

***Idaho State Department of Agriculture***

***02.03.03 Rules Governing Pesticide and Chemigation Use and Application***

***June 30, 2020, 9:00 a.m.***

***Victor Mason, Facilitator***

Present: Paul Arrington, Idaho Water Users Association; Ann Bates, Idaho Pest Management Association; Roger Batt, Association Management Group; Joel Bauer, TruGreen; Colby Cameron, Division of Financial Management; Ester Ceja; Elizabeth Criner, Idaho Food Producers; Breland Draper, Idaho Organization of Resource Councils; Nicole Foy, Idaho Statesman; Tom Gritzmacher, Pesticide Advisory Committee; Samantha Guerrero, Idaho Organization of Resource Councils; Jared Hedelius, USDA/APHIS Wildlife Services; Ronda Hirnyck, Pesticide Advisory Committee; Mike Jurak, Pesticide Advisory Committee; Elaine Kazakoff, Idaho Organization of Resource Councils; Patxi Larrocea-Phillips, Idaho Noxious Weed Control Association; Terry Lee, Pesticide Advisory Committee; David Lehman, Primus Policy Group; Bob Naerebout, Idaho Dairymen's Association; Craig Nuthak, Pesticide Advisory Committee; Jonathan Oppenheimer, Idaho Conservation League; Doug Paddock, Idaho Organization of Resource Councils; Julia Page; Stacy Satterlee, Idaho Grain Producers Association; Todd Sawyer, Pesticide Advisory Committee; Adam Schroeder, Pesticide Advisory Committee; Kali Sherrill, Idaho Association of Weed Control Superintendents; Rachel Spacek, Idaho Press; Christina Stucker-Gassi, NW Center for Alternatives to Pesticides; Kimberly Tate, University of Idaho; Sally Toone, Idaho House of Representatives; Tracy Walton, Pesticide Advisory Committee; Rob Wasia, Pesticide Advisory Committee; Dallas Burkhalter, Office of Attorney General – ISDA; Sherman Takatori, ISDA; Brian Slabaugh, ISDA; Ryan Ward, ISDA; Luis Urias, ISDA; Westy Jones, ISDA; Jeremey Varley, ISDA; Brian Oakey, ISDA; Chanel Tewalt, ISDA; Celia Gould, ISDA; Victor Mason, ISDA; and Janis Perry, ISDA.

**AGENDA ITEMS**

**WELCOME**

Victor Mason, Administrator for the Division of Agricultural Resources, convened the meeting at 9:00 a.m. by teleconference. He welcomed everyone to the negotiated rulemaking and explained the procedures for the WebEx meeting. He asked that participants keep their lines muted and to use the chat box for comments or questions. He stated that the meeting was being recorded.

Vic delineated four goals that are trying to be accomplished with this rulemaking:

1. Continue to implement the Governor's Zero-Based Regulation by:
  - Eliminating unnecessary language, or for example the LPC section of the rule which will be discussed in more detail later.
  - Reorganized the rule into subchapters to make it easier to use.
2. Address the concerns raised during the 2020 legislative session by
  - Proposing a strawman with a goal of protecting human/health and the environment balanced with having the lightest possible regulatory approach that accomplishes that goal.
  - Discussing the overall effect of eliminating the sections proposed and comparing those rule requirements with neighboring states.

3. Update our licensing categories to be consistent with FIFRA requirements for certification and training in order to maintain primacy for the pesticide enforcement program in Idaho.
4. Propose adding an apprentice category that will allow a new applicator the ability to gain some on the job experience in the use of some pesticides, that we believe will translate in better performance on more difficult testing categories and make them better professionals.

Vic stated that the strawman which was emailed to all participants is just a starting point and the discussion paper should help with the process. He indicated that the department looks forward to input and comments. There will be at least a second meeting to discuss comments and questions raised in this meeting.

Vic started a Powerpoint presentation of the proposed changes noting that the sections highlighted in yellow are substantive changes that will be discussed while those highlighted in blue are non-substantive changes to meet the guidelines of zero-based regulation. On page 1, two new Incorporations by Reference have been added: the first CFR, Title 40, Chapter 1, Part 1 which spells out EPA's certification and training regulations of FIFRA; the second is a document created and now posted on the ISDA website regarding Livestock Protection Collars.

On page 3, the definitions of "Limited supervision" pertaining to the Commercial Apprentice category and "On-site supervision" pertaining to Restricted Use Pesticides have been added. On page 4, Vic pointed out that the rule has been divided into subchapters for ease of use, starting with Licensing of Pesticide Applicators and Dealers. In section 100.02.x. a core competency regarding the responsibilities of supervising noncertified applicators has been added. Section 100.03 are additions to the examination procedures to comply with EPA guidelines. Vic explained the proposed changes to the license categories on pages 5-7: Core Competency (CO) is required for all categories and aligns with national licensing policies; Space Fumigation (AF) involving rodent control is split from Soil Fumigation; Aerial Pest Control (AA), is a new category required by EPA; Ornamental Herbicide (OH) and Ornamental Insecticide (OI) have been reworded for clarity; Commercial Apprentice (CA), another new category that allows for limited supervision for on the job training while applying General Use Pesticides.

On page 8, Vic stated that subsection 100.05.p was added to give the name and license number of the supervising applicator on pesticide records. Subsection 100.07 provides when two-year professional licenses expire. It also states that the apprentice license which cannot be recertified expires at the end of the year it was issued.

In subsection 150.02 on page 11, the AA and AF categories have been added to private applicator licenses. The provision allowing non-reading applicators to certify has been removed following EPA guidance. Section 200 on page 12, adds information on how pesticide dealers can be licensed. Under Subchapter B Fees, the cost for an apprentice license is \$60 since it is for twelve months or less.

In Subchapter C on page 14, subsection 400.01 spells out restrictions for on-site supervision of noncertified applicators using restricted use pesticides.

Vic explained that the wind velocity restrictions on page 16 have been proposed to be removed since wind speed requirements are on the pesticide label. He indicated that neighboring states use the label for

wind speed guidance. The strawman proposes to not include the low flying and hazard area restrictions since these are covered by FAA enforcement and that is parallel to neighboring states.

On page 18 in section 550, the words “empty or partially full” have been removed to describe pesticide container storage and warning notices.

Vic indicated that most proposed changes to Subchapter D Chemigation are non-substantive with the following exceptions: on page 22 “functional” has been added to the description of a hydraulic interlock and on page 26 for automatic low pressure drains, a ½” hose is proposed.

Vic stated that written comments should be mailed or faxed to Brian Oakey by July 17. Tracy Walton asked if they could also be emailed to which Vic replied yes to [brian.oakey@isda.idaho.gov](mailto:brian.oakey@isda.idaho.gov). Christina Stucker-Gassi asked if the comment period could be extended. Brian Oakey responded that there will be multiple opportunities for comments but he is open to extend stating that July 21 would be okay. Vic Mason indicated that comments and strawman edits would be available on the website. Brian explained that the process involves posting all comments to the website with follow up emails to all participants that changes to the website had been made.

Todd Sawyer asked about extending the apprentice category to the following year if it was obtained in say November. Vic responded that it is only for the calendar year and is not renewable. Todd also asked about language changes regarding testing sites and third parties authorized to test. Vic replied that the goal down the road is to work toward that.

Elaine Kazakoff asked where to find the document specific to the LPC collars to which Vic replied on the Ag Resources Laws and Rules web page: <https://agri.idaho.gov/main/i-need-to/see-lawsrules/ag-resources-division-laws-and-rules/>

Jonathan Oppenheimer asked if there were plans to further discuss the aerial applicators and the FAA protections. Vic replied that the local FAA administrator was invited to the meeting. Brian Oakey commented that the department will reach out to the FAA so that dialog can happen. He said that the strawman proposed is where the rule was left when the legislature adjourned, but he wanted stakeholders to weigh in on this issue. Rep. Toone asked if any labels allow spraying with wind speeds over ten mph. Vic replied that labels that do not give a wind speed, typically state to not allow drift offsite. Rep. Toone asked if drift was defined. Vic responded that drift is off the targeted area. Rep. Toone asked who would get the additional information. Vic stated that everyone who is on the meeting list would get the information.

Mike Jurak asked how the aerial applicator category would be implemented and if separate testing is planned. Sherm Takatori responded that one of the challenges to the department is working on certification for new categories. He indicated that other states use the national standards for this category and reciprocity with other states would be recognized. Mike replied that Utah as that category license and questioned whether that would cover pilots. Sherm responded that Idaho has reciprocity with Utah so yes; Idaho also has reciprocity with Washington so that would apply as well.

Christina Stucker-Gassi expressed concern with the CA category allowing application of GUPs with only limited supervision. Vic responded that this category was driven by stakeholders wanting a way for applicators to get on the job training. He indicated that it is being used by other states without issues. Brian Oakey commented that the intent is to improve the core competency of applicators using GUPs which anyone can buy and apply. Currently only an exam proves competency and that may not be as comprehensive as on the job training, only for one year. He stated that this is a starting place and encourages feedback since competencies cannot be relaxed. Christina Stucker-Gassi replied that since this is a segment of the industry with high enforcement counts she wanted to be sure that customers can be confident of safety issues and she looks forward to more discussion.

Brian Oakey responded to a chat question from Doug Paddock regarding subsection 400.05 restrictions. Doug asked why the entire subsection had been struck when the Idaho Agricultural Aviation Association testified to the legislature that they wanted the first line of IDAPA 02.03.03.550.03 removed. Brian stated that the legislature removed the entire section so that is the proposal, but he invited comments. Jonathan Oppenheimer asked whether if wind speed and hazard areas are overseen by the FAA, would ISDA still retain authority to enforce unintentional drift. Vic responded that low flying and hazard area enforcement would be done by the FAA, including notification for the target area. Jonathan questioned whether the penalty matrix that was discussed during the legislature was part of this rulemaking. Brian responded that it is not, but as part of the governor's executive order all department guidance documents will be available on the website, including the penalty matrix, by July 1. Jonathan asked if it was the same document and Brian replied that it was.

Ann Bates commented that she had submitted questions and comments before this meeting and wondered about comments to those comments. Vic replied that all comments will be posted on the website. Brian replied that no date had been set to respond to comments but that the next meeting would be based on all comments received. Elaine Kazakoff asked if the chat comments would be available. Ryan Ward indicated that the comments would be copied and pasted and posted to the website.

Tom Gritzmacher asked how the low flying prohibitions would be handled by the FAA and what that would look like. Vic replied that he would reach out to the FAA and will try to have that addressed at the next meeting. Tom also asked if DEQ would be involved since surface waters are affected. Vic responded that the department is in open dialog with DEQ on issues but have not been invited to the meeting. Ester Ceja encouraged the water division of DEQ to be at the table.

Christina Stucker-Gassi asked if the words "or equivalent" had been added to subsection 400.01a.iii regarding Worker Protection Standard. When Vic responded yes, she commented that should be flagged since the EPA's standard may be more stringent on WPS. Sherm Takatori responded that the focus is on the core competencies. Christina asked how the core competency exam relates to FIFRA. Sherm replied that the core competency replaces the current Law and Safety exam and while it is not much different it will be updated. Currently the law and safety portions are integrated into the independent license exams. Those sections will be removed since everyone will now have to pass the core competency exam which will stress environmental stewardship. Christina commented that is exciting but a lot of work.

Ester Ceja questioned why licensure is handled through the ISDA when drinking water operators are licensed through Idaho Bureau of Licensing. Vic replied that licensing is based out of EPA with Idaho

having primacy. Ester responded that she does not see where the distinction is and that it appears DEQ and ISDA have taken different approaches to licensure. She asked if moving pesticide licensing to IBOL was considered and if not why. Vic responded that this is a part of the certification and training through an EPA cooperative agreement following FIFRA. Ester then asked if notification to communities was being done in the language in which they speak. Vic replied that requirement for notification fall to the applicator or employer. Ester commented that she felt ISDA has a responsibility to address environmental justice issues. Vic responded that the legal department would look into it.

Brian Oakey summarized that written comments on the existing strawman are now due July 21 with a subsequent meeting to be held. He indicated that there are deadlines to meet and tight timelines if the rule is to be completed this year. He appreciated the time invested and the input, since he feels a better product results from participation. He and Vic thanked everyone for attending the meeting.

Vic Mason adjourned the meeting at 10:31 am.

Respectfully submitted by Janis Perry