



NORTHWEST CENTER FOR
ALTERNATIVES TO PESTICIDES



IDAHO
CONSERVATION
LEAGUE



Deputy Director Brian Oakey
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
Boise, ID 83712

Submitted via email to: Brian.Oakey@isda.idaho.gov

July 21, 2020

Re: IDAPA 02.03.03 – RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

Dear Mr. Oakey,

On behalf of the Northwest Center for Alternatives to Pesticides (NCAP), the Idaho Conservation League (ICL), Idaho Organization of Resource Councils (IORC) and Visión 2C Resource Council (V2C), we offer the following comments with regards to the Idaho State Department of Agriculture (ISDA) negotiated rulemaking on Pesticide and Chemigation Rules (IDAPA 02.03.03). We appreciate the opportunity to provide input on this important issue and look forward to continuing our engagement in this rulemaking process.

The Northwest Center for Alternatives to Pesticide works to protect community and environmental health and inspire the use of ecologically sound solutions to reduce the use of pesticides. NCAP has been a resource for Idahoans seeking non-chemical and or least toxic management of invasive weeds, crop pests, and other unwanted species for over 20 years and has over 5,000 Idaho supporters. In Idaho, Christina Stucker-Gassi represents NCAP and serves on the EPA Pesticide Program Dialogue Committee representing the public health perspective.

Since 1973, the Idaho Conservation League has been Idaho's leading voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 30,000 supporters, many of whom have a deep personal interest in protecting Idaho's water quality,

aquatic habitat and communities from the harmful effects of inappropriate pesticide use and application.

The Idaho Organization of Resource Councils empowers people to improve the well-being of their communities, sustain family farms and ranches, transform local food systems, promote clean energy, and advocate for responsible stewardship of Idaho's natural resources.

Visión 2C Resource Council strives for community driven social justice that is multi-generational, multicultural, and is representative of the people of Canyon County.

Again, we appreciate the opportunity to submit these comments. Please keep each of our organizations on the mailing list for any additional information, rule updates, and public comment opportunities.

Our detailed comments can be found following this letter. Please do not hesitate to contact lead-comment author Christina Stucker-Gassi at cstuckergassi@pesticide.org or at 208-888-5024 if you have any questions about these comments, or need any additional information.

Sincerely,



A. Christina Stucker-Gassi
Healthy Food and Farms Program Coordinator
Northwest Center for Alternatives to
Pesticides
SW Idaho Office



Jonathan Oppenheimer
External Relations Director
Idaho Conservation League

Elaine Kazakoff
Ag and Food Team Co-Chair
Idaho Organization of Resource Councils

Marielena Vega
Visión 2C Resource Council Member

Cc: Celia Gould, Director, ISDA; Chris Hladick, Regional Administrator, Environmental Protection Agency - Region 10

**NCAP, ICL, IORC, and V2C Comments on the Rules Governing Pesticide and Chemigation
Use and Application (IDAPA 02.03.03)**

Please accept the following comments from NCAP, ICL, IORC and V2C into the record in response to ISDA's proposed rule changes.

General Comments

At a fundamental level, our organizations are concerned about the potential reduction in oversight and accountability associated with the application and use of pesticides as a result of these rule changes. The impacts of any changes to the ISDA's pesticide rules should be considered in the context of public health, worker health, and environmental health. We encourage opportunities for meaningful stakeholder engagement of farm worker and water quality advocacy groups to be created by ISDA to help address these areas of concern better moving forward. Further, pursuant to state [Idaho Code 22-101\(a\)](#) the ISDA must apply "[t]he best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices..."

In particular, we are concerned with the potential impacts associated with the reduction in oversight associated with aerial application of pesticides. Recent examples of homes, property and individuals who were negatively impacted as a result of unintentional pesticide spray drift offer poignant examples of the need for clear direction and rigorous oversight. Notification of community members before aerial application is critical, as sensitive individuals may need time to develop plans to vacate or avoid spray operations.

While we recognize that the Federal Aviation Administration (FAA) has some responsibility pursuant to their rules at [36 CFR Part 137](#), we are concerned that the agency lacks the capacity or priority to ensure public health is protected. As a result, we strongly encourage you to restore clear direction and authority over notification and limitations associated with aerial application of pesticides.

We encourage you to provide information on the number of licensed and commercially-active aerial applicators, along with general information on the number of reported violations and penalties (warning letters, regulatory letters, etc.). We feel strongly that the infrequent regulatory penalties that have been assessed do not warrant the deletion of these provisions designed to protect public health and awareness.

Specific Comments and Recommendations

Page 5	Proposed Expanded Definition: <ul style="list-style-type: none"> - Draft language calling for an expanded definition of hazard areas that includes schools, hospitals, and occupied structures
Page 6	Proposed New Definitions: <ul style="list-style-type: none"> - Draft language for two new definitions: <ol style="list-style-type: none"> 1) Pesticide drift 2) Occupied structure
Page 7-8	Proposed Changes to Existing Language: <ul style="list-style-type: none"> - Suggested edits to distinguish between supervision of noncertified applicators and Commercial Apprentices (CA) - Draft language for Worker Protection Standards (WPS) notification requirements to be included on the list of Idaho core competency areas - Suggested edits to clarify what training qualifies a noncertified applicator to apply Restricted Use Pesticides (RUPs)
Page 9	Proposed New Section: <ul style="list-style-type: none"> - Draft language for a new section under restrictions expressly prohibiting pesticide spray drift
Page 10-12	Discussion of Sections Proposed for Removal: <ul style="list-style-type: none"> - Discussion of three sections proposed for removal in ISDA proposed rule and suggestions for retaining parts of the sections
Page 12	Discussion of Commercial Apprenticeship Category: <ul style="list-style-type: none"> - Discussion of the new proposed CA category with minor changes proposed and a question posed about Applicator Core Competency (CO) compliance

Proposed changes are highlighted in yellow along with explanations included from a public health perspective.

Proposed Expanded definition:

We request the Department expand the existing definition of hazard areas.

-Incorporate proposed edits in to the definition below-

- **Hazard Area.** Cities, towns, subdivisions, schools, hospitals, occupied structure, or densely populated areas.

Explanation: Schools, hospitals, and occupied buildings should be added to the existing definition of hazard areas. Doing so retains language proposed for deletion in 400.6(a) Low Flying Prohibitions (page 16 of the proposed rule). Inclusion of this language in the definition of hazard areas maintains protection of public safety and more clearly defines areas in which increased caution is warranted to protect vulnerable populations from pesticide spray drift. Doing this retains the intent of 400.6 Low Flying Prohibitions.

Children and schools should be specifically protected because of childrens' sensitivity to pesticides. Research has suggested that even low levels of pesticide exposure can affect young children's neurological and behavioral development, demonstrating links physical and mental development¹.

¹ Liu, J., & Schelar, E. (2012). Pesticide exposure and child neurodevelopment: summary and implications. *Workplace health & safety*, 60(5), 235–243. <https://doi.org/10.1177/216507991206000507>

Proposed New Definitions:

We request the Department add the following two definitions to the chapter.

-Incorporate proposed new definition below-

- **31. Pesticide Spray Drift.** Pesticide drift is the movement of pesticide dust or droplets through the air at the time of application or soon after, to any site other than the area intended.

Explanation: There is currently no definition of pesticide spray drift in the chapter and we advocate that there should be. This definition of spray drift was composed by participants of the National Coalition on Drift Minimization, which includes representatives from federal (including EPA and the US Department of Agriculture) and state agencies and tribes, pesticide and equipment manufacturers, university scientists, and others who have focused their attention on enhancing pesticide applicator education, application research and regulatory initiatives to foster reductions in spray drift. Inclusion of this definition allows for the definition of spray drift to be defined, and by inclusion, allows for drift restrictions to be expressly included with the goal of preventing pesticide spray drift incidents involving human exposure and other non target damages.

-Incorporate proposed new definition below-

- **32. Occupied Structure:** Occupied structure means a building with walls and a roof within which individuals live or customarily work.

Explanation: The definition of occupied structure already exists within IDAPA but is not defined in the chapter. Inclusion in the chapter will allow for clarity around what structures are defined as occupied under 400.6(b) Low Flying Prohibition (page 16 of the proposed rule). We also recommend reinstating previously deleted language from 400.6, detailed below. Drift on non-target occupied structures should be specifically restricted to protect the health of Idahoans living and working near pesticide application sites.

Proposed Changes to Existing Language:

- 100.02(b) (Page 4 in proposed rule) lists the areas of core competency all applicants in the state of Idaho must show competency of 70% or higher before obtaining a license. ISDA proposed adding “**x. Responsibilities of supervision of noncertified applicators**” to that list. We propose that language be added to specifically include the following:
 - 1) Responsibilities of supervision for the new CA category.
 - 2) WPS labeling requirements

-Incorporate new proposed language below-

100. LICENSING PROFESSIONAL APPLICATORS AND PESTICIDE DEALERS.

To obtain a professional applicator’s license an applicant must: ()

01. Submit an application prescribed by the Department with applicable fee (Section 250). ()
02. Demonstration of Demonstrate Competence.
 - a. Professional applicators may only recommend the application or make pesticide applications for any purpose for which they have demonstrated competence. Competence is demonstrated by passing Department examinations and becoming licensed in the Subsection 100.04 categories. (3-20-20)T
 - b. An applicant shall demonstrate core competency in the following areas:
(3-20-20)T()

(i. -viii.)

x. Responsibilities of supervision of noncertified applicators

xi. Responsibilities of supervision of applicators licensed under the Commercial Apprentice Category

xii. Responsibilities of noticing after spraying any pesticide with a worker protection statement under the direction of use portion of a label, including personal protective equipment (PPE), restricted entry intervals (REIs), oral and posted notification requirements.

Explanation for xi:

Since individuals who go through the process to become a licensed professional CA require supervision, all applicants who qualify to provide CA supervision should be required to test on these supervision requirements. CA applicators should also be required to test on their supervision requirements. The ISDA proposed language of supervision of noncertified applicators should not refer to those with the new CA category because the difference between the terms “licensed” and “certified” are unclear within the chapter. The suggested language provides clarity and assurance that supervision of both noncertified and CA applicators will be included in CO.

Explanation for xii.

Since the main group of unlicensed applicators the Department oversees are workers whose employers are required to adhere to Worker Protection Standards (WPS) in section 25 of FIFRA — under which the Department is mandated to participate in Worker Protection Standard Compliance Monitoring Program — applicators should be aware of their responsibilities to follow through on noticing, in line with the worker protection statement under the direction of labels which require it. Ensuring the worker protection statement is an element of testing is a simple way to promote Worker Protection Standard Compliance. In practice, this would mean that the CO would include a question about where to find re-entry noticing and PPE requirements on a pesticide label.

- Proposed changes to 400.01(a)(iii) (Page 14-15 in proposed rule) are edited to clarify what training is in line with EPA WPS requirements.

-Incorporate proposed edit below-

400. PESTICIDE RESTRICTIONS

01. ON-SITE SUPERVISION OF NONCERTIFIED APPLICATORS

RESTRICTIONS. An uncertified applicator may apply restricted use pesticides (RUPs) under on-site supervision of a professional applicator with the proper categories if: (3-20-20)T()

- a. One or more of the following conditions are met:
 - i. Professional applicator has completed the Apprentice Category (CA).
 - ii. Uncertified applicator completes Applicator Core Competency (CO).
 - iii. Uncertified applicator has completed EPA-approved Worker Protection Standard (WPS) Worker-Safety Training **certification for pesticide handler training or equivalent.**

Explanation: All requirements of the 2015 revised WPS are now in effect including the requirement that all pesticide safety training materials used for WPS Worker-Safety Training must be EPA-approved. EPA-approved training materials for national use are available on the [Pesticide Educational Resources Collaborative](#) website. There is no equivalency, training must be EPA-approved. This includes state sponsored training, which we encourage ISDA to increase. This simple edit brings ISDA proposed language into compliance with [§170.401\(c\)](#) and [§170.501\(c\)](#). EPA-approved Worker Protection WPS Worker-Safety Training is also required for workers and handlers regarding GUP. We advise more language be included in the chapter regarding WPS requirements.

Proposed New Section:

- The following proposed new language in yellow was not a part of ISDA's proposed rule. Adding this new section under restrictions is an effective way to reduce non-target application, promote compliance and foster reductions in spray drift. Inclusion of this new proposed section in subsequent renditions of the proposed rule is requested.

-Incorporate proposed new section below-

400.

05. DRIFT PROHIBITIONS: No pesticide applicator will apply pesticide products labeled for use outdoors that can be applied as sprays or dusts, including but not limited to applications with ground hydraulic, airblast, aerial, chemigation, handheld, or backpack equipment when conditions:

- a. May result in drift from the target area
- b. May result in drift onto any hazard area

Explanation: Pesticide spray drift is already not allowed in Idaho, though as the Department is aware it does still happen. NCAP regularly receives public information requests from Idahoans asking what to do after they have been impacted by non-target spraying, and ISDA records demonstrate that concerns around the issue persist.

Organic crops have been damaged as a result of pesticide drift, resulting in significant economic losses; gardens and landscaping have been damaged; and workers in agricultural fields have been sickened leading to hospitalization, lost wages, and long term health impacts. We commend the Department for administering a complaint process for such events and for staffing investigations, and when needed pursuing regulatory action against applicators. Adding this restriction would allow the Department to respond with more clarity when reports of non-target drift occur. We are not advocating for all incidents of spray drift to be handled the same as differences in severity are bound to occur, but if someone reports spray drift we do suggest keeping record of it in the Addition to fostering further reductions in spray drift with a focus on hazard areas.

Discussion of Sections Proposed for Removal:

Discussion of 400.5. WIND VELOCITY RESTRICTIONS -proposed for deletion- (page 16):

This is one of the sections suggested for deletion by the Idaho Agricultural Aviation Association (IAAA) during the 2020 legislative session. The House Agriculture Committee approved this deletion, but the Senate Agriculture Committee did not. We advise the Department to reinstate the 10 mph wind velocity restriction. One argument for the deletion of this section is that it is duplicative, but this section is not duplicative because in some instances federal law allows for application of select pesticides up to 15mph. We urge ISDA to reinstate clear language that prohibits spraying when wind exceeds 10 mph. If the Department moves ahead with deletion, a specific spray drift definition and prohibition should be added to this chapter. Proposed language for doing that is including on Page 7 and Page 10 of these comments. Our preference would be to retain the 10 pmh limit AND to specify drift definitions and prohibitions.

-Retain the following in full-

05. WIND VELOCITY RESTRICTIONS. No person shall apply any pesticide in sustained wind conditions exceeding ten (10) miles per hour or in wind conditions exceeding product label directions, except as provided in Subsection 400.05(c) (3-20-20)T

- a. Exceptions. Application of pesticides by injection into application site or by impregnated granules shall be made according to label directions. (3-20-20)T
- b. Approval for Use of Other Application Techniques. Other pesticide application techniques or methods may be approved by the Director or his agent on a case-by-case basis. (3-20-20)T
- c. Chemigation Wind Speed Precautions. Chemicals shall not be applied when wind speed favors drift beyond the area intended for treatment or when chemical distribution is adversely affected. (3-20-20)T

Discussion of 400.06. LOW-FLYING PROHIBITIONS -proposed for deletion (page 16):

This is another section suggested for deletion by the IAAA during the 2020 legislative session. It is reasonable for the Department to require Idaho's aerial applicators adhere to restrictions in this section.

We advise the Department to retain low-flying prohibitions language in the chapter and not defer to the Federal Aviation Administration (FAA). Joint regulation of low-flying planes applying pesticides is encouraged.

ISDA regulates pesticide use, not the FAA. Therefore, it is within the authority and is the prerogative of ISDA to set reasonable regulations on low flying activities related to pesticide application. If the Department moves forward with deleting this section ISDA should demonstrate how the FAA currently administers the program, whether any changes in the program are anticipated (in the absence of ISDA regulations), and how the FAA monitors compliance in a manner to protect public health.

One of the arguments for deletion of this section is that the suburbanization of Idaho's rural agricultural areas makes the notification requirements too onerous, but we feel it is reasonable and prudent to request that flight paths avoid cities, towns, schools, hospitals, densely populated, and occupied structures OR receive permission. The ISDA should detail penalties, warning letters and regulatory letters associated with violations of this provision, and should demonstrate why pre-existing regulations were onerous, especially when compared with the relative benefit to protecting public health and safety.

In addition to this section being retained, we suggest that the Department provide clarity on the definition of "effective means" in regards to noticing requirements mentioned in 400.06(b). Requiring public notice of toxic chemicals spraying overhead is defensible and represents appropriate regulation by the government. We suggest that the following be included in a specific definition of "effective means": A timeline for notifying, the option to post on ISDA website, and use of email notification. This can be done within or outside of the negotiated rulemaking and would bring the practice into the modern day.

-Retain the following in full-

06. LOW-FLYING PROHIBITIONS. Aircraft pilots during spray operations are prohibited from turning or low-flying: (3-20-20)T

- a. Over cities, towns, schools, hospitals and densely populated areas unless the pilot obtains an agreement in writing for pesticide applications from the authorized agent for the city, town, school, hospital, or densely populated area in question; or (3-20-20)T
- b. Directly over an occupied structure without prior notification by some effective means such as daily newspapers, radio, television, telephone, or door-to-door notice. (3-20-20)T
- c. Restriction. The low-flying restrictions listed in Subsection 400.06(a) shall only pertain to persons other than those persons whose property is to be treated. (3-20-20)T

Discussion of 400.06. APPLICATION NEAR HAZARD AREAS -proposed for deletion- (page 17):

This is another section suggested for deletion by the IAAA during the 2020 legislative session, but not approved by the Senate Agriculture Committee. We urge that this section be retained and strengthened. Proposed language is below. By retaining and strengthening this section ISDA would be fostering further reductions in spray drift and keeping restrictions in line with language under the 400.06(a.ii and b.ii) (page 16 of proposed rules).

-Retain the following and incorporate proposed edit-

06. APPLICATION NEAR HAZARD AREAS. An aircraft pilot will not apply any pesticide within ~~one-half (1/2) mile~~ **one (1) mile** of a hazard area unless there is air movement away from the hazard area. (3-20-20)T

Discussion of Proposed Commercial Apprenticeship Category (Page 7):

- For consistency of state proctored licensing tests individuals testing for the CA category should take the same CO exam all other categories are required to take, not a shortened version. As the CA category is currently written, there is no clarity that the CA should be treated differently from other categories. If the Department is thinking of individuals with a CA license as noncertified, that should be expressly stated somewhere. FIFRA training requirements included by reference on 003. (Page 1 of the proposed rule) should extend to this new category or else proper licensing requirements for noncertified applicators is not reached. **Are there plans underway to allow for individuals testing for the CA to take a shorted test other than the CO all other categories are required to pass?**

We commend the Department for creating this opportunity for on the job training, but urge for changes to be made requiring on-site supervision and limiting approved applications to GUP only. If off-site supervision and RUPs application is retained, then CO should be required.