

**From:** [Ester Ceja](#)  
**To:** [Vic Mason](#); [Brian Oakey](#); [Janis Perry](#)  
**Subject:** {External}Comments on IDAPA 02.03.03 Pesticide Rulemaking  
**Date:** Tuesday, October 6, 2020 10:12:51 PM

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

Good evening. Thank you for the opportunity to provide comment on the rulemaking. First I would like to take note that many of us (individuals/organizations) have provided comments, many of which have not been incorporated nor have you (ISDA) provided an explanation as to why our comments have not been incorporated into the rule. It is your responsibility as a public servant to be transparent in the work you do.

- 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. It's imperative that pesticide application be monitored. Application of pesticides should require on-site supervision for individuals applying restricted use pesticides as well as 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.

*"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:** I appreciate the inclusion of schools and hospitals to the hazard area definition. I ask that "occupied structures" as noted in my previous comments also be included to the hazard area definition. It is appropriate and important to include rural residences and workplaces as hazard areas due to the potential risk pesticides pose to farm workers and other rural residences who live and work in areas that may not be defined as "congested areas".

- 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 02.03.03.400.06: 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*

Former EPA Administrator Lisa Jackson was correct in her quote “*The American people will not trust us to protect their health or their environment if they do not trust us to be transparent and inclusive in our decision making.*” While ISDA is not the EPA, you as a state agency should strive for transparency and inclusive decision making.

Thank you,  
Ester Ceja

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