

Primus Policy Group
Government Affairs

August 13, 2020

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

Delivered Via Email

Dear Mr. Oakey,

Please accept this letter on behalf of my client, the Idaho Agricultural Aviation Association (IAAA), as our response to the second draft strawman rules governing pesticide and chemigation.

First, we continue to commend ISDA for its revision to 02.03.03.400.06 Low-Flying Prohibitions and appreciate the department's further explanation for its final decision to exclude the regulation of commercial air flight from ISDA purview. Not only do we believe that it is the appropriate policy decision for the department, but we also think it is the only conclusion that the department can reach, given the primary role the Federal Aviation Administration takes in the regulation of ALL commercial air flight in the United States.

As stated in my previous letter, dated July 20, 2020, the FAA maintains sole regulatory responsibility for the flight routes of commercial aircraft and that it is likely the state's low-flying prohibition violated the authority granted to the FAA in the Airline Deregulation Act on 1987. In fact, after a survey of state regulations relating to agricultural aviation, we were unable to find any other state that regulates the flight routes of agricultural aircraft. Instead, the FAA regulates such flight routes, included flight over congested areas, as it should.

I have attached a link to [14 CFR § 137](#), the FAA's regulations for agricultural aviation, for your review. Additionally, I have attached a 2010 4th Circuit Court of Appeals decision upholding the FAA's authority to regulate low-flying aircraft, including over congested areas, and confirmed the FAA's ability to address complaints on a case-by-case basis. Simply put, there is no one single standard for regulating flight over congested areas, and the court recognized the authority and expertise of the FFA to make those determinations.

Concerning IDAPA 02.03.03.400.05 Wind Velocity Restrictions, the IAAA believes ISDA had it right in its first strawman draft and views the most recent draft as a return to a long-obsolete regulatory policy this is the scientific equivalent of licking the end of your finger and sticking it in the air. Why, with billions of dollars of investment in scientific research, development, and regulation of pesticides in the United States, does Idaho want simply to ignore science to appease the anecdotal fears of a few? It simply does not make sense, which is precisely why the House Agricultural Committee overwhelmingly struck down this regulation earlier this year.

However, in the spirit of compromise, the IAAA offers the following language to strike a balance between the well-researched and scientifically-back EPA standard for ariel application of pesticides, and

the prevailing belief that randomly picking a number out of thin air two decades ago is the best way to ensure public safety:

WIND VELOCITY RESTRICTIONS. No person shall apply any pesticides in conditions exceeding product label directions.

- a. Exceptions. The Director or his agent may consider additional scientific research, studies, government findings, or legal decisions, at his discretion, to impose wind velocity restrictions that are more restrictive than label directions, on a case by case basis.

In our view, regulatory policy should be based on science and not fear. The US Department of Agriculture's Aerial Application Technology Unit, located at Texas A&M in College Station, Texas, is a prime example of how research and development can improve the methods and practices of product application. I have attached a link to the USDA Aerial Application Research Page [HERE](#) to demonstrate that active scientific research and study are currently taking place in the area of pesticide application. You will notice that none of the research taking place through the USDA begins with the phrase, "Well, I just think..."

Please feel free to reach out to me if you have any additional questions. I can be reached at 208-906-0602 or david@primuspolicy.com. We look forward to the next round of discussions on ISDA's recommended rules.

Best,

A handwritten signature in dark ink, reading "David Lehman". The signature is fluid and cursive, with a long horizontal stroke at the end.

David Lehman
Principal