented federal bulk pesticide storage and containment regulations in 2006. The EPA exempted antimicrobial pesticides from most of the federal storage and containment requirements. This rule revision would more closely align the state and federal regulations.

In summary, the revisions to this rule should not negatively impact the intended purposes of the rule of human and environmental protection from bulk pesticide storage and handling practices, but could relieve some government entities from some regulatory and fiscal burden.

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

Notice of Intent to Adopt a Rule LSA Document # 17-XX

Under IC 4-22-2-23, the State Chemist of the State of Indiana intends to adopt a rule concerning the following:

OVERVIEW: Amends 355 IAC 5-1 to add the definition of “antimicrobial pesticide”. Amends 355 IAC 5-1-6 to revise the definition of “liquid pesticide” to exempt from the scope of the rule end users of antimicrobial pesticides that store products for use in containers designed to hold more than fifty-five (55) gallons of liquid. Effective 30 days after filing with the Publisher.

Effective 30 days after filing with the Publisher. Questions may be directed to the Small Business Regulatory Coordinator for this rule. Statutory authority: IC 15-16-4-50.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

David Scott
Pesticide Administrator
Office of Indiana State Chemist
175 South University Street
West Lafayette, IN 47907-2063
(765) 494-1593
scottde@purdue.edu

For purposes of IC 4-22-2-28.1, the Small Business Ombudsman designated by IC 4-4-35-8 is:

Robert Warner
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 600
Indianapolis, IN 46204
(317) 232-5679
rwarner@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman’s duties stated in IC 4-4-35-8, specifically IC 4-4-35-8(9), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

Economic Impact Statement

LSA Document #17-XX

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

The proposed rule will not impose requirements or costs on small businesses under IC 4-22-2.1-5. This rule will reduce the scope of the regulatory requirements for storage and containment of bulk antimicrobial pesticides by adding a definition of antimicrobial pesticide to the rule and making it clear that the storage and containment requirements in the rules do not apply to end users of bulk antimicrobial pesticides.