



Idaho State Department of Agriculture
P.O. Box 7249 • Boise, Idaho 83707
P: 208.332.8500 • F: 208.334.2170
www.agri.idaho.gov

BRAD LITTLE, GOVERNOR
CELIA GOULD, DIRECTOR

Idaho's Low-Flying Rules Compared to Federal Aviation Administration Regulations

Idaho's low-flying restrictions previously read as follows:

310. LOW-FLYING PROHIBITIONS.

01. Low-Flying Prohibitions. Aircraft pilots during spray operations are prohibited from turning or low-flying:

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

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.

c. Restriction. The low-flying restrictions listed in Subsection 310.01 shall only pertain to persons other than those persons whose property is to be treated.

Once this section is removed, ISDA will no longer have regulatory authority over low-flying restrictions. Rather, that responsibility will fall solely upon the Federal Aviation Administration (FAA). These federal regulations have been in place concurrently with IDAPA 02.03.03's restrictions. These regulations are both consistent with and more stringent than the regulations previously contained in the Pesticides Rule.

Federal Low-Flying Regulations.

There are two sets of regulations applicable here: those that apply to general operation and flight rules for minimum safe altitudes and those regulations that apply only to agricultural aircraft operations. These regulations are addressed below.

A. General Federal Operation and Flight Rules

14 CFR § 91.119 Minimum safe altitudes: General.

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) Anywhere. An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

(b) Over congested areas. Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.

(c) Over other than congested areas. An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

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14 CFR § 91.119(a)-(c)(emphasis added.)

B. Agricultural Flight Prohibitions

Aerial applicators must also follow the Agricultural Flight Prohibitions of 14 CFR Section 137 for operations over “congested areas” (similar to Idaho’s previous “densely populated areas.”) Those restrictions are as follows:

14 CFR §137.49 Operations over other than congested areas.

Notwithstanding part 91 of this chapter, during the actual dispensing operation, including approaches, departures, and turnarounds reasonably necessary for the operation, an aircraft may be operated over other than congested areas below 500 feet above the surface and closer than 500 feet to persons, vessels, vehicles, and structures, if the operations are conducted without creating a hazard to persons or property on the surface.

14 CFR §137.51 Operation over congested areas: General.

(a) Notwithstanding part 91 of this chapter, an aircraft may be operated over a congested area at altitudes required for the proper accomplishment of the agricultural aircraft operation if the operation is conducted—

(1) With the maximum safety to persons and property on the surface, consistent with the operation; and

(2) In accordance with the requirements of paragraph (b) of this section.

(b) No person may operate an aircraft over a congested area except in accordance with the requirements of this paragraph.

(1) Prior written approval must be obtained from the appropriate official or governing body of the political subdivision over which the operations are conducted.

(2) Notice of the intended operation must be given to the public by some effective means, such as daily newspapers, radio, television, or door-to-door notice.

(3) A plan for each complete operation must be submitted to, and approved by appropriate personnel of the responsible Flight Standards office for the area where the operation is to be conducted. The plan must include consideration of obstructions to flight; the emergency landing capabilities of the aircraft to be used; and any necessary coordination with air traffic control.

(4) Single engine aircraft must be operated as follows:

(i) Except for helicopters, no person may take off a loaded aircraft, or make a turnaround over a congested area.

(ii) No person may operate an aircraft over a congested area below the altitudes prescribed in part 91 of this chapter except during the actual dispensing operation, including the approaches and departures necessary for that operation.

(iii) No person may operate an aircraft over a congested area during the actual dispensing operation, including the approaches and departures for that operation, unless it is operated in a pattern and at such an altitude that the aircraft can land, in an emergency, without endangering persons or property on the surface.

(5) Multiengine aircraft must be operated as follows

(i) No person may take off a multiengine airplane over a congested area except under conditions that will allow the airplane to be brought to a safe stop within the effective length of the runway from any point on takeoff up to the time of attaining, with all engines operating at normal takeoff power, 105 percent of the minimum control speed with the critical engine inoperative in the takeoff configuration or 115 percent of the power-off stall

speed in the takeoff configuration, whichever is greater, as shown by the accelerate stop distance data. In applying this requirement, takeoff data is based upon still-air conditions, and no correction is made for any uphill gradient of 1 percent or less when the percentage is measured as the difference between elevation at the end points of the runway divided by the total length. For uphill gradients greater than 1 percent, the effective takeoff length of the runway is reduced 20 percent for each 1-percent grade.

(ii) No person may operate a multiengine airplane at a weight greater than the weight that, with the critical engine inoperative, would permit a rate of climb of at least 50 feet per minute at an altitude of at least 1,000 feet above the elevation of the highest ground or obstruction within the area to be worked or at an altitude of 5,000 feet, whichever is higher. For the purposes of this subdivision, it is assumed that the propeller of the inoperative engine is in the minimum drag position; that the wing flaps and landing gear are in the most favorable positions; and that the remaining engine or engines are operating at the maximum continuous power available.

(iii) No person may operate any multiengine aircraft over a congested area below the altitudes prescribed in part 91 of this chapter except during the actual dispensing operation, including the approaches, departures, and turnarounds necessary for that operation.

Conclusion

The Federal Agricultural flight regulations are similar to the restrictions previously found in IDAPA 02.03.03.310.

The federal regulations consider “congested areas” to be cities, towns, or settlements, or over any open air assembly of persons.” “Congested area” is presumptively similar to Idaho’s delineation of “cities, towns, schools, hospitals and densely populated areas.” Although Idaho’s rule included specifically schools and hospitals, these places are not excluded from coverage by the federal rule. Schools, hospitals, and densely populated areas are contained in cities, towns, or settlements.

In order to operate over these “congested areas,” applicators must still obtain “prior written approval” from the “appropriate official or governing body of the political subdivision over which the operations are conducted” in order to make applications. (This requirement is strikingly similar to Idaho’s requirement to obtain a written agreement from an “authorized agent for the city, town, school, hospital, or densely populated area in question.”)

Further, the Federal regulations are more stringent than Idaho’s restriction on flying directly over occupied structures. Idaho prohibits flying “[d]irectly over an occupied structure without prior notification by some effective means such as daily newspapers, radio, television, telephone, or door-to-door notice.” The federal regulations require “Notice of the intended operation must be given to the public by some effective means, such as daily newspapers, radio, television, or door-to-door notice” if the area is congested, regardless of whether structures are, in fact, occupied.

Thus, aerial applicators will still be subject to the federal rules regarding agricultural applications, meaning that Idaho citizens will be entitled to the same environmental and health protections as before. Citizens will now pursue low-flying complaints with the FAA through their local Flight Standards District Office (FSDO). Guidance for making low-flying complaints can be found [here](#).