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From: Zoe Olson <zolson@ifhcidaho.org>

Sent: Thursday, August 13, 2020 1:54 PM

To: Brian Oakey <Brian.Oakey@ISDA.IDAHO.GOV>

Subject: {External}I support health & safety standards for pesticide use

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Dear Mr. Oakey,

I am writing to you today on behalf of myself and my community. I am concerned about the impact of the proposed rules regarding pesticide regulations in the State of Idaho. The proposed rules do not adequately protect public health and the safety of the workers who provide our community with food. Specifically, I am requesting the following changes to the proposed rules:

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

-Incorporate proposed additions in parentheses to the definition below-

Hazard Area. Cities, towns, subdivisions, (schools, hospitals, occupied structures,) 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 children's' sensitivity to pesticides. Research has suggested that even low levels of pesticide exposure can affect young children's neurological and behavioral development, demonstrating links to physical and mental development.

We request the Department add the following definition to the chapter.

-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 Idaho Code (see 47-310) 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 prohibited to protect the health of Idahoans living and working near pesticide application sites.

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

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 to 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 aircraft applying pesticides is encouraged.

-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 in the proposed rule):

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) which as proposed below mirror language changes made in the wind velocity second as it pertains to labels.

-Retain the following and incorporate proposed edits in parentheses-

06. APPLICATION NEAR HAZARD AREAS. An aircraft pilot will not apply any pesticide within one ½ mile of a hazard area unless there is air movement away from the hazard area (or in accordance with the pesticide label, whichever is more restrictive. Applications must be properly noticed.) (3-20-20)T

Please uphold the standards the previous rules enforced and allow for stronger protections for our communities. Thank you for your time.

IFHC is a nonprofit organization whose mission is to ensure open and inclusive housing for all persons without regard to race, color, sex, religion, national origin, familial status, sexual orientation, gender identity, a source of income, or disability. IFHC attempts to eradicate discrimination through education on the fair housing laws, housing information and referral, housing counseling, and assistance with mediating and or filing fair housing complaints, among other things. IFHC also provides free education and outreach on fair housing laws and practices to housing providers and others especially with the heightened need surrounding COVID-19. We ensure that housing is available for all regardless of race, color, sex, religion, national origin, disability, and familial status. We have helped thousands of families address housing and housing-related discrimination based on race, color, religion, national origin, sex, disability and familial status all over Idaho. Disability, race/national origin and familial status discrimination especially against communities of color is on the rise and pervasive in Idaho, and we want everyone to feel welcome and that they belong here in our community. It also means that people live in healthy, clean environments free of environmental hazards including pesticides or the spraying of pesticides on their person, homes, workplace and community.

The Fair Housing Act or Title VIII of the Civil Rights Act prohibits housing discrimination based on race, color, religion, national origin was passed in 1968 and amended in 1974 to include sex (including addressing sexual stereotypes based on sexual orientation/gender identity), and 1988 to include disability (both mental and physical) and familial status (the presence of children under the age of 18) respectively.

The heart of the Fair Housing Act lies in 42 U.S.C. Section 3608 that states that:

“All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.” This means the State and communities have an obligation to address housing and community inequality and address environmental hazards in an affirmative way through environmental justice policies at the State, regional, and local level and through the pesticide rules committee.

Environmental justice means ensuring that the environment and human health are protected fairly for all people regardless of race, color, national origin, or income. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations" (2/94) requires certain federal agencies, including HUD, to consider how federally assisted projects may have disproportionately high and adverse human health or environmental effects on communities of color and low-income populations.

Environmental justice is an integral part of HUD's mission. The Department works with multiple stakeholders and other federal agencies in its efforts to assure environmental justice concerns are addressed. When assessing this committee's pesticide rules it should use HUD's environmental guidance.

HUD Guidance Evaluates:

Does the project create adverse environmental impacts?

If so, are these adverse environmental impacts disproportionately high for low-income and/or minority communities?

Can the adverse impacts be mitigated? Engage the affected community in meaningful participation about mitigating the impacts or move the project to another community including input to this committee by affected people—workers and community members affected by the spraying of pesticides.

Compliance and Documentation

Review land use plans, census information and the U.S. EPA Environmental Justice webpage (EJ View). Consider local government sources such as the health department or school district that may be more current or focused on the neighborhood as their unit of analysis.

The environmental review record should contain one of the following:

Evidence that the site or surrounding neighborhood does not suffer from adverse environmental conditions and evidence that the proposed action will not create an adverse and disproportionate environmental impact or aggravate an existing impact. (Describe how the proposed action will not have a disproportionate adverse impact on minority or low-income populations.) Evidence that the project is not in an environmental justice community of concern (demographics, income, etc.) or evidence that the project does not disproportionately affect a low-income or minority population. If there are adverse effects on low-income or minority populations, documentation that the affected community residents have been meaningfully informed and involved in a participatory planning process to address (remove, minimize, or mitigate) the adverse effect from the project and the resulting changes—including in providing opportunities to provide input to this committee and participate in English and Spanish and other languages as needed in compliance with the Fair Housing Act and Title VI of the Civil Rights Act. Resources to assist this committee include:

<https://files.hudexchange.info/resources/documents/HUD-Environmental-Justice-Strategy.pdf>

<https://www.hudexchange.info/programs/environmental-review/environmental-justice/>

For meaningful participation in this committee and rulemaking and to provide lawful notice of pesticide spraying, warnings, health impact and the like, this committee must also meet its Title VI commitment. Title VI of the Civil Rights Act of 1964 and HUD's implementing regulations at 24 CFR Part 1 prohibit race, color, and national origin discrimination in the administration of programs or activities receiving Federal financial assistance and imposing affirmative obligations on such programs or activities to remedy the effects of past discrimination.

Definition of Federal Financial Assistance Grants, loans, and advances of federal funds The grant or donation of federal property and interests in property The detail of federal personnel Use or rental of federal land or property at below market value Any federal agreement, arrangement, or other contract that includes as one of its purposes, the provision of assistance (for example, training conducted by federal personnel). Federal financial assistance does not include a contract of insurance or guaranty. Title VI applies to all federally assisted programs and entities.

Discriminatory Actions Prohibited by Title VI Title VI prohibits recipients of federal financial assistance, either directly or through subcontracts, from, on the ground of race, color, or national origin:

Denying housing, accommodations, facilities, services, financial aid, or other benefits or providing these in a way that is different than how it is provided to others Subjecting a person to segregation or separate treatment related to the receipt of housing, accommodations, facilities, services, financial aid, or other benefits Restricting access to or enjoyment of housing, accommodations, facilities, services, financial aid, or other benefits Treating a person differently from others in determining whether he or she satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirements or conditions Denying a person an opportunity to participate in a program or activity Denying a person the opportunity to be a member of a planning or advisory body Utilizing criteria or other methods, or determining the site or location of housing, accommodations, or facilities in a way that has the effect of discriminating or impairing the purpose of the program The Fair Housing Act prohibits discrimination against people who are of a different national origin, which includes many people who are not proficient in English. Providers of federally-assisted housing and programs must also comply with Title VI of the Civil Rights Act. Title VI requires additional language assistance measures.

The Fair Housing Act is meant to ensure equal treatment of people who are limited English proficient. Title VI is meant to result in an equal outcome for those who are limited English proficient because of the additional language assistance measures in most federally assisted programs and entities. Limited English proficiency is not listed among the protected classes in either title of the Civil Rights Act; however, case law and a HUD Office of General Counsel guidance document equate limited English proficiency to race and national origin which are both protected classes.

Concerning the spraying of pesticides, notices of spraying, notices for participation in rule making and legislative sessions, the State and this committee as recipients of federal funds must have a Language Access Plan (LAP) and provide meaningful access to language assistance. This assistance includes interpretation (free of charge) and translation of vital documents such as pesticide spraying warnings, health warnings, and notices/opportunities for public participation for people who are Limited English Proficient (LEP) including specifically Spanish speakers and others LEP persons who meet translation thresholds under Title VI guidance. According to the U.S. Department of Justice, "meaningful access" means language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, "meaningful access" denotes access that is not significantly restricted, delayed or inferior as compared to programs or activities provided to English-proficient individuals. For more information on this topic visit: <https://ifhcidaho.org/language-access-guide/>.

Under the FHA and Title VI, we ask the State and this committee to ensure its rule, process and procedures regarding pesticides complies with these Acts, environmental justice guidance, Title VI. Thank you for your time and implementation of these civil rights requirements and best practices and in support of concerns voiced by community members and the Idaho Organizing Resource Council and V2C. For more information, please, contact me, Zoe Ann Olson, at 208-383-0695, x. 306 or at zolson@ifhcidaho.org.

Thank you for partnering in fair housing,

Zoe Ann Olson

Executive Director

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IFHC's 26th Anniversay!

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