



## VISIÓN2C RESOURCE COUNCIL

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August 12, 2020

Mr. Brian Oakey (Brian.Oakey@isda.idaho.gov)  
Idaho State Department of Agriculture  
P.O. Box 7249  
Boise, Idaho 83707

RE: Comments on the ISDA IDAPA 02.03.03 Negotiated Rulemaking

Dear Mr. Oakey,

Please include the following comments into the record. We ask that you address all questions and that the Idaho State Department of Agriculture **NOT** remove 02.03.03.400.05 Wind Velocity Restrictions and 06. Low Flying Prohibitions from ISDA's rules!

Visión 2C is a community organization working towards building and advocating for resilient, equitable, and sustainable communities. Among our issues of concern are improper pesticide application, pesticide exposure, and implementation of the Worker Protection Standards.

Based on the most recent proposed changes to the rule, we have grave concerns with the ISDA's ongoing effort to delete the Low Flying Prohibitions and Hazard Areas from the existing rule. Please find our specific comments and concerns below based on the July 31, 2020 changes ISDA emailed stakeholders.

1. Definitions: We continue to have ongoing concerns with the definition of "Limited Supervision" and "On-Site Supervision." We are proposing an update to the definition of "Hazard Area" and we request the addition of "Occupied Structure" to the definition section of the rule.

a. Limited Supervision (#18)

**Visión 2C Comment:** Personnel new to pesticide application should not be allowed to apply pesticides with limited supervision due to inexperience and the potential of improper application leading to water quality and aquatic impacts (depending on location of application) and public health impacts depending on distance from humans in the area. We ask the proposed language be updated to read *"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*



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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.”

b. On-Site Supervision (#20) – Pertains to the application of Restricted Use Pesticides (RUP): On-Site Supervision of an unlicensed pesticide applicator or a pesticide applicator who does not hold an appropriate category for the RUP being applied. Supervising pesticide applicator must be physically at the site of application, must have visual contact with the pesticide applicator, and must be in a position to direct the actions of the pesticide applicator. The supervising applicator may not supervise more than two pesticide applicators.

**Visión 2C Comment:** Application of pesticides, regardless of the type, should require on-site supervision for not just individuals applying restricted use pesticides, but also for Commercial Apprentice (CA) category licensees. Inexperience and improper pesticide application will undoubtedly result in water quality and/or aquatic impacts (depending on proximity to water source) and/or potential public health exposure concerns if humans are within close proximity. It is imperative that pesticide application be strictly monitored. Improper use can result in adverse impacts to natural resources and human health.

c. Hazard Area: Cities, towns, subdivisions, or densely populated areas.

**Visión 2C Comment:** We request the “Hazard Area” definition be updated to include “schools, hospitals, occupied structures.”

Hazard Area: Cities, towns, subdivisions, **schools, hospitals, occupied structure**, or densely populated areas.

d. We request ISDA add the following to the definition section.

**Occupied Structures: Occupied structure means a building with walls and a roof within which individuals live or customarily work.**

### 2. IDAPA 02.03.03.100.03.b/c/e: *Licensing Professional Application and Pesticide Dealers*

b. Proctored and monitored by ISDA staff or administered by an ~~designated~~ authorized agent following approved Department procedures. ~~Examinations are (3-20-20)T( )~~





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**Visión 2C Comment:** We advise the department to explore alternate testing structures to promote independence and to continue working with the University of Idaho to address problem areas through more education and training opportunities.

c. Given only to a person who presents valid government-issued identification;

**Visión 2C Comment:** What is meant by valid government-issued identification? What exactly are you looking for a state issued identification card, a passport, a permanent resident card, a work Visa?

e. Retaken after a minimum waiting period of one (1) week ~~is required before an applicant may retake an examination.~~ (3-20-20)T( )

**Visión 2C Comment:** Is there more than one version of the exam that is proctored or can the same exact exam be taken 5-15 consecutive times?

### 3. IDAPA 02.03.03.100.04: *Categories*

a. 04: Proposed licensing for new category "Commercial Apprentice (CA)" For conducting General Use Pesticide (GUP) foliar surface applications only in situations applicable to the OI, OH, AI, AH, GP, and RW categories. Persons with this category can only perform pesticide applications under limited supervision, and cannot make any soil-active Total Vegetation Control (TVC) pesticide applications or injectable applications to soil or plants. Applicators with this category cannot supervise other pesticide applicators. ~~This is a non-renewable license category.~~ This license is renewable one time if the original license is active less than 13 months from the date of issue, but not renewable if the original license is active 13 months or more from the date of issue.

**Visión 2C Comment:** Pesticide application, regardless of the type of pesticide, and if not applied per the label instructions, can result in adverse environmental (water quality/aquatic) and public health impacts due to exposure. Visión 2C does not support the proposed new "Commercial Apprentice" (CA) license category as currently identified. We propose the following specific change to the Category description, deletion of "limited" and inclusion of "direct on-site"

*"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."*

4. IDAPA 02.03.03.100.06: Financial Responsibility:

**Visión 2C Comment:** We strongly recommend that ISDA revise this section to clearly note "an applicator license not be issued by the ISDA until applicant submits their proof of financial responsibility." It is important to ensure that financial responsibility and the appropriate documents are provided to the Department.

06.a, b, and d:

**Visión 2C Comment:** It appears the reference to "acceptable to the Director" is subjective. Due to the agencies lack of transparency, we strongly recommend "acceptable to the Director" be revised to read "approved by the AG's Office and acceptable to the Director."

5. IDAPA 02.03.03.100.07: Licensing and Recertification Period

**Visión 2C Comments:** Section 100.03 does not address our initial comment voicing concern with striking out language about passing a safety and law recertification exam. Please explain if a safety and law section is a required section in the recertification exam process or is the agency completely eliminating the requirement for potential licensees to take a safety and law recertification exam?

6. IDAPA 02.03.03.280: Fees

~~03. Commercial Apprentice (CA) Applicator's License. Sixty dollars (\$60) per licensing period of twelve (12) months or less. (-)~~

**Visión 2C Comment:** ISDA is proposing deleting the CA license fee from this section. Will there be a fee associated with this license? If not, why?

7. IDAPA 02.03.03.400: Pesticide Restrictions

a. Section 01.a and 01.b:

**01. APPLICATION OF RESTRICTED USE PESTICIDES BY NONCERTIFIED APPLICATORS ON-SITE SUPERVISION OF NONCERTIFIED APPLICATORS RESTRICTIONS** ~~. Only a licensed professional applicator shall will operate or supervise the operation of commercial application equipment by being present during the time of operation. An uncertified applicator may apply restricted use pesticides~~



(RUPs) under on-site supervision of by a professional applicator with the required license proper categories of the application being supervised if: (3-20-20)T( )

a. One or both more of the following conditions are met:

~~i. Professional applicator has completed the Apprentice Category(CA).~~

i. Uncertified applicator completes Applicator Core Competency (CO).

ii. Uncertified applicator has completed EPA approved Worker Protection Standard (WPS) certification for: ~~pesticide handler training or equivalent.~~ (-)

b. The uncertified application of any pesticide is prohibited for: ~~Supervision of the unlicensed pesticide applicators does not apply to:~~

i. Soil or area (space) fumigation RUPs;

ii. Aerial application of pesticides.

iii. Supervision of unlicensed pesticide applicators does not apply to aerial or chemigation application of RUPs. ( ).

**Visión 2C Comment:** We propose both 01.a.i and 01.a.ii be met. Revise 01.a to read as "The following conditions must be met."

## 8. IDAPA 02.03.03.400: Pesticide Restrictions

a. Section 02 and 05a

### **02. APPLICATION OF GENERAL USE PESTICIDES BY**

**NONCERTIFIED APPLICATORS.** A Commercial Apprentice applicator may apply general use pesticides (GUPs) under OI, OH, AI, AH, GP, and RW categories with limited supervision by a professional applicator that has the required license categories of the application being supervised if:

a. All of the following conditions are met:

i. The Commercial Apprentice applicator has a valid (CA) license category.

ii. Immediate communication requirements exist between the supervising professional applicator and the Commercial Apprentice applicator.

b. Applications of RUPs, Total Vegetation Control pesticide, or injectables to soil or plants are prohibited under the CA license category. ( )

**Visión 2C Comment:** What is meant by immediate communication requirements?

## 05. 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 ( )

**Visión 2C Comment:** Please make the following correction to this section. The first sentence in the Bee Restrictions section includes a double-negative. We believe what is meant in this sentence is that no pesticide toxic to bees will be applied to any agricultural crops when such crop is in bloom or when bees are actively foraging on blooming weeds in the crop...

### 9. IDAPA 02.03.03.400: Pesticide Restrictions

~~**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~~

**Visión 2C Comment:** The primary reason our organization is involved in this rulemaking is due to our concern of the proposed deletion of this particular section. We strongly recommend this section remain intact. EPA has granted ISDA primacy of FIFRA and as such, ISDA is responsible for implementing the program and ensuring compliance. It's important to note the low-flying prohibitions rule is not duplicative. While the Federal Aviation Administration has oversight of aircrafts, they **do not** have primacy over aerial pesticide application. The language in this section while speaking to low-flying aircrafts more importantly has to do with aerial spraying of pesticides, proper notification of such activities, and prohibitions.

We recommend the following language stay intact:





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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

10. IDAPA 02.03.03.400.06: APPLICATION NEAR HAZARD AREAS. An aircraft pilot **shall** will not apply any pesticide. ~~within one-half (1/2) mile of a hazard area unless there is air movement away from the hazard area. (3-20-20)T~~

**Visión 2C Comments:** We strongly recommend this section remain however it should read "An aircraft pilot will not apply any pesticide."

Thank you for the opportunity to provide important feedback on the proposed rulemaking.

Regards,

Marielena Vega

Visión 2C Resource Council Member