

From: [Ester Ceja](#)
To: [Brian Oakey](#); [Vic Mason](#); [Janis Perry](#)
Subject: {External}Comments on IDAPA 02.03.03 Negotiated Rulemaking
Date: Wednesday, August 12, 2020 11:01:52 PM

Mr. Oakey, Mr. Mason, and Mrs. Perry,

Good evening. I have provided my comments on the rulemaking below. Please consider them part of the record.

- Definition: Limited Supervision

Comment: I ask you make the following revision to the limited supervision definition. Commercial apprentice applicators should have direct on-site communication.

*“Pertains to the supervision of a currently licensed pesticide applicator who holds the Commercial Apprentice (CA) category. The Supervising Applicator will be currently licensed in the same category necessary for the pesticide application, and is limited to supervising a maximum of two Commercial Apprentice applicators and must maintain **direct on-site immediate communications (voice) radio, cellular telephone, or similar** with the supervised applicators for the duration of all pesticide applications.”*

- Definition: Hazard Area

Comment: Please consider updating the “Hazard Area” definition to include “schools, hospitals, occupied structures.”

- Definition: Occupied Structures

Comment: Please include the following definition to the rule. *“Occupied Structures: Occupied structure means a building with walls and a roof within which individuals live or customarily work.”*

- IDAPA 02.03.03.100.04: Commercial Apprentice (CA)

Comment: It is imperative that commercial apprentices (CA) have direct on-site supervision. Limited supervision increases the potential for improper application and environmental and/or public health impacts. Please consider the proposed revision as I have noted below.

*“Persons with this category can only perform pesticide applications under **limited direct on-site** supervision, and cannot make any soil-active Total Vegetation Control (TVC) pesticide applications or injectable applications to soil or plants.”*

- IDAPA 02.03.03.400.05a: Pesticide Restrictions

Comment: Please make the following revision to the “Restrictions to Protect Pollinators”.

a. Bee Restrictions. ~~Any~~ No pesticide that is toxic to bees ~~shall~~ will ~~not~~ be applied to any agricultural crop when such crop is in bloom or when bees are actively foraging on blooming weeds in the crop being sprayed except during the period beginning three (3) hours before sunset until three (3) hours after sunrise. (3-20-20)T ()

- IDAPA 02.03.03.400.06: Pesticide Restrictions (Low-Flying Prohibitions)

Comment: I am extremely concerned by ISDA’s unwillingness to consider comments received during this process requesting this section remain intact. ISDA has primacy of the FIFRA program. As the state agency with responsibility of proper implementation and compliance of this program, ISDA rules should reflect low-flying prohibitions as they relate to aerial pesticide application. EPA has not granted the Federal Aviation Administration primacy of FIFRA and therefore they are not responsible for implementation and compliance of the regulation, rather it is ISDA responsibility. If this section is removed from the rules, then there should be a reference in this section of the rule that speaks to how ISDA will coordinate with FAA on low-flying prohibitions related to pesticide aerial spraying. I have yet to see any correspondence during the negotiated rulemaking process that would indicate ISDA has been in direct communication with FAA to develop a plan as to how low-flying prohibitions related to aerial pesticide application would be addressed. **I strongly request the existing 06. Low-Flying Prohibition section remain intact.**

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

- IDAPA 02.03.03.400.06: APPLICATION NEAR HAZARD AREAS.

Comment: Please revise this section to read “An aircraft pilot will not apply any pesticide.”

I have yet to receive a response from ISDA on my email request from August 7, 2020 as to the agency's process for addressing comments during the negotiated rulemaking. I encourage you to reach out to Paula Wilson, Idaho DEQ Administrative Rules Coordinator. DEQ has an organized rulemaking process that agencies like ISDA should strive to implement.

Thank you,
Ester Ceja

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