

Pesticide and Chemigation

Rule Update

June 2020



**Idaho State Department of
Agriculture**

1. Introduction

1.1 Purpose and Scope

This discussion paper outlines the Idaho State Department of Agriculture’s (ISDA) analysis and explanation for changing certain sections of the Rules Governing Pesticide and Chemigation Use and Application, IDAPA 02.03.03. This Pesticide Discussion Paper and associated proposed changes to the rule itself are intended to help stakeholders better prepare for informal rulemaking meetings. The ISDA will facilitate the informal negotiated rulemaking and provide stakeholders with data and information to help inform input on proposed changes being discussed.

1.2 Background

IDAPA 02.03.03 is in place for Idaho to have and continue as the primary enforcement authority to regulate pesticides in this state.

The proposed rulemaking will update the certification and training requirements in Idaho in order to meet the recently changed Code of Federal Regulations under Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”). The Federal Environmental Protection Agency is primarily responsible for regulating the distribution, sale and use of pesticides in the United States. Under FIFRA, states may regulate the sale or use of any federally registered pesticide or device, but only if and to the extent that the state does not permit any sale or use prohibited by FIFRA. See 7 U.S.C § 136v.

The proposed changes within the draft rule will introduce new or modified pesticide license categories outlined in more detail below. The proposed changes will also consider certain sections suggested to be deleted by the Idaho Aerial Applicators Association during the 2020 legislative session. Finally, the ISDA will continue to review the entire rule for implementation of Governor Little’s Zero Based Regulation Executive Order.

2 Proposed Changes

The portions of the rule highlighted in yellow indicate substantive changes, strikes, or additions to the rule. Some of these changes have been made for clarity, others have been made pursuant to updates to federal laws and rules, and some have been made pursuant to actions taken during the 2020 legislative session. These substantive changes will be the focus of rulemaking meeting.

The portions highlighted in blue indicate non-substantive portions of this rule that may be changed. Blue highlights indicate words and sections which have been deemed redundant, confusing, or irrelevant pursuant to the Governor’s Red Tape Reduction mandate. These portions will not be focused on during the rulemaking meeting.

2.1 Section 02 – Incorporation by Reference

Part of the ISDA rule is accomplished by incorporating by reference certain federal regulations and guidance documents. This means that IDAPA 02.03.03 relies on existing federal regulations in order to maintain consistency with federal pesticide standards. The ISDA is tasked with enforcing these regulations within Idaho. ISDA is proposing to incorporate by reference U.S. Code of Federal Regulations (CFR) Title 40, Chapter 1, Part 171 Certification of Pesticide Applicators. This regulation outlines the recently amended certification and training requirements under FIFRA.

The ISDA is proposing to remove the section of the rule pertaining to the registration and licensing requirements for use of the Livestock Protection Collars. The requirements for the use of these collars would be maintained by incorporating the necessary restrictions by reference. This is being proposed as part of the ISDA's zero based regulation analysis of the existing rules.

2.2 Reorganization of the Rule into Subchapters.

For clarification and ease of use, ISDA is proposing to rearrange the rules into the following Subchapters:

- Subchapter A – Licensing of Applicators and Dealers
- Subchapter B – Fees
- Subchapter C – Registration and Use of Pesticides
- Subchapter D – Chemigation

Reorganizing the rule into subchapters will make it easier to find the applicable sections of the rule.

2.3 Subsections 100.02 and 100.03 – Core Competencies and Examination Procedures

This sub-section of the rule ensures that the ISDA maintains the standards for certification of commercial (professional) applicators found in 40 CFR, Part 171.103. The ISDA must set standards to ensure that applicators are competent to apply pesticides, and that examination standards are as high, or higher than what is required by EPA. These standards encompass minimum age (18 years), examination content, reference material, and certifying and reporting results of examinations. This sub-section also establishes core competency standards previously listed in rule, including label comprehension, pesticide safety, environmental stewardship, pests and pest characteristics, pesticides and pesticide characteristics, pesticide application equipment and methods, laws and rules and responsibilities of supervisors of non-certified pesticide applicators.

2.4 Subsections 100.04 and 150.02 – Categories

Following guidance from EPA and stakeholders, ISDA is proposing to rename and redefine several of the applicator license categories to better describe the type of pesticide applications performed by persons licensed in those particular categories.

Applicator Core Competency (CO)

The Applicator Core Competency category (Applicator Core – CO) will replace the Law and

Safety (LS) category. By doing this, this certification category will now be more aligned with current national category trends. The (CO) category exam will now be a requirement for all categories of professional applicators. This is a new requirement in order to comply with EPA standards.

This is a change from the current category structure that had both independent (those categories that did not need Law and Safety) and the dependent categories (categories that require the Law and Safety category). By making this change, the ISDA will be consistent with the new C&T changes required by EPA.

Space (Area) Fumigation (AF)

The Space and Area Fumigation (AF) category is proposed in order to separate the certification requirements of the existing Soil Fumigation category (SF) and space or area fumigation applications. The soil fumigation category is designed to apply soil fumigants to crop land by injecting pesticides into the soil. Space fumigation is the application of fumigants to railcars, storage areas and for the control of burrowing pest like gophers. The (AF) category will apply to all fumigation applications for burrowing rodent control. These two categories ((AF) and (SF)) were split into two categories because of the difference in the application process.

Aerial Pest Control (AA)

The Aerial Pest Control (AA) category is a new license category for Idaho. This category is required as a result of the changes to 40 CFR 171. By adding this category, the ISDA will be in compliance with the new C&T requirements.

Ornamental Herbicide (OH)

The Ornamental Herbicide (OH) category description in the prior versions of this rule was ambiguous and created confusion. The Ornamental Herbicide (OH) category is for conducting outside urban or residential herbicide applications to turfs, flowers, shrubs, trees, and associated landscapes, excluding soil applied, total vegetation control pesticides. The proposed category description limits applicators to specifically turfs and ornamental weed control and restricts the use of soil applied, residual Total Vegetation Control (TVC) herbicides that are more applicable to the Right-of-Way or Agricultural Herbicide category.

Ornamental/ Insecticide/ Fungicide (OI)

The Ornamental Insecticide (OI) category description in the prior versions of this rule was ambiguous and created confusion. The Ornamental/ Insecticide/ Fungicide (OI) category is for conducting outside urban or residential insecticide or fungicide applications to turfs, flowers, shrubs, trees and associated landscapes. The proposed category description is specific to only those application for turfs and ornamentals. This category does not allow for applications to buildings, structures, building foundations, or other applications that are more applicable to a person holding an appropriate indoor or structure application category such as General Pest Control (GP) or Structural Pest Control (SP).

Apprentice Applicator (CA)

ISDA is proposing to add a new professional pesticide applicator category. The apprentice applicator

category (CA) will allow an applicator to work under limited supervision in the application of general use pesticides only, for a period of no more than one year. This category is intended to allow inexperienced applicators to gain some on-the-job training in the use of pesticides, after passing the core competency pesticide exam. This category requires that the applicator be supervised by a professional applicator licensed in the categories the CA is working. Supervision is accomplished by having contact with the apprentice by voice, phone or radio. In addition, this category will only allow for the application of GUP pesticides and will be valid until December 31st of the year in which it was obtained.

The CA license holders will be allowed to perform general use pesticide (GUP) foliar applications in situations where the OI, OH, AI, AH, GP, and RW categories are required. Persons with this category can only perform pesticide applications under 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.

05. Records Requirements:

Pesticide application records will also change to take into consideration the new proposed Apprentice Category (CA). The addition of the follow requirement will be added to professional applicator's records:

Full name and license number of professional applicator supervising the pesticide applications of the professional applicator holding the Apprentice Category (CA).

2.5 Subsection 400.01 – On-Site Supervision of Noncertified Applicators

Following guidance from EPA, ISDA is proposing to clarify restrictions for applications of Restricted Use Pesticide (RUP) by noncertified applicators under (On-Site) supervision of properly certified professional applicators.

On-Site Supervision is required when an unlicensed person is going to apply a restricted use pesticide (RUP.) The person who is applying the RUP will have had to pass certain trainings to ensure that they have a basic knowledge of personal protective equipment and label requirements. The properly licensed professional applicator must be on site, and within visual contact of the unlicensed applicators to be able to stop, or correct the RUP application. The supervising person is also required it ensure that all PPE is used, is in proper condition, and that all required pesticide application records are maintained.

The new section will say:

An uncertified applicator may apply restricted use pesticides (RUPs) under on-site supervision of a professional applicator with the proper categories if.

- a. One or more of the following conditions are met:
 - i. Professional applicator has completed the Apprentice Category(CA).
 - ii. Uncertified applicator completes Applicator Core Competency (CO).
 - iii. Uncertified applicator has completed Worker Protection Standard (WPS)

certification for pesticide handler training or equivalent.

b. Supervision of the unlicensed pesticide applicators does not apply to:

i. Soil or area (space) fumigation RUPs.

ii. Supervision of unlicensed pesticide applicators does not apply to aerial or chemigation application of RUPs.

2.6 Subsections 400.05 and 400.06 – Restrictions Previously Removed

During the 2020 Legislative session the Idaho Aerial Applicators Association (IAAA) requested that certain sections of the rule be removed. Those sections pertained to applying pesticides in sustained wind speeds above 10 mph, low flying prohibitions and certain pesticide applications in hazard areas. These three sections of the rule will be considered for amendment or deletion as part of the current negotiated rulemaking.

2.7 Subsections 400.08 - Restrictions For Use of Livestock Protection Collars (LPC)

ISDA is proposing that the section of the rule dedicated to Livestock Protection Collars be removed. ISDA is proposing that the relevant LPC collar requirements be incorporated by reference to reduce redundancy and bulk in the existing rule. The ISDA is not proposing changes to the requirements, only that the format of the rule be changed.

2.8 Other Changes

ISDA is proposing additional detail and clarification are needed in the following areas.

- **Section 010 – Definitions**

Addition of definitions for “On-Site Supervision” and “Limited Supervision.”

On-Site Supervision is one of the requirements from EPA that pertains to the application of Restricted Use Pesticides (RUP) by uncertified applicators. On-Site Supervision of an unlicensed pesticide applicator is required by EPA when a pesticide applicator does not hold an appropriate license and category for the RUP being applied. Supervision of the unlicensed pesticide applicator by a properly licensed professional applicator must be done by being physically present 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. One additional item that was asked by stakeholders, was the supervising applicator may not supervise more than two pesticide applicators.

Limited Supervision is required for the Commercial Apprentice (CA) category. This new category will allow an inexperienced applicator to train under a more experienced licensed applicator. One of the requirements for this new category is the CA applicator only apply General Use Pesticides (GUP) and that they be supervised by a properly certified professional applicator. Lastly, the Supervising Applicator is also limited to supervising a maximum of two Commercial Apprentice applicators for the duration of all pesticide applications.

- **Sections 100.04 and 150.02– Categories**

ISDA believes that the professional applicator licensing categories are confusing and are redundant. In addition, some category descriptions have changed due to the C&T plan required by EPA. There have also been categories added to as part of the new C&T requirements. The new category descriptions seek to clarify the types of pesticide applications allowed within each license category.

Section 100.05, Recordkeeping the ISDA added a line in the professional applicator recordkeeping. With the addition of the Apprentice Category (CA), there needed to be a tracking mechanism for supervision of these new applicators. This new record requirement added: Full name and license number of professional applicator supervising the pesticide application of the professional applicator holding the Apprentice Category (CA).

Section 100.06, Financial Responsibility - The ISDA clarified two items to make them easier to understand and follow. These are simple clarifications, not additions to the rule. Those items are: An annuity issued by an insurance company, bank or other financial institution found acceptable to the Director;

An irrevocable letter of credit issued by a national bank in Idaho or by an Idaho state-chartered bank insured by the federal deposit insurance corporation.

ISDA removed sections that were redundant and confusing pursuant to the Governor's Red Tape Reduction mandate.

Section 100.07, Licensing Periods and Recertification – The ISDA cleared sections on licensing periods for professional applicators and recertification credits, and removed redundant and confusing language.

Section 150.02, Private Applicator Licensing – The ISDA added a new licensing category as part of the new C&T requirement, as well as redefined others to make them compliant with the new C&T changes required by USEPA. This action also helped clarify categories, and delete redundant language.

- **Sections 100.01, 150.01 and 200.01– Licenses**

ISDA has three license categories – Professional applicator, Private applicator and a Dealer license. ISDA has worked with EPA and stakeholders to ensure that the licenses meet the requirements for core competency.

- **Section 280 – Fees**

Designate fees for Apprentice Category (CA). These fees will be based on the new category: Commercial Apprentice (CA) Applicator's License is, sixty dollars (\$60), and is only good for the year in which it was issued. This category is a non-renewable category.

- **Section 450 – Pesticide Use on Seed Crop Fields**

In compliance with the Governor's Zero-Based Regulation Executive Order, the rule section on Seed Crop Fields has been edited. Redundant wording was removed on lists of seeds, but the

intent, or meaning of the rule has not changed.

- **Sections 550 – Storage of Pesticide Containers**

In the current rule, only pesticide containers that are partially full, or empty are required to be in a locked storage area. The change would be to add (full containers) to the section. This will make this rule easier to understand. Full containers that meet the requirements for posting will also be added to the section for storage areas.

- **Sections 650, 660, 670, 675– Chemigation**

In compliance with the Governor’s Zero Based Regulation Executive Order, this sub-section was reviewed to remove redundant language for clarification. This sub-section is now easier to read and understand.