

## **REGULATIONS UNDER ACT 410**

### **REGULATION NO. 1. Registration Fees; Expiration of Registration -**

Through December 31, 2007 the registration fee for each pesticide product registered for calendar year 2007 by any manufacturer, registrant or distributor shall be \$150. For products registered for calendar year 2008, the registration fee shall be \$200. For products registered for calendar year 2009 and each additional year thereafter the fee shall be \$250. Registrations shall expire December 31 of the year for which registered. This fee does not include the Abandoned Agricultural Pesticide Disposal Fee as required by Act 1130 of 2001.

### **REGULATION NO. 2. Pests Declared -**

Each of the following forms of plant and animal life and viruses is declared to be a pest when it exists under circumstances that make it deleterious to man or the environment:

- (1) Vertebrate animals (other than man), including but not limited to mammals, birds, fish, amphibians, and reptiles.
- (2) Invertebrate animals (other than internal parasites of living man or other living animals), including but not limited to insects and other arthropods, nematodes, and mollusks such as slugs and snails.
- (3) Plants growing where not wanted, including mosses, liverworts, and all plants of higher orders, and plant parts such as roots.
- (4) Microorganisms (other than those on or in living man or other living animals, and those on or in processed food, beverages, pharmaceuticals including cosmetics), including but not limited to algae, fungi, and bacteria.
- (5) Viruses (other than those on or in living man or other animals and those on or in food, beverages, and pharmaceuticals including cosmetics).

### **REGULATION NO. 3. Devices Specified; Provisions Applicable -**

A device shall be construed to be any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, viruses, or other microorganisms on or in living man or other living animals), but not including equipment used for the application of pesticides when sold separately therefrom. Devices shall be subject to the misbranding provisions of Section 2-16-410 (1), (2) and (3) of this Act.

### **REGULATION NO. 4. Coloration and Discoloration -**

The requirements for coloration and discoloration of pesticides shall be those as set forth in the regulations adopted by EPA pursuant to Section 25(c)(5) of FIFRA.

#### **REGULATION NO.5. Labeling-**

Labeling requirements for pesticides shall be those as set forth in Section 162.10 of the Regulations adopted under FIFRA.

#### **REGULATION NO. 6. Pesticides Highly Toxic to Man -**

The determination of pesticides highly toxic to man shall be those in accord with the regulations promulgated by EPA pursuant to Section 25(c)(2) of FIFRA.

#### **REGULATION NO 7. Notice of Requirement for Additional Research and for Restricting Products Beyond EPA Approval.**

**The Plant Board will notify applicants for registration in writing if any additional research, evidence or information will be required, and specifically what information will be necessary in order to receive state approval. The notice may also inform the applicant that once the requested information is reviewed, further information or research may be requested based upon pertinent science.**

**The Board considers the environment in Arkansas to be unique, therefore there will be a higher consideration given to research that is specific to Arkansas. Research conducted by scientists from universities within the state will be the primary source of expertise to allow the Board to determine if the data is scientifically sound and relevant to growing and cropping conditions in the state of Arkansas. While this expertise shall be used as guidance when considering a product for registration or restricted use, the Board may consider other research sources and is not bound by the advice or findings of any one individual or entity, and any final determination regarding registration rests within the discretion of the Board.**

**Prior to issuing regulations that restrict the use of a product beyond what has been approved by the Environmental Protection Agency, the State Plant Board shall provide notice to the product registrant, in writing, of what pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable source that the board considered in reaching their decision in accordance with A.C.A. 20-20-206.**

**In the event the Board finds any research presented in connection with the restricted use of a product to be insufficient, the Board shall also state in writing why such a finding was made and also provide written justification behind the board's decision to further restrict the use of the product. The Board shall provide this notice to the product registrant at the first available opportunity but no later than 45 days after the initial review by registration staff of the written application for registration.**

**Within 14 days of receiving a notification of restricted use, the product registrant shall notify the Board, in writing, if they wish to dispute the decision of the Board and state the specific reasons for the dispute and as necessary submit additional research findings and recommendations for the board's consideration. Plant Board staff will then decide whether the registrant has**

MARK UP

Agency 209.02

provided sufficient additional information, evidence or research to change the proposed restricted use. As previously stated in this rule, the Board will present its findings in writing.

- Further, for products that have received federal approval from the Environmental Protection Agency and are currently registered and being used in the state, the Plant Board must provide written notice to the product registrant before placing further restrictions on the product. The Plant Board must state in writing the reasoning and justification behind the board's decision to place additional restrictions on the use of the product and what actions the product registrant may take to prevent the additional use restrictions, if applicable.

## **RULE SUMMARY**

This rule will allow the Plant Board to request additional information/research before a pesticide is registered for use in the State of Arkansas. This rule will allow the introduction of new pesticide technologies while providing protection for farmers who choose not to use the technology.

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS**  
**WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

**DEPARTMENT/AGENCY** Arkansas State Plant Board  
**DIVISION** Pesticide Division  
**DIVISION DIRECTOR** Susie Nichols  
**CONTACT PERSON** Susie Nichols or Brandi Reynolds  
**ADDRESS** P.O. Box 1069, Little Rock, AR 72203  
**PHONE NO.** 501-225-1598 **FAX NO.** 501-312-7053 **E-MAIL** Susie.Nichols@aspb.ar.gov  
**NAME OF PRESENTER AT COMMITTEE MEETING** Susie Nichols  
**PRESENTER E-MAIL** Susie.Nichols@aspb.ar.gov

**INSTRUCTIONS**

- A. Please make copies of this form for future use.  
B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.  
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.  
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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1. What is the short title of this rule? Arkansas Pesticide Control Act Regulations (Regulation No.7)

2. What is the subject of the proposed rule? Pesticide Registration

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒  
If yes, please provide the federal rule, regulation, and/or statute citation. \_\_\_\_\_

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒  
If yes, what is the effective date of the emergency rule? \_\_\_\_\_

When does the emergency rule expire? \_\_\_\_\_

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐

No ☐

5. Is this a new rule? Yes ☐ No ☒

If yes, please provide a brief summary explaining the regulation. \_\_\_\_\_

Does this repeal an existing rule? Yes ☐ No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. \_\_\_\_\_

Is this an amendment to an existing rule?

Yes ☒

No ☐

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. ACA 20-20-206

7. What is the purpose of this proposed rule? Why is it necessary? This rule will allow the Plant Board to request additional information/research before a pesticide is registered for use in the state. This rule will help ensure the introduction of new pesticide technologies while still providing a level of protection for the farmers with susceptible crops who do not choose to use these technologies.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). <http://www.aad.arkansas.gov/laws-regulations>

9. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: December 12, 2107

Time: 10:00 a.m.

Arkansas State Plant Board, 1 Natural  
Resource Drive, Little Rock, AR

Place: 72205

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

December 3, 2017 Close of business

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

Upon filing with the Secreatry of State

12. Do you expect this rule to be controversial? Yes ☒ No ☐

If yes, please  
explain.

This rule could delay the registration of some pesticides in the State of  
Arkansas

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules?  
Please provide their position (for or against) if known.  
Pesticide Registrants, Farm Bureau, Farmers, Commercial Applicators, Pesticide Dealers, Agriculture  
Council of Arkansas. Positions Unknown

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## FINANCIAL IMPACT STATEMENT

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas State Plant Board  
**DIVISION** Pesticide Division  
**PERSON COMPLETING THIS STATEMENT** Susie Nichols  
**TELEPHONE NO.** 501-225-1598 **FAX NO.** 501-312-7053 **EMAIL:** susie.nichols@aspb.ar.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** Arkansas Pesticide Control Act Regulations (Regulation No.7)

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

\_\_\_\_\_

- (b) The reason for adoption of the more costly rule;

\_\_\_\_\_

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

\_\_\_\_\_

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

\_\_\_\_\_

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>

**Next Fiscal Year**

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>



Total                      0

Total                      0

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

**Next Fiscal Year**

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

\$ 0

**Next Fiscal Year**

\$ 0

Unknown. Any additoanl costs would depend on how much informaiton was lacking in the application.

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ 0

**Next Fiscal Year**

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.