

# TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

## Proposed Rule

LSA Document 09-812

### DIGEST

Adds 355 IAC 7-1 to establish the purpose and applicability of the article. Adds 355 IAC 7-2 to establish definitions of terms used in the article. Adds 355 IAC 7-3 to establish the credentialing requirements to distribute and use fertilizer materials. Adds 355 IAC 7-4 to establish the standards and procedures to become certified to distribute or use fertilizer materials.

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

#### **355 IAC 7**

SECTION 1. 355 IAC 7 IS ADDED TO READ AS FOLLOWS:

#### **Article 7. Fertilizer Material Distribution and Use Certification**

#### **Rule 1. General Provisions**

#### **355 IAC 7-1-1 Purpose**

**Authority:** IC 15-16-2-44

**Affected:** IC 15-16-2

Sec. 1. The purpose of this article is to ensure fertilizer materials are distributed and used effectively and safely as plant nutrients through training and education of distributors and applicators.

*(State Chemist of the State of Indiana; 355 IAC 7-1-1)*

#### **355 IAC 7-1-2 Applicability**

**Authority:** IC 15-16-2-44

**Affected:** IC 15-16-2

Sec. 2. (a) Except as provided in subsection (b) this article applies to any person that:

(1) uses fertilizer material for hire on the property of another person for purposes of producing an agricultural crop;  
(2) uses organic fertilizer from a confined feeding operation for purposes of producing an agricultural crop; or  
(3) distributes fertilizer material directly to any person described in this subsection.

- (b) This article does not apply to any person applying:
- (1) or distributing less than ten (10) cubic yards or four thousand (4,000) gallons of organic fertilizer obtained from a confined feeding operation in a calendar year or:
  - (2) biosolids to the land in Indiana that comply with 327 IAC 6.1.

*(State Chemist of the State of Indiana; 355 IAC 7-1-2)*

## **Rule 2. Definitions**

### **355 IAC 7-2-1 Applicability**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 1. The definitions in this rule apply throughout this article.

*(State Chemist of the State of Indiana; 355 IAC 7-2-1)*

### **355 IAC 7-2-2 "Agricultural crop" defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 2. "Agricultural crop" means any plant or part of a plant, produced primarily for sale, consumption, propagation, or other use by humans or animals. For the purposes of this article, the term does not include turf, trees or ornamental plantings.

*(State Chemist of the State of Indiana; 355 IAC 7-2-2)*

### **355 IAC 7-2-3 "Biosolid" defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec 3. (a) “Biosolid”, as defined in 327 IAC 6.1-2-7, means solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Examples of biosolid include, but are not limited to, the following:

- (1) Scum or solids removed in primary, secondary, or advanced wastewater treatment processes.
- (2) A material derived from biosolid.
- (3) An industrial waste product that contains domestic sewage or material under subdivision (1) or (2).

(b) Biosolid does not include ash generated during the firing of biosolid in a biosolid incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

*(State Chemist of the State of Indiana; 355 IAC 7-2-3)*

#### **355 IAC 7-2-4 “CCH” defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 4. “CCH” means a continuing certification hour for certified applicators. One (1) CCH is equivalent to one (1) hour of fertilizer material-related instruction or training that has been evaluated and approved by the state chemist.

*(State Chemist of the State of Indiana; 355 IAC 7-2-4)*

#### **355 IAC 7-2-5 "Certified applicator" defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 5. “Certified applicator” means any individual who has been issued a certificate or licensing credential under this article as evidence of the individual's qualifications to distribute or use fertilizer material. The term includes both commercial applicators and private applicators.

*(State Chemist of the State of Indiana; 355 IAC 7-2-5)*

#### **355 IAC 7-2-6 “Commercial applicator license” defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 6. “Commercial applicator license” means the licensing credential issued annually to a certified applicator who:

- (1) distributes;
- (2) uses;
- (3) supervises the distribution; or
- (4) supervises the use;

of fertilizer material for purposes of producing an agricultural crop on the property of another person for hire.

*(State Chemist of the State of Indiana; 355 IAC 7-2-6)*

**355 IAC 7-2-7 “Confined Feeding Operation” or “CFO” defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 7. “Confined Feeding Operation” or “CFO” means any:

(a) confined feeding of at least:

- (1) three hundred (300) cattle;
- (2) six hundred (600) swine or sheep;
- (3) thirty thousand (30,000) fowl; or
- (4) five hundred (500) horses

(b) animal feeding operation electing to be subject to IC 13-18-10;

(c) animal feeding operation that causes a violation of:

- (1) water pollution control laws;
- (2) any rules of the water pollution control board; or
- (3) IC 13-18-10; or

(d) animal feeding operation located outside of Indiana that would be a CFO if located in Indiana is considered a CFO

*(State Chemist of the State of Indiana; 355 IAC 7-2-7)*

**355 IAC 7-2-8 “Distribute” defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 8. “Distribute” means to:

- (1) offer for sale;
- (2) sell;

- (3) exchange;
  - (4) barter;
  - (5) supply;
  - (6) offer to supply; or
  - (7) transport to the application site;
- fertilizer material.

*(State Chemist of the State of Indiana; 355 IAC 7-2-8)*

### **355 IAC 7-2-9 “Fertilizer application business license” defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 9. “Fertilizer application business license” means the licensing credential issued annually to a person that is engaged in or professes to be engaged in distributing or using fertilizer material on the property of another person for hire.

*(State Chemist of the State of Indiana; 355 IAC 7-2-9)*

### **355 IAC 7-2-10 “Fertilizer material” defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 10. “Fertilizer material”, as defined in IC 15-16-2-11, means any substance containing nitrogen, phosphate, potash, or any recognized plant nutrient that is:

- (1) used for the plant nutrient content; and
- (2) has nutrient value in promoting plant growth.

The term includes unmanipulated animal and vegetable manures.

*(State Chemist of the State of Indiana; 355 IAC 7-2-10)*

### **355 IAC 7-2-11 “Inorganic fertilizer” defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 11. “Inorganic Fertilizer” means any fertilizer material manufactured by means of a man-made chemical reaction and does not contain any plant or animal

products, manures or renderings. For the purposes of this article, urea is considered to be an inorganic fertilizer, not an organic fertilizer.

*(State Chemist of the State of Indiana; 355 IAC 7-2-11)*

### **355 IAC 7-2-12 “Manure” defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 12. “Manure”, as defined in 327 IAC 16-2-22, means any liquid or solid animal excreta or any used bedding, litter, waste liquid, or contaminated run-off.

*(State Chemist of the State of Indiana; 355 IAC 7-2-12)*

### **355 IAC 7-2-13 “Organic Fertilizer” defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 13. “Organic Fertilizer” means any fertilizer material derived from either plant or animal products or manures containing one or more elements (other than carbon, hydrogen or oxygen) which are essential for plant growth. For the purpose of this article, the term does not include sludge.

*(State Chemist of the State of Indiana; 355 IAC 7-2-13)*

### **355 IAC 7-2-14 “PARP” defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 14. “PARP” means a private applicator recertification program of fertilizer material-related instruction or training that has been evaluated and approved by the state chemist.

*(State Chemist of the State of Indiana; 355 IAC 7-2-14)*

### **355 IAC 7-2-15 “Person” defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 15. "Person", as defined in IC 15-16-2-17, means:

- (1) an individual;
- (2) a partnership;
- (3) an association;
- (4) a firm;
- (5) a limited liability company; or
- (6) a corporation.

*(State Chemist of the State of Indiana; 355 IAC 7-2-15)*

### **355 IAC 7-2-16 "Private applicator certification" defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 16. "Private applicator certification" means the licensing credential issued to a certified applicator who uses or supervises the use of organic fertilizer for purposes of producing any agricultural crop on property owned, rented, or managed by the employer or the applicator.

*(State Chemist of the State of Indiana; 355 IAC 7-2-16)*

### **355 IAC 7-2-17 "State chemist" defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 17. "State chemist" means the Indiana state chemist or an appointed agent.

*(State Chemist of the State of Indiana; 355 IAC 7-2-17)*

### **355 IAC 7-2-18 "Trained employee" defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 18. "Trained employee" means any individual who is operating as an employee, agent, or contractor of a certified applicator and has received training required

under this article to distribute or use fertilizer material under the supervision of the certified applicator.

*(State Chemist of the State of Indiana; 355 IAC 7-2-18)*

### **355 IAC 7-2-19 “Use” defined**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 19. “Use”, as defined in IC 15-16-2-23, means the placement or usage of fertilizer materials on a targeted agricultural crop growing area and includes any references to application of fertilizer material.

*(State Chemist of the State of Indiana; 355 IAC 7-2-19)*

### **Rule 3. Credentialing Requirements for Distribution and Use of Fertilizer Material**

#### **355 IAC 7-3-1 For hire use and application of fertilizer material**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 1. All fertilizer material applied for hire on the property of another person for purposes of producing an agricultural crop must be applied by an individual that:

- (1) has a valid commercial applicator license; or
- (2) (A) has been trained as provided in section 4(b) of this rule; and  
(B) is operating under the supervision of a certified applicator as provided in section 4 of this rule.

*(State Chemist of the State of Indiana; 355 IAC 7-3-1)*

#### **355 IAC 7-3-2 Use and application of organic fertilizer**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 2. All organic fertilizer from a confined feeding operation applied for purposes of producing an agricultural crop must be applied by an individual that:

- (1) has a valid commercial applicator license;

- (2) has a valid private applicator certification; or
- (3) (A) has been trained as described in section 4(b) of this rule; and  
(B) is operating under the supervision of a certified applicator as described in section 4 of this rule.

*(State Chemist of the State of Indiana; 355 IAC 7-3-2)*

### **355 IAC 7-3-3 Distribution of fertilizer material**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec 3. All fertilizer material distributed to an end user or certified applicator for the purpose of producing an agricultural crop must be distributed by a person that:

- (1) has a valid fertilizer application business license;
- (2) has a valid commercial applicator license;
- (3) has a valid private applicator certification; or
- (4) (A) has been trained as provided in section 4(b) of this rule; and  
(B) is operating under the supervision of a certified applicator as provided in section 4 of this rule; and

*(State Chemist of the State of Indiana; 355 IAC 7-3-3)*

### **355 IAC 7-3-4 Supervision of noncertified individuals**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec.4. (a) Fertilizer materials covered by this article may be used or distributed by a noncertified trained employee who is working under the supervision of a certified applicator affiliated with the person performing the use or distribution.

- (b) The training required in this section shall be:
  - (1) identified and approved by the state chemist;
  - (2) repeated by the noncertified trained employee when that individual moves from one employer to another.

- (c) The supervising certified applicator shall be responsible for:
  - (1) insuring that the noncertified employee has received the training required in this section;
  - (2) keeping a record of the training required in this section;

- (3) providing the supervised noncertified trained employee with the means and instructions to:
  - (i) establish direct voice communication during the use or distribution of fertilizer material; and
  - (ii) immediately contact the Indiana Department of Environmental Management to report any fertilizer material spill that may threaten waters of the state;
- (4) making work assignments to the supervised noncertified trained employee;
- (5) knowing the status of the work assignments made to supervised trained employee.
- (d) A certified applicator shall supervise no more than ten (10) noncertified trained employees at any time.

*(State Chemist of the State of Indiana; 355 IAC 7-3-4)*

#### **Rule 4. Applicator and Distributor Certification Standards**

##### **355 IAC 7-4-1 Certification standards**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec.1. (a) An individual may become eligible to be a certified applicator by passing one or more of the category certification examinations described in subsection (b):

(b) The certification examinations shall be written closed book examinations developed by the state chemist. The minimum passing score for each examination 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).

(c) The state chemist shall appoint a standards committee to develop certification subject matter and standards for each certification examination. Members of this committee shall include, at a minimum, individuals representing the following:

- (1) The state chemist.
- (2) The Purdue University cooperative extension service.
- (3) The inorganic fertilizer industry.
- (4) The organic fertilizer industry.

(d) Certification eligibility shall remain in force from the date of completing the requirements in subsection (a) through December 31 of the fourth year following the year during which the requirements were met.

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

(f) The state chemist shall specify examination procedures that must be followed by any individual taking an examination. Failure to comply with these 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 7-4-1)*

### **355 IAC 7-4-2 Certification renewal standards**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec 2. (a) An individual may become eligible for certification renewal by completing one (1) of the following:

(1) The written examination procedures for initial certification established in section 1 of this rule.

(2) Accumulating at least three (3) fertilizer material CCHs before the expiration of the individual's certification period.

(3) Attending at least three (3) fertilizer material PARPs before the expiration of the individual's certification period.

(b) An individual can accumulate CCHs or PARPs only after the individual is certified.

(c) An individual can accumulate a maximum of two (2) fertilizer material CCHs or PARP credits in any one (1) year of the individual's five (5) year certification period.

(d) Credit for accumulating in excess of three (3) fertilizer material CCHs or PARP credits shall not be carried forward to the next certification period.

(e) Eligibility for renewed certification shall remain in force through December 31 of the fifth year following renewal unless revoked or suspended prior to that date.

*(State Chemist of the State of Indiana; 355 IAC 7-4-2)*

### **355 IAC 7-4-3 Criteria and procedures for approving fertilizer material CCHs and PARPs**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 3. (a) The state chemist shall be responsible for evaluating all instruction and training opportunities submitted for consideration of approval for CCHs or PARP credits.

(b) Training and instruction may be evaluated and approved for both CCHs and PARP credits.

(c) All requests for CCH or PARP approval must be submitted to the state chemist as follows:

- (1) At least twenty-one (21) days prior to the date that the instruction or training event will occur.
- (2) In a format determined by the state chemist.
- (3) By an individual directly responsible for the instruction or training event.

(d) Criteria to be followed by the state chemist for the evaluation of instruction and training events for CCH and PARP approval shall include, but may not be limited to, the following:

- (1) Must be open to all certified applicators.
- (2) Except as provided in subdivision (3), any costs or participation fees to cover expenses incurred by the training providers must be the same for all certified applicators.
- (3) Professional educational organizations claiming Internal Revenue Service 501(c) status and governmental organizations may charge variable participation fees.
- (4) Must not be in-house training.
- (5) The venue must be large enough to accommodate a reasonable number of certified applicators from outside of the immediate organization facilitating the instruction or training.
- (6) Must be open without fee or charge to the state chemist for monitoring.
- (7) Must have an effective mechanism for the person responsible for the training to verify participation of the certified applicator from the start to the conclusion of the CCH or PARP event.
- (8) Subject matter and content must include, but may not be limited to, at least one (1) of the following:
  - (A) Fertilizer material storage.
  - (B) Fertilizer material chemistry.
  - (C) Fertilizer material equipment calibration and maintenance.
  - (D) Fertilizer material use.
  - (E) Fertilizer material transportation.

- (F) Fertilizer material application development and implementation
  - (G) Spill response procedures.
  - (H) Public and customer safety.
  - (I) Public and customer concerns.
  - (J) Applicator safety.
  - (K) Environmental safety.
  - (L) Employee training
  - (M) Associated state and federal laws or regulations affecting fertilizer materials or fertilizer material applicators.
- (9) Subject matter and content must not include any of the following:
- (A) Product or service sales or promotions.
  - (B) Employee hiring or retention.
  - (C) General business practices.

*(State Chemist of the State of Indiana; 355 IAC 7-4-3)*

### **355 IAC 7-4-4 Regulatory response to CCH and PARP violations**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 4. (a) A certified applicator that makes false or fraudulent reports or in any way misrepresents his or her participation in the certification renewal process shall be subject to the following:

- (1) Revocation of all accumulated CCHs or PARP credits to date.
- (2) Regulatory provisions in IC 15-16-2-49.5

(b) A person who makes false or fraudulent reports or in any way misrepresents information that is part of the certification renewal process shall be subject to the following:

- (1) Revocation of authority and privilege to participate in any future CCH or PARP events.
- (2) Regulatory provisions in IC 15-16-2-49.5

*(State Chemist of the State of Indiana; 355 IAC 7-4-4)*

### **355 IAC 7-4-5 Applications for certification**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 5. (a) A person applying for a fertilizer application business license must:

(1) Submit an application to the state chemist on a form provided by the state chemist; and

(2) Except for a person that has paid a pesticide business license fee under IC 15-16-5-48 for the current year, submit a fee of forty-five dollars (\$45) to the state chemist.

(b) An individual applying for a commercial applicator license must:

(1) Meet the certification standards described in Sec.1(a) of this rule;

(2) Submit an application to the state chemist on a form provided by the state chemist; and

(3) Except for a person that has paid a pesticide commercial applicator license fee under IC 15-16-5-52 for the current year, submit a fee of forty-five dollars (\$45) to the state chemist.

(c) An individual applying for a private applicator certification credential must:

(1) Meet the certification standards described in Sec.1(a) of this rule;

(2) Submit an application to the state chemist on a form provided by the state chemist; and

(3) Except for a person that has paid a pesticide private applicator permit fee under IC 15-16-5-54 for the current certification period, submit a fee of twenty dollars (\$20) to the state chemist.

(d) If the state chemist does not issue a license or certification to a person who applied for a license or certification described under this article, the state chemist shall inform the person in writing of the reason the license was not issued.

(e) A person who has been issued a license or certification under this article:

(1) shall notify the state chemist in writing within ten (10) days after a change in or termination of the person's employment or status as a licensed or certified applicator; and

(2) may apply to the state chemist to transfer or amend the person's license or certification by submitting an updated application form described in this section.

(f) A license issued under subsections (a) or (b) expires on January 1 of each year.

(g) A certification issued under subsection (c) expires on January 1 of the fifth year following the year of issuance.

*(State Chemist of the State of Indiana; 355 IAC 7-4-5)*

### **355 IAC 7-4-6 Late fees**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec.6. A person who:

(1) is required to pay a fee under this article to the state chemist; and

(2) does not pay the fee before the date the fee is due;

shall pay a penalty fee to the state chemist equal to one hundred percent (100%) of the required fee when the person pays the required fee.

*(State Chemist of the State of Indiana; 355 IAC 7-4-6)*

### **355 IAC 7-4-7 Reciprocity; waiver of requirements**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 7. The state chemist may waive all or part of the requirements provided for under 355 IAC 7-4-5 on a reciprocal basis with any other state agency or federal agency that has substantially the same standards.

*(State Chemist of the State of Indiana; 355 IAC 7-4-7)*

### **Rule 5. Effective Date**

#### **355 IAC 7-5-1 Compliance with Effective Date of Rule**

**Authority: IC 15-16-2-44**

**Affected: IC 15-16-2**

Sec. 1. (a) Full compliance by persons required to be certified or licensed under this rule shall be required no later than January 1 of the second year following adoption.

*(State Chemist of the State of Indiana; 355 IAC 7-5-1)*