



**Office of Indiana
State Chemist**



Plan for 2024 Legislative Recommendations

Indiana Pesticide Review Board Meeting

August 8, 2023

-Dave Scott-

Pesticide Administrator

IC 15-16-4-52.5 Restrictions on rules governing general use pesticide

Sec. 52.5. (a) Neither the board nor the state chemist may by rule or otherwise impose a requirement or limitation on the storage, distribution, use, application, or record keeping of a general use pesticide by:

- (1) a certified applicator;
- (2) a commercial applicator;
- (3) a licensed applicator for hire;
- (4) a licensed applicator not for hire;
- (5) a licensed pesticide business;
- (6) a licensed public applicator; or
- (7) a private applicator;

that is more stringent than the requirements and limitations applicable under federal law, federal regulations, or Indiana statutory law to the general use pesticide or a pesticide product containing a general use pesticide and no restricted use pesticide.

Restriction on rules governing general use pesticide *(cont.)*

Sec. 52.5(b) A rule or other requirement or limitation of the board in effect on June 30, 2023, that does not comply with this section is voided on July 1, 2023, to the extent it conflicts with this section.

What is targeted for voiding on July 1, 2023?

- Any rule, requirement, or limitation
- Adopted or implemented by the board (IPRB)...357 IAC 1
- In effect on June 30, 2023
- More stringent than requirements & limitations under:
 - Federal law (FIFRA)...Title 7 U.S.C. 136
 - Pesticide Code of Federal Regulation...40 CFR 165 & 40 CFR 170
 - Indiana statutory law...IC 15-16-4 & IC 15-16-5
- Affecting general use pesticide (GUP):
 - Storage
 - Distribution
 - Use
 - Application
 - Record keeping
- All the preceding parameters should be required for voiding process to be implemented

IC 15-16-4-72 Restrictions on rules governing pesticides; exceptions

Sec. 72. (a) Except as provided in IC 4-22-2.3-9, a rule adopted under this chapter that becomes effective **after June 30, 2023**, may not impose a restriction or requirement concerning pesticides more stringent than a restriction or requirement imposed under federal law unless the restriction or requirement is specifically authorized by Indiana law.

IC 15-16-4-72 Restrictions on rules governing pesticides; exceptions *(cont.)*

(b) Restrictions or requirements specifically authorized to be more stringent than a restriction or requirement imposed under federal law include the following:

- (1) Commercial termite control applicators (category 7b) must complete a practical hands-on training program to become certified.
- (2) Commercial applicators must have access to the pesticide label when applying pesticides.
- (3) Commercial for hire general use pesticide application businesses are required to show proof of having minimum liability insurance coverage.
- (4) Commercial for hire general use pesticide applicators (category 7b) must disclose to customers any omissions from label required termite control applications.

IC 15-16-4-72 ...exceptions (*cont.*)

...(5) Commercial applicators and school employees applying general use pesticides at schools:

- (A) may not apply when students are present;
- (B) must notify students, parents, and staff of planned and conducted applications;
- (C) must store pesticides safely;
- (D) must keep students and staff out of treated areas until spray has dried; and
- (E) may only apply rodenticide baits in areas inaccessible to students.

IC 15-16-4-72...exceptions *(cont.)*

...(6) Commercial and private applicators must store and contain general use pesticide portable refillable containers (minibulks) safely to prevent releases to the environment.

(7) Commercial and private applicators may not store, mix, or load general use pesticides within two hundred (200) feet of a community public drinking water well.

(8) Commercial and private applicators must store general use pesticide containers on impervious surfaces within a wellhead protection area zone.

(9) Commercial and private applicators must clean up general use pesticide spills within a wellhead protection area immediately upon discovery.

(10) Commercial and private applicators may not open burn general use pesticide containers.

Current Federal Regulation of GUPs

1. FIFRA Sec. 12(a)(2)(G)
 - User must follow label directions
 - Applies to all pesticides, both RUP & GUP
 - Applies to all users, both certified/licensed or not
2. 40 CFR 165
 - Pesticide Management & Disposal (storage & containment of bulk pesticides)
 - Applies to both RUPs & Tox Category I & II GUPs
3. 40 CFR 170
 - Worker Protection Standard (WPS)
 - Applies to use & handling of all ag products, both RUP & GUP
 - Applies to all users, both certified/licensed or not

Interpretation & Impact Analysis of Law Amendments by the Indiana Attorney General

- Board & State Chemist:
 - retained some rule making authority,
 - lost some rule making authority (particularly GUPs), and
 - are likely to have lost some other rule making authority.
- In summary, restrictions on Board & State Chemist authorities have not been done in a uniform or consistent manner.

Attorney General Analysis on Rules to “VOID”

- Some current rules & requirements:
 - remain enforceable,
 - remain likely enforceable,
 - remain partially enforceable, or
 - are clearly no longer enforceable.
- In summary, the amended law, as written, has introduced some ambiguity and confusion into the scope & detail of current regulatory requirements.

Rules Clearly Voided on July 1, 2023

- 355 IAC 4-4-1... Commercial applicator use records
 - For-hire
 - Golf course
 - School
 - *GUP application records still required, but record content no longer dictated.*
 - *RUP application records still required for all licensed applicators.*

- 355 IAC 4-5... Storage and Containment of Pesticides (*bulk & minibulk*)
 - GUPs
 - Stored by licensees
 - *Would continue to regulate RUPs stored by anyone*
 - *Would continue to regulate GUPs stored by distributors that are NOT licensees*

Rules Clearly Voided on July 1, 2023

- 357 IAC 1-5...Outdoor Lawn Pesticide Applications; Notification and Posting
 - *Would no longer be regulated*
- 357 IAC 1-12...Pesticide Drift (*general use pesticides only*)
 - *Would continue to regulate drift of RUPs*
 - *Would continue to regulate drift of GUPs by applicators that are NOT licensees*

Need for 2024 Law Amendment to:

- Add clarity & address regulatory ambiguity.
 - Which rules, parts of rules, or regulatory requirements should remain.
 - Which requirements in rule should be confirmed & clearly acknowledged by moving them into law?
- Further implement the legislative guidance & intent introduced in 2023 amendments.
 - No requirements more stringent than federal law or rules.
 - No requirement for GUPs that is not clearly called for in state law.

Plan for Developing 2024 Legislative Proposal

- Review impact analysis from Attorney General.
- Work with stakeholder groups to collect input & seek consensus positions on regulatory issues & requirements in question.
- Work with stakeholders & IPRB to draft recommendations for legislative proposal.
- Target proposal for October 1, 2023.
- Encourage stakeholders to support the legislative process.
- Seek legislative support & authors.



Questions or Comments?

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