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**TITLE 355 STATE CHEMIST OF THE STATE
OF INDIANA**

Proposed Rule
LSA Document #06-63

DIGEST

Adds 355 IAC 4-0.5-1.5 to establish a definition of certification for pesticide applicators. Amends 355 IAC 4-1-2.1 to clarify the initial pesticide applicator certification requirements for commercial applicators. Amends 355 IAC 4-1-3 to clarify the scope and description of existing commercial applicator certification and licensing categories. Amends 355 IAC 4-1-4 to clarify the initial pesticide applicator certification requirements for private applicators. Effective 30 days after filing with the Secretary of State.

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

The proposed rule would establish a clear definition of certification for pesticide applicators, would help clarify the already existing applicator certification and license categories and procedures, and would eliminate some categories that are currently overlapping or duplicative. Therefore, this clarification and streamlining would not create new requirements or regulatory burdens for pesticide application businesses or other pesticide applicators.

355 IAC 4-0.5-1.5 **355 IAC 4-1-3**
355 IAC 4-1-1.1 **355 IAC 4-1-4**
355 IAC 4-1-2.1

SECTION 1. 355 IAC 4-0.5-1.5 IS ADDED TO READ AS FOLLOWS:

355 IAC 4-0.5-1.5 "Certification" defined

Authority: IC 15-3-3.6-4; IC 15-3-3.6-5

Affected: IC 15-3-3.6

Sec. 1.5. "Certification" means the status achieved by an individual who has demonstrated competency in a particular category by having met the certification requirements established for that category. Certification shall:

- (1) be assigned to the individual; and**
- (2) not be impacted by that individual's employment status.**

(State Chemist of the State of Indiana; 355 IAC 4-0.5-1.5)

SECTION 2. 355 IAC 4-1-1.1 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-1-1.1 Commercial applicators; licensing

Authority: IC 15-3-3.6-4; IC 15-3-3.6-5

Affected: IC 15-3-3.6-2

Sec. 1.1. ~~(a)~~ An individual who is employed as a licensed applicator by more than one ~~(1)~~ business or agency at the same time shall hold separate and distinct licenses for each employer and shall pay all applicable license fees:

~~(b)~~ **(a)** Completing the certification requirements as a commercial applicator (IC 15-3-3.6-2(7)) shall be a qualifying requirement for each of the licenses defined in 355 IAC 4-0.5.

(b) An individual who is employed as a licensed applicator at more than one (1) business location or agency at the same time shall:

- (1) hold separate and distinct licenses for each employer; and**
- (2) pay all applicable license fees.**

(State Chemist of the State of Indiana; 355 IAC 4-1-1.1; filed Nov 21, 1984, 3:33 p.m.: 8 IR 331; filed Nov 22, 1999, 3:39 p.m.: 23 IR 777; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269)

SECTION 3. 355 IAC 4-1-2.1 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-1-2.1 Commercial applicators; certification standards and procedures

Authority: IC 15-3-3.6-3; IC 15-3-3.6-4; IC 15-3-3.6-5

Affected: IC 15-3-3.6-8.1

Sec. 2.1. (a) Initial certification of commercial applicators shall be by written **closed book** examinations ~~as set forth in subsections (b) and (c):~~ **developed by the state chemist.** The minimum passing score on all examinations administered by the state chemist shall be seventy-five percent (75%) unless another minimum passing score has been established by the state chemist after consideration of the recommendations of the standards committee described in subsection ~~(d):~~ **(c).**

(b) **Except for applicators in category 12 and category 13,** each certified commercial applicator shall have passed a core examination and a category or combined core and category examination. ~~covering, at a minimum, subject matter and standards that have been identified to the state chemist by the standards committee described in subsection (d):~~ These subject matter and standards shall be published as part of the state chemist's plan for certification of applicators that is filed with the United States Environmental Protection Agency:

(c) **For each examination,** the state chemist shall **appoint a separate standards committee to** develop the certification examinations covering subject matter and standards. ~~identified to the state chemist by the standards committee:~~ Members of this committee shall be ~~appointed by the state chemist and shall~~ include, at a minimum, individuals representing the following:

(1) The state chemist.

(2) The Purdue University cooperative extension service.

(3) The largest pesticide user groups covered by that category. ~~of commercial applicators who will take the examination:~~

~~A separate standards committee shall be assembled for each examination; but an individual shall be allowed to serve on more than one (1) committee:~~

(d) **Initial** certification shall remain in force from the date of passing the examination through December 31 of the fourth year following the year during which the examination was passed unless revoked or suspended.

(e) No examination may be attempted more than three (3) times in any twelve (12) month period. The twelve (12) month period shall commence on the date ~~that~~ the first ~~exam~~ **examination** failure occurs.

(f) **The state chemist shall specify examination procedures that must be followed by any individual taking the exam shall not** consult notes, training materials, books, or any other prohibited materials during the examining period. ~~There shall be no unauthorized talking during the examining period: All an examination, materials shall be turned in to the examination proctor following the examining session:~~ Failure to comply with these ~~or other specified examination~~ procedures or any unauthorized assistance provided by or received by an individual during the examining period shall be cause for immediate termination of the examining process for all involved individuals and no additional opportunity to take any examinations shall be provided to the involved individuals for a period of five (5) years. *(State Chemist of the State of Indiana; 355 IAC 4-1-2.1; filed Nov 21, 1984, 3:33 p.m.: 8 IR 331; filed Nov 22, 1999, 3:39 p.m.: 23 IR 777; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269)*

SECTION 4. 355 IAC 4-1-3 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-1-3 Commercial applicators; categories of certification and licenses

Authority: IC 15-3-3.6-4; IC 15-3-3.6-5

Affected: IC 15-3-3.6

Sec. 3. Commercial applicators shall be certified and licensed in one (1) or more of the following categories:

(1) Category ~~1a:~~ **1. Agricultural pest control (plant): management.** This category includes individuals using or supervising the use of pesticides **on noncrop agricultural lands, such as pastures, or** in production of agricultural crops, including, but not limited to, **the following:**

(A) ~~feed~~ Grains.

- (B) corn;
- (C) (B) Soybeans and oil seed. and
- (D) (C) Forage. as well as on grasslands and noncrop agricultural lands;
- (E) **Vegetables.**
- (F) **Fruits.**
- (G) **Nuts.**

(2) Category 1b. Agricultural pest control (animal): This category includes individuals using or supervising the use of pesticides other than fumigants and pesticides for the control of wood destroying pests on livestock as defined in IC 15-2.1-2-27 and IC 15-2.1-2-15; and poultry or structures on or in which these animals are confined.

(3) Category 1c. Vegetable, fruit, and nut production pest control: This category includes individuals using or supervising the use of pesticides in production of:

- (A) vegetables;
- (B) fruits; and
- (C) nuts.

(4) (2) Category 2. Forest pest control: **management.** This category includes individuals using or supervising the use of pesticides in forests or forest nurseries.

(5) (3) Category 3a. Ornamental pest control: **management.** This category includes individuals using or supervising the use of pesticides in the maintenance and production of on ornamental plants and related areas such as the following:

- (A) **Driveways.**
- (B) **Sidewalks.**
- (C) **Residential parking areas.**
- (D) **Landscape beds.**
- (E) **Fence lines.**

(6) (4) Category 3b. Turf pest control: **management.** This category includes individuals using or supervising the use of pesticides in the maintenance and production of on turf and turf related areas such as the following:

- (A) Driveways. and
- (B) Sidewalks.
- (C) **Residential parking areas.**
- (D) **Landscape beds but not ornamental plantings within the beds.**
- (E) **Fence lines.**
- (F) **Riprap.**

This category does not include the use of pesticides applied for the purpose of managing pests to prevent infestation of a structure.

(7) (5) Category 4. Seed treatment. This category includes individuals using or supervising the use of pesticides on seed stocks for the purpose of controlling managing pest organisms that are anticipated to attack the plant or germinating seed.

(8) (6) Category 5. Aquatic pest control: **management.** This category includes individuals using or supervising the use of pesticides purposefully applied to any of the following:

- (A) Standing or running water. or
- (B) Wetlands.
- (C) **Related areas such as riprap.**

(9) (7) Category 6. Right-of-way pest control: **Industrial weed management.** This category includes individuals using or supervising the use of pesticides in the maintenance of public or private:

- (A) ~~public~~ roads;
- (B) utility rights-of-way;
- (C) pipelines;
- (D) railway rights-of-way;
- (E) parking lots;
- (F) ditch banks; or
- (G) **riprap;**
- (H) **fence lines;**
- (I) **restoration areas; and**
- (J) **substations;**

(G) and other similar areas.

(10) (8) Category 7a. Residential and Industrial, institutional, structural, and health related pest control: **management.** This category includes individuals using or supervising the use of pesticides other than fumigants and pesticides for the control

management of wood destroying pests other than termites in or around structures such as any of the following:

(A) Human dwellings.

(B) Offices.

(C) Retail establishments.

~~(D)~~ **(D)** Farm structures.

~~(E)~~ **(E)** Restaurants.

~~(F)~~ **(F)** Warehouses.

~~(G)~~ **(G)** Institutional establishments. ~~or~~

~~(H)~~ **(H)** Industrial plants; facilities.

(I) Food processing facilities.

~~except those engaged in the manufacture or processing of food products or ingredients.~~

~~(11)~~ **(9)** Category 7b. ~~Wood destroying pest Termite control.~~ This category includes individuals using or supervising the use of pesticides ~~other than fumigants; in or around structures for the prevention, suppression, or control~~ **management of termites and other wood destroying organisms. Certification in this category can also include** ~~qualifies~~ individuals ~~who to~~ inspect structures for the purpose of determining the presence or absence of evidence of termites or other wood destroying organisms.

~~(12)~~ Category 7c. Food processing industry pest control: This category includes individuals using or supervising the use of pesticides, ~~other than fumigants; in or around structures or portions thereof in which food products are manufactured or processed.~~

~~(13)~~ **(10)** Category 7d. Fumigation. ~~Certification in this category includes~~ **is required for all** individuals using or supervising the use of pesticides ~~that in the gaseous state are designed to kill or repel pests.~~

~~(14)~~ **(11)** Category 8. ~~Public health pest control: Community-wide mosquito management.~~ This category includes governmental employees or other individuals using or supervising the use of pesticides in public health programs such as: ~~(A) for community-wide mosquito abatement operations; as defined in 357 IAC 1-11-1(3).~~

~~(B) area vertebrate control programs; and~~

~~(C) similar area pest control activities;~~

~~having health or nuisance significance.~~

~~(15)~~ **(12)** Category 11. Aerial application. ~~Certification in this category includes those~~ **is required for all** individuals who apply pesticides by means of:

(A) fixed wing;

(B) rotary wing;

(C) ultralight aircraft; or

(D) lighter-than-air aircraft.

(13) Category 12. Wood destroying pest inspection. Certification in this category limits individuals to the inspection of structures for the purpose of determining evidence of the presence or absence of termites or other wood destroying organisms. It does not permit these individuals to use or supervise the use of pesticides for hire. The certification requirements for this category shall be determined by the state chemist.

~~(16)~~ ~~(14)~~ ~~Category 13. Limited certification.~~ This category includes individuals using or supervising the use of a very limited number of specialized pesticides in or on a very limited number of types of sites and situations not adequately covered by other categories listed in this section. ~~This category also can include individuals who only inspect for the purpose of determining the presence or absence of a particular pest or group of pests and the damage caused by those pests; but who neither use nor supervise the use of pesticides nor prescribe or recommend steps for prevention or control of such pests. The requirements for these limited certifications shall be determined by the state chemist. as the state chemist determines to be necessary.~~

(State Chemist of the State of Indiana; 355 IAC 4-1-3; Pesticide Use & Application Reg 1, Sec. 3; filed Aug 3, 1976, 4:10 p.m.: Rules and Regs. 1977, p. 440; filed Nov 21, 1984, 3:33 p.m.: 8 IR 332; filed Nov 22, 1999, 3:39 p.m.: 23 IR 778; errata filed Dec 9, 1999, 12:31 p.m.: 23 IR 814; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269)

SECTION 5. 355 IAC 4-1-4 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-1-4 Private applicators; certification requirements

Authority: IC 15-3-3.6-4; IC 15-3-3.6-5

Affected: IC 15-3-3.5-1; IC 15-3-3.6

Sec. 4. ~~(a)~~ **The requirements for** initial certification of private applicators (IC 15-3-3.5-1(6)) shall be ~~by written examination as set forth in subsection (b). Minimum passing score on all examinations administered by the state chemist shall be seventy-five percent (75%) unless another minimum passing score has been established by the state chemist after consideration of the recommendations of the standards committee described in subsection (c).~~

(b) Each certified private applicator shall have passed a private applicator examination or an appropriate commercial applicator examination covering, at a minimum, subject matter and standards that have been identified to the state chemist by the standards committee described in subsection (c) or section 2.1 (d) of this rule: **the same as those described for commercial applicators in section 2.1(d) 2.1 of this rule except that the state chemist shall determine which commercial applicator examination will be considered appropriate for the private applicator's proposed use of pesticides.**

(c) The state chemist shall develop the certification examinations covering subject matter and standards identified to the state chemist by the standards committee. Members of this committee shall be appointed by the state chemist and shall include, at a minimum, individuals representing the following:

(1) The state chemist:

(2) The Purdue University cooperative extension service:

(3) The largest pesticide user groups covered by that category of private applicators who will take the examination:

(d) Certification and the permit for private applicators shall remain valid from the date of passing the examination and paying the permit fee through December 31 of the fourth year following the year during which the examination was passed. (*State Chemist of the State of Indiana; 355 IAC 4-1-4; filed Nov 21, 1984, 3:33 p.m.: 8 IR 334; filed Nov 22, 1999, 3:39 p.m.: 23 IR 780; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 15, 2006 at 9:00 a.m., at the Office of the Indiana State Chemist, Purdue University, 175 South University Street, Room A151, West Lafayette, Indiana the State Chemist of the State of Indiana will hold a public hearing on a proposed rule to establish a definition for the term certification and to clarify the scope and description of existing pesticide applicator certification and license categories.

This proposed rule would not impose any requirements or costs under IC 4-22-2-24(d)(3).

Copies of these rules are now on file at the Office of the Indiana State Chemist, Purdue University, 175 South University Street, West Lafayette, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David Scott
Pesticide Administrator
State Chemist of the State of Indiana