

Memorandum

To: Dave Scott, Pesticide Administrator
From: Claire Dyer and Jacob Purcell
Re: Analysis of HEA 1623 – Implications for State Chemist and Indiana Pesticide Review Board
Date: June 19, 2023

Executive Summary

The newly passed HEA 1623 (“the Act”)—which goes into effect on July 1, 2023—has major implications for the State Chemist and the Indiana Pesticide Review Board (“Board”). This memorandum summarizes relevant changes imposed by the Act for the State Chemist and the Board, then evaluates the remaining powers of the Board and the State Chemist as described in the updated Indiana Code.

First, under the Act, the Board loses its power to designate a pesticide as “restricted use” through the regular rulemaking process. Instead, the Board must recommend a pesticide to the General Assembly for “restricted use” status. Additionally, the Act eliminates “pesticide for use by prescription only” status.

Second, the Act establishes an interim rulemaking procedure for the Board, which authorizes the Board to take three major interim rulemaking actions: (1) classifying a pesticide as “restricted use”; (2) imposing restriction requirements on the storage, distribution, use, application or record keeping for a “restricted use” pesticide more stringent than the restriction requirements under federal law; or (3) imposing a restriction on the storage, distribution, use, application, or record keeping for a restricted use pesticide more stringent than federal law, if the Board receives a written request from the registrant of the applicable pesticide. These powers expire upon “adjournment sine die of the regular session of the general assembly that begins after the rule is accepted for filing by the publisher of the Indiana Register.”

Third, the Act reduces the powers of the Pesticide Review Board and State Chemist to regulate pesticides under IC § 15-16-4 (“Chapter Four”) and IC § 15-16-5 (“Chapter Five”). The Pesticide Review Board loses some of its regulatory powers granted under Chapter Four, and due to IC § 15-16-4-52.5 (“Section 52.5”), the Board can no longer promulgate rules restricting the “storage, distribution, use,

application, or record keeping of a general use pesticide” by an applicator that are more stringent than the requirements and limitations under federal law or Indiana statutory law. Section 52.5 partially—but not completely—preempts the Board’s powers to regulate “general use pesticides” among applicators.

However, the State Chemist retains most, if not all, powers granted under Chapter Four.

The Act also adds IC § 15-16-5-72 (“Section 72”), which proscribes all rulemaking “concerning pesticides” except for rulemaking in ten narrow categories. The Board therefore loses nearly all of its rulemaking power under Chapter Five, and only retains rulemaking authority regarding the narrow, enumerated exceptions in Section 72. Conversely, the State Chemist retains all powers granted by Chapter Five not related to rulemaking, but similarly loses rulemaking authority, and can only promulgate rules within the enumerated exceptions in Section 72 under the Act.

Summary of Remaining Pesticide Review Board Powers	
Under Chapter Four (IC § 15-16-4)	Under Chapter Five (IC § 15-16-5)
<p>Pursuant to IC § 15-16-4-50, the Board is fully authorized to promulgate rules regulating:</p> <ul style="list-style-type: none"> • pesticide labelling and packaging – Section (b)(1) • pesticide handling requirements – Section (b)(1) • pesticide transportation requirements – Section (b)(1) • pesticide disposal requirements – Section (b)(1) • the structure of pesticide packaging materials – Section (b)(2) • pesticide purchase and sale – Section (b)(3) • permit, license, or registration requirements with the State Chemist to determine eligibility for purchasing pesticides – Section (b)(4) • the quantities and concentrations pesticides that may be purchased – Section (b)(4) <p>However, if the Board is (1) regulating a “general use pesticide” (2) among an applicator, under IC 15-16-4-52.5, the Board cannot promulgate rules regulating:</p> <ul style="list-style-type: none"> • pesticide use • pesticide storage • pesticide distribution • pesticide application • pesticide record keeping 	<p>Board can only promulgate rules governing “use and application” of pesticides in the following areas:</p> <ol style="list-style-type: none"> (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. (5) Commercial applicators and school employees applying general use pesticides at schools (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.

	<p>(9) Commercial and private applicators must clean up general use pesticide spills within a wellhead protection area immediately upon discovery.</p> <p>(10) Commercial and private applicators may not open burn general use pesticide containers.</p>
<p>Summary of State Chemist Powers</p>	
<p>Under Chapter Four (IC § 15-16-4)</p>	<p>Under Chapter Five (IC § 15-16-5)</p>
<p>State Chemist retains the following powers held previously under Chapter Four, including:</p> <ul style="list-style-type: none"> • Collecting and examining samples of pesticide products (Section 52) • Creating cooperative agreements with other agencies, the federal government, or agencies in other states (Section 54) • Entering public or private premises to obtain samples of pesticide products for testing and investigation (Section 55) • Requiring submission of complete formula of a pesticide product, registering that product, notifying an applicant if they fail to comply, giving an applicant an opportunity to make necessary corrections, and deny, suspend, or cancel the registration of a pesticide (Section 64) • Condemning any pesticide product (Section 74) <p>However, the following powers could be restricted if applied against a “general use pesticide” by an applicator, depending on the action:</p> <ul style="list-style-type: none"> • Applying for a temporary or permanent injunction (Section 71) • Issuing a stop sale, use or removal order to the custodian of a pesticide product (Section 73) 	<p>State Chemist retains the following powers under Chapter Five, including:</p> <ul style="list-style-type: none"> • Delegating any powers vested in the State Chemist in this chapter (Section 40) • Waiving all or part of the requirements in this chapter (Section 42) • Cooperating with, and entering into agreements with other state agencies, federal agencies, or other state or nongovernmental organizations to carry out requirements of chapter (Section 63) • Imposing civil penalties (Section 66) • Entering public or private property at reasonable times to inspect products and equipment, sample products, inspect storage areas, and investigate complaints (Section 69) <p>However, the following powers are likely preempted:</p> <ul style="list-style-type: none"> • Adopting rules to establish licensure categories and qualifications (Section 45) • Establishing and administering a program to register individuals as registered technicians (Section 56) • Adopting rules to require the reporting of significant pesticide accidents or incidents (Section 62) <p>Unless the State Chemist’s rulemaking fits within one of the enumerated exceptions in Section 72</p>

I. Designating a Pesticide as Restricted Use

The Act reclassifies the regulatory structure of pesticides in the Indiana Code. Formerly, under IC § 15-16-4-31, pesticides could be designated as “pesticide for use by prescription only,” and prescribed by a qualified pest management specialist approved by the State Chemist. The Act repeals this structure,

instead classifying pesticides into “restricted use” and “general use” pesticides only. Pursuant to newly added IC § 15-16-4-15.5, general use pesticides are classified as any pesticides not classified as restricted use.

The Act defines “restricted use” as a pesticide (1) classified as restricted use by the EPA; (2) designated as a restricted use pesticide in law enacted by general assembly; (3) that the GA then adopts after the Board’s recommendation (*see* IC § 15-16-4-50); (4) containing methomyl; and (5) containing some dicamba pesticide products. The Act amends IC § 15-16-4-50 to remove the Board’s ability to unilaterally designate a pesticide as “restricted use” via rule or regulation.

Instead, the Act’s new language allows the Board to recommend a pesticide for restricted use. The Board must recommend the addition, deletion, or reclassification of pesticides by submitting a report of recommendations to the legislative council under IC § 5-14-6. To make this determination, the Board must find that the characteristics of the pesticide require rules restricting sale, distribution or use of the pesticide to prevent undue hazards. The Board then must publish their findings in the Indiana Registrar. Then, the General Assembly may elect to promulgate this restriction into law. Additionally, the Board can no longer adopt by reference the restricted use classification of a pesticide maintained by United States Environmental Protection Agency.

II. Interim Rulemaking Under the HEA 1623

Given the changes in powers for the Board, there are interim provisions to allow for regulatory continuity. The Act adds IC § 4-22-2.3-9, which authorizes the Board to take three interim rulemaking actions. First, under IC § 4-22-2.3-9(a), the Board may classify a pesticide as a restricted use pesticide (if the Board finds that “adoption is necessary to prevent an undue and immediate hazard to persons, animals, wildlife, lands, or water, other than the pests that the pesticide is intended to prevent, destroy, control, or mitigate.”) Next, under IC § 4-22-3.9-9(b), the Board may impose restriction requirements on the storage, distribution, use, application or record keeping for a restricted use pesticide more stringent

than the restriction requirements under federal law (if the board finds that “weather, soil, or other conditions in Indiana impact the effectiveness or safety of the storage, distribution, use, application or record keeping of the restricted use pesticide.”) Finally, under IC § 4-22-2.3-10(a), the Board may impose a restriction on the “storage, distribution, use, application, or record keeping” for a “restricted use pesticide” that is more stringent than federal law, if the board receives a written request from the registrant of the applicable pesticide.

Crucially, unless authorized under the newly-added Section 72 (IC § 15-16-5-72), an interim rule promulgated under this section expires on adjournment *sin die* (without setting a day to reconvene – usually at the end of the legislative session) of the regular session of the general assembly following the publishing of the Interim Rules in the Indiana Register.

III. Rulemaking After June 30, 2023

Prior to the adoption of the Act, the Board had broad rulemaking authority to regulate the use, distribution, storage, sale and transportation of pesticides under Indiana law, with rulemaking authority derived from two separate chapters of the Indiana Code: IC § 15-16-4 and IC § 15-16-5. The Act limits the authority of the Board, but still allows for the Board to promulgate regulations in some situations.

a. Board Rulemaking Powers Under Chapter Four (IC § 15-16-4)

The Act provides that the board retains most of its rulemaking powers under IC § 15-16-4-50, authorizing the Board to promulgate rules to regulate the storage, transportation, display, distribution, disposal, and production of pesticides. However, the Act adds Section 52.5 (IC § 15-16-4-52.5), which prohibits the Board and State Chemist from adopting any rule:

impos[ing] 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.

Section 52.5 leaves the Board’s powers unaffected in some situations. First, the Board can adopt any rules pursuant to IC § 15-16-4-50(b) when regulating “restricted use pesticides.” Second, the Board can adopt any rules pursuant to IC § 15-16-4-50(b) powers when regulating someone other than an applicator,¹ such as a manufacturer or seller of pesticides.

However, it is not entirely clear what power the Board retains under IC § 15-16-4-50(b) when it promulgates rules regulating “general use pesticides” among applicators. The language in Section 52.5 prohibits requirements and limitations on the “storage, distribution, use, application, and record keeping” of “general use pesticides.” However, this language does not preempt the entire field of delegated power under IC § 15-16-4-50(b). The following color-coded chart demonstrates this, with red being preempted language, and green being language that is not preempted:

	Chapter Four	Chapter Five
Rulemaking Powers Granted to Board	<p>IC § 15-16-4-50:</p> <p>(a) Board may recommend pesticides be classified as restricted use.</p> <p>(b) Board may adopt rules:</p> <p>(1) providing for <u>handling, transportation, storage, display, distribution, disposal, and production</u> of pesticide products and containers</p> <p>(2) restricting or prohibiting the use of certain <u>types of containers or packages</u> for specific pesticides. These restrictions may apply to the type of <u>construction, strength</u> or <u>size</u> to alleviate danger of spillage, breakage, or misuse.</p> <p>(3) to determine the <u>time</u> and <u>conditions</u> of the <u>sale, distribution, or use</u> of pesticide products.</p> <p>(4) Board may <u>require that pesticides be purchased, possessed, or used only under permit, certificate, license, or registration of the state chemist</u> or under certain conditions or in certain quantities or concentrations.</p>	<p>IC § 15-16-5-44:</p> <p>(a) Board may adopt rules prescribing policies and procedures relating to:</p> <p>(1) <u>use</u> and <u>application</u> of pesticides; and</p> <p>(2) <u>diagnostic inspections and reports for wood destroying pests.</u></p> <p>(b) For the purpose of uniformity and in order to enter into both cooperative and reciprocal agreements, the board may adopt restricted use pesticide classifications as determined by the United States Environmental Protection Agency. The state chemist may adopt additional rules under IC 4-22-2 as required to accomplish the purpose of this chapter.</p>

¹ The term “applicator” throughout this memorandum refers generally and collectively to the six categories of applicators mentioned in IC § 15-16-4-52.5(a).

	(5) Board may require all people issued permits, certificates, licenses or registrations <u>maintain records</u> as to the use of pesticide products.	
Preemptive Provisions	Section 52.5 (IC § 15-16-4-52.5): Neither board nor state chemist may by rule or otherwise impose a requirement or limitation on <u>storage, distribution, use, application, or record keeping</u> of a <u>general use pesticide</u> by an applicator that is more stringent than requirements and limitations applicable under Indiana statutory law	Section 72 (IC § 15-16-5-72): Any rule <u>adopted under this chapter (by state chemist or Board)</u> may not impose a restriction or requirement <u>concerning pesticides</u> more stringent than a restriction or requirement imposed under federal law <u>unless</u> the restriction or requirement is specifically authorized by Indiana law

It is possible that the drafters intended for IC § 15-16-4-50 to apply exclusively to sellers and manufacturers, since a similar provision, IC § 15-16-5-44, governs “use and application,” which implicates regulating applicators only. However, this theory is undercut by the explicit mention of applicators in Section 52.5. Applying IC § 15-16-4-50 exclusively to regulations on sellers and manufacturers of pesticides would render Section 52.5 redundant. Therefore, it is still unclear to what degree the Board retains authority to regulate “general use pesticides” by applicators.

As the table above demonstrates, the Board’s powers in IC § 15-16-4-50(b)(2) and (4) are not explicitly preempted by any language in Section 52.5. Additionally, these powers chiefly apply to pesticide manufacturers and sellers, not applicators [subsection 50(b)(2) governs the physical construction of packaging, subsection 50(b)(4) pertains to sale restrictions on pesticides]. Therefore, the Board can likely still regulate:

- 50(b)(2): the structural integrity of the packaging materials of “general use pesticides”
- 50(b)(4): permit/license/registration requirements for selling or purchasing “general use pesticides”
- 50(b)(4): quantities and concentrations of “general use pesticides” that may be purchased

However, the Board’s powers to regulate “general use pesticides” among applicators in IC § 15-16-4-50(b)(1), (3), and (5) are likely preempted to varying degrees. First, subsection 50(b)(1) powers (providing for handling, transportation, storage, display, distribution, disposal, and production of pesticide

products and containers) are likely the least preempted among these three subsections, although there is still ambiguity. Only “storage” and “distribution” are preempted verbatim by Section 52.5 for “general use pesticides” by applicators. Therefore, under its subsection 50(b)(1) powers, the Board can still presumably regulate:

- Display and production of the containers of “general use pesticides” by applicators—this language likely gives the Board authority to regulate pesticide labelling and packaging in all circumstances
- Handling requirements for “general use pesticides” by applicators
- Transportation requirements for “general use pesticides” by applicators
- Disposal requirements for “general use pesticides” by applicators

Similarly, the Board’s subsection 50(b)(3) powers (determining the time and conditions of the sale, distribution, or use of pesticide products) are likely moderately preempted as it applies to “general use pesticides” among “licensed applicators.” The Board likely retains the power to regulate the “time and conditions of the sale” of “general use pesticides” among applicators. However, the terms “distribution” and “use” are preempted verbatim by Section 52.5. Therefore, probably only restrictions on sales of “general use pesticides” to applicators would be permissible under Section 52.5.

Finally, the Board’s subsection 50(b)(5) powers to require record-keeping are likely entirely preempted by Section 52.5 as applied to “general use pesticides” among applicators. Any regulation requiring applicators to maintain records on “general use pesticides” would run afoul with the broad prohibition on recordkeeping present in Section 52.5.

b. State Chemist Powers Under Chapter Four (IC § 15-16-4)

The State Chemist’s powers under Chapter Four are partially preempted by Section 52.5 under the Act. As previously noted, Section 52.5 provides that “[n]either board nor the state chemist may by rule or otherwise impose a requirement or limitation on storage, distribution, use, application, or record keeping of a general use pesticide by an applicator that is more stringent than requirements and limitations applicable under Indiana statutory law.”

Since Section 52.5 prohibits certain limitations and requirements “by rule or otherwise,” the State Chemist’s remaining powers under Chapter Four are subject to Section 52.5’s preemption, whether they are related to rulemaking or not. As previously noted, the preemptive effect of Section 52.5 is minimized by its narrow application to limitations or requirements on “general use pesticides” among applicators, leaving the State Chemist’s powers unaffected in other situations. Nevertheless, it’s necessary to inquire which of the State Chemist’s powers may be utilized to regulate all pesticides and applicators.

The State Chemist probably can exercise most of the powers listed in IC § 15-16-4-52 without restriction. This section provides power to (1) collect and examine samples of pesticide products; (2) determine whether a pesticide is “highly toxic to humans or wildlife”; (3) issue “permits to purchase, possess, or use ‘restricted use pesticides’”; and (4) determine “standards of coloring or discoloring for pesticide products.” Subsections (1), (2), and (4) have no applicability to applicators, and instead govern exclusively pesticides themselves. Additionally, subsection (3) only pertains to “restricted use pesticides.” Therefore, the State Chemist likely has full authority under the Act to utilize powers in IC § 15-16-4-52.

Next, the State Chemist can also likely create cooperative agreements with other agencies, the federal government, or agencies in other states, pursuant to IC § 15-16-4-54, without running afoul with the prohibitions of Section 52.5. The State Chemist’s power under IC § 15-16-4-55 to enter public or private premises to obtain pesticide samples, copy records, or “investigate conditions possibly resulting from the use or misuse of a pesticide product” are similarly unaffected. Entering the premises to investigate pesticide products does not impose restrictions on “storage, distribution, use, application, or record keeping,” so the State Chemist likely retains those powers in their entirety.

Finally, the State Chemist’s powers under IC § 15-16-4-64 are likely unaffected by Section 52.5 and its preemptive impact. Under IC § 15-16-4-62, the State Chemist may: (a) require the submission of the complete formula of a pesticide product and its accompanying records; (b) require registration of a pesticide product; (c) notify an applicant if they fail to comply with the Indiana Code or regulations on pesticides; (d) give an applicant an opportunity to make necessary corrections; and finally, (e) deny,

suspend, or cancel the registration of a pesticide if no compliance is received. On its face, these powers—with their references to chemical formulas and labeling—appear to principally govern the sale of pesticides, as opposed to “storage, distribution, use, application, or record keeping” by applicators. Therefore, the State Chemist may apply his powers under IC § 15-16-4-64 without restriction.

Similarly, the State Chemist’s powers under IC § 15-16-4-74 are likely unaffected by the preemptive impact of Section 52.5. Under IC § 15-16-4-74, the State Chemist can file a claim to condemn pesticide products if they are (1) adulterated or misbranded, (2) unregistered, (3) lacking adequate label information, (4) a white powder pesticide not colored as required, or (5) used in a manner inconsistent with representations made in connection with its registration. Like IC § 15-16-4-64, these powers apply to the sale of pesticides instead of the use of pesticides by applicators. Therefore, the State Chemist can apply powers under IC § 15-16-4-74 without restriction.

However, certain actions taken by the State Chemist could impact applicators’ use of “general use pesticides.” For example, is the State Chemist permitted to issue a removal order to the custodian of a pesticide product under IC § 15-16-4-73 if that removal order is issued to an applicator regarding a general use pesticide? The largest source of ambiguity stems from whether Section 52.5 preempts restrictions and limitations on *applicators as a field*, or any limitation on a *singular applicator* pertaining to “general use pesticide.” If a court were to interpret the limitations in Section 52.5 as applying to restrictions on an individual, several powers could be preempted as applied to “general use pesticides” by an applicator.

The State Chemist can seek injunctions “restraining any person from violating or continuing to violate or continuing to violate this chapter or any rule adopted under the chapter notwithstanding the existence of other remedies at law,” under IC § 15-16-4-71. If the State Chemist were to seek to restrain an applicator’s “storage, distribution, use, application, or record keeping” of a “general use pesticide,” this action could be preempted under Section 52.5. For a similar reason, the State Chemist could be

preempted from issuing a stop sale, use, or removal order to the custodian of a pesticide product under IC § 15-16-4-73. Therefore, these powers could be preempted under Section 52.5.

c. Board Powers Under Chapter Five (IC § 15-16-5)

The Board's powers are the most constricted under Chapter Five, by the Act's addition of Section 72. The Act eliminates the majority of the Board's rulemaking authority by preserving the authority to promulgate rules but adding a preemptive provision which preempts a majority of rulemaking power. The Act preserves the language in IC § 15-16-5-44 which authorizes the Board to adopt rules governing the "use and application" of pesticides. "Use" is defined under IC § 15-16-5-36 as:

an act of handling, releasing, or exposing individuals or the environment to a pesticide.

The term includes the following:

- (1) Application or supervision of an application of a pesticide, including mixing or loading the pesticide.
- (2) Storage of pesticides and pesticide containers by the intended applicator of the pesticides.
- (3) Transportation of pesticides and pesticide containers by the intended applicator of the pesticides.
- (4) Disposal of pesticides and pesticide containers by the intended applicator of the pesticides.

However, the Act adds Section 72 (IC § 15-16-5-72), which provides that the Board may not adopt rules "concerning pesticides" which are "more stringent than a restriction or requirement imposed under federal law" under their Chapter Five authority unless those restrictions fit within the exceptions authorized in the statute. These areas include:

- (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.
- (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.
- (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.

Because “concerning pesticides” is broad language, the exceptions enumerated in the statute likely encompass the only rulemaking authority the Board retains under Chapter Five. In sum, under the Act, the Board can no longer promulgate a rule concerning the “use or application” of pesticides under Chapter Five, unless the rule they intend to promulgate falls within one of the ten exempted categories.

d. State Chemist’s Powers Under Chapter Five (IC § 15-16-5)

Conversely, the State Chemist’s powers under Chapter Five are minimally affected by the preemptive provisions added by the Act. Crucially, Section 72 only applies to rulemaking, leaving all Chapter Five powers unrelated to rulemaking granted to the State Chemist intact. These include:

- Delegating any powers vested in the State Chemist in this chapter (section 40)
- Waiving all or part of the requirements in this chapter (section 42)
- Cooperating with, and entering into agreements with, other state agencies, federal agencies, or other state or nongovernmental organizations (section 63)
- Imposing civil penalties (section 66)
- Entering public or private property at reasonable times to inspect products and equipment, sample products, inspect storage areas, and investigate complaints (section 69)

However, it is unclear whether the State Chemist may still exercise powers related to rulemaking under Chapter Five. Since Section 72 applies to all rules “concerning pesticides” promulgated under Chapter Five—regardless of whether they are promulgated by the Board or State Chemist—the State Chemist likely cannot utilize rulemaking powers unless they fall within the narrowly enumerated exceptions listed in Section 72. The State Chemist’s rulemaking powers in this include:

- Adopting rules to establish licensure categories and qualifications (section 45)
- Establishing and administering a program to register individuals as technicians (section 56)
- Adopting rules to require the reporting of significant pesticide accidents or incidents (section 62)

Therefore, if the State Chemist wants to promulgate a rule under IC § 15-16-5-45, IC § 15-16-5-56, or IC § 15-16-5-62, the State Chemist must determine whether the desired rule fits within the exceptions enumerated in Section 72. The legality of any rules under these chapters will likely have to be evaluated on a case-by-case basis.

Conclusion

In sum, HEA 1623 considerably restricts the authority of both the Board and the State Chemist, albeit not in a uniform or consistent manner. Under the legal landscape imposed by HEA 1623, the Board and State Chemist retain varying degrees of authority to promulgate rules regulating pesticides. Further, the Act provides for a limited interim rulemaking procedure. Nevertheless, Section 52.5 explicitly voids conflicting regulations in the Indiana Administrative Code on July 1, 2023.