

***Idaho State Department of Agriculture  
Negotiated Rulemaking  
Rules Pertaining to the Idaho Commercial Feed Law  
July 18, 2012  
Lloyd Knight, Facilitator***

Present: Randy MacMillan, Clear Springs Foods; Leslie Lawrence, K-9 Delights; Brent Olmstead, Milk Producers of Idaho; Angela Kaufmann, OAG/ISDA; Johanna Phillips, ISDA; Jared Stuart, ISDA; Katy Mink, ISDA; Tina Eiman, ISDA; Douglas Jones, Feed Coalition; Pamm Juker, ISDA; Representative Gayle Batt; Brody Miller, Western Stockmen's; Leah Wilkinson, AFIA; Bob Naerebout, Idaho Dairymen's; Tim Bodine, PerforMix; Sean Costa, PerforMix; Sean Costello, OAG/ISDA; Bryan Culbertson, Jr., Western Stockmen's; Lloyd Knight, ISDA; and Melinda Bouldin, ISDA, recording.

Via Telephone: Roxanne Rydeen, Land O' Lakes; Maria Tharpe, Pacific Ethanol; Paul Marsh, Scoular; Robert King, Hills Pet Nutrition; Steve Busby, J.D. Heiskell; Neal Bosshardt, Redmond Natural; Bill Bookout, NASC; Carli Mann, CHS; Monte Quast, Carne 1; Joy Kinyon, Rangen; Doug Ramsey, Rangen; Patt Klevmoen, Rangen; Leeon Martineau, Simplot; Robin Fisher, DB Supply; JoAnn Goodwin, DB Supply;

**AGENDA ITEMS**

**WELCOME**

Lloyd Knight convened the meeting at 10:03 a.m. Introductions were made of all present.

Mr. Knight reviewed the meeting agenda, and gave a brief recap of last week's discussion and the process moving forward. With the help of Randy MacMillan and Leah Wilkinson, the goal is to try to memorialize what the exemptions should be and how to identify them in rule. Mr. Knight stated that he has learned that lots of byproducts are being shipped directly to end users, and this issue needs to be revisited.

Mr. Knight shared that after further analysis, he estimates that his earlier estimate of 1500 potentially exempt products should be smaller, probably closer to 500. He reminded the group that today's discussion will be registration fees. Questions received since the last meeting have focused on: (1) what the fee will be, and (2) what the exemptions should be.

Mr. Knight stated that he had heard that by shifting to registration and away from tonnage, people will not choose to register products. He stated that he would like to re-set the discussion. Mr. Knight distributed a handout which outlined the program's revenue and expenses from FY2007 through FY2012, and included estimates for FY2013. The handout shows the split between tonnage and registration. He stated that he was unsure as to why there are so many more products now than before. The new registration process has changed ISDA's internal process, and triggers a change in revenue. The last two fiscal years show that the expenses have remained virtually static. He noted that three personnel positions had been added, also.

Additionally, Mr. Knight noted that the number of registered products has remained virtually the same over the last two fiscal years. The number varies a lot from one day to the next, but FY numbers give an accurate snapshot.

Regarding the FY2013 estimates, which are what we want to use, it is estimated there will be 500 exemptions, a small part of the equation. Estimated product loss is what we need to capture. This is the biggest part of discussion for today, and will affect the expense of the program. Mr. Knight explained that the method for estimating total expenses for FY2013 was to add 5% to FY2012 expenses to cover inflation.

Further, Mr. Knight stated that he doesn't see the overall cost of the program changing much in the switch from tonnage to registration – the workload will shift somewhat, but volume-wise will remain virtually the same.

Mr. Knight then called for comments.

Paul Marsh voiced concern that if a product doesn't sell enough to absorb the registration cost, the registrant will be forced to consider whether or not that product should be sold in Idaho. Registration fees are part of doing business, and if the company can't reconcile that against how much it sells of a product, they shouldn't be selling it.

Tim Bodine asked Mr. Knight if he was wanting stakeholders to tell him whether or not they will be registering fewer products?

Mr. Knight answered that this information would be extremely helpful, but he doesn't expect specificity at this point. Mr. Bodine stated that they would probably register fewer products, and push for exemption.

A question was submitted via email by Paul Marsh representing Scoular. His question was about where excess revenues are held, and whether or not they can be used to offset any future revenue shortfalls? Mr. Knight answered that the balance of approximately \$2.1M is held in a dedicated fund for the Feed Program to be used in case of budget tightening, revenue shortfalls, equipment replacement, and the move of the lab to Twin Falls.

Ms. Wilkinson stated that any time product registration fees increase, companies will be registering fewer products. After last week's meeting, she polled her constituents about the proposed fee of \$60.00 per product. They responded that \$60.00 represents a significant increase in expense for them.

Regarding the issue of companies taking the risk of not registering and just paying the fine if/when they are caught, Mr. Knight stated that ISDA finds unregistered products all the time and will continue to.

Mr. Bodine asked how much of the \$284,565.00 in registration revenue is from the fees for small packages, 10 lbs. or less, and how much is from the regular \$25 fee? Mr. Knight stated that he would get those figures and get back to him.

Pamm Juker asked Ms. Wilkinson if she thought companies were taking into consideration that if they were paying tonnage before, the new fee might be far less? Ms. Wilkinson answered that they have companies that have fallen into both categories. Some have paid lots in tonnage, some have not. The proposed fee being discussed is still a large jump in fees. Will be hard for some companies to justify writing a large check.

Mr. Knight asked Doug Jones if he had any idea what reductions would look like from his folks? Mr. Jones answered that it would vary from company to company. Products vary so much, it is difficult to answer. As fees increase a lot of people will say O.K. to \$25.00 or \$30.00, but if it rises to \$60.00, there may be a lot that don't register, and some may just pay the fine for late registration.

Mr. Knight reiterated that this already happens. Since it is so hard to estimate what the reduction might be, maybe we should just use what we have, where we are now – just set the fee based on no change. Just maybe see what happens and readjust later?

Mr. Jones suggested setting the fee at \$25.00 or \$30.00 and utilizing the budget surplus for a couple of years, then re-evaluate and see where we are. He further stated that the legislature will be willing to listen to data collected that clarifies what the realities of the program are.

Mr. Knight stated that the surplus had been there for years. This proposal could be a serious cash burn; but could be an option, though.

Brent Olmstead stated that the political reality of coming back later to ask for an increase in fees is not good. He feels it should be set at a more moderate amount now.

Bob Naerebout pointed out that the “up to” phrase should be used, the fee could be set at a moderate level, then Lloyd can adjust the number internally as needed. Mr. Knight affirmed that the “up to” language is already in statute. It is “up to \$100.00”. What we need to do is identify what is “medium” and what is “high”. That is the difficulty.

Bill Bookout asked if the penalty of \$25.00 fluctuates to accommodate small package products? Mr. Knight answered that the fee was the same for all. Mr. Bookout then went on to say that if the penalty for non-registration is at \$25.00 and the registration fee increases to \$50.00, we would have better compliance if the registration stays lower. Ms. Wilkinson agreed that people will just have to make a business decision as to whether it's worth it or not. She believes that we will see a large decrease in specialty product registration.

Mr. Bodine stated that ISDA is getting revenue off of products not sold in Idaho. Mr. Knight explained that when they register a product, we make the assumption that product will be sold in Idaho. ISDA still has the expense of doing the label review, etc., whether or not they end up selling the product in Idaho.

Mr. Knight proposed the possibility of establishing different fees for different product types. Mr. Bookout stated that this could be a worthwhile analysis to see the feasibility of this approach. He stated also, that Texas has a one-time fee per company. Mr. Knight stated that statute won't allow that here.

Katie Mink added that the penalty for non-registration is currently \$25.00, but reminded the group that civil penalties can be assessed anywhere from \$500.00 to \$10,000.00. Mr. Knight added that civil penalties are for non-compliance, violation of stop sales, willful violations, but that we don't assess civil penalties often.

Leslie Lawrence asked if Mr. Knight thinks there will be more cheating? She deals with a lot of boutique items and many are not registered. This prompted the statement that dairies and feedlots are carrying the burden with tonnage fees. Revenues came from tonnage tax. If those manufacturers are custom shops and that's a major part of revenue, is the burden going to be evenly distributed?

Mr. Bookout proposed the possibility of splitting the fee structure into two groups, one for small package products, and one for high tonnage. He further stated that he feels the fee should stay under \$50.00. He feels folks will flare if the fee is more than that. People definitely won't register if the fee is at \$100.00.

Ms. Mink stated that some of the \$46.00 per product figure includes label reviews for products that never even come here.

Ms. Wilkinson wondered how the testing and sampling plan add up? Mr. Knight stated that the \$46.00 hasn't been broken out as to how much was label review or sampling. ISDA has about 1.5 FTEs for label review, and he feels we need to have two FTEs. Sometimes with sampling other staff members are pulled in to help. Historically, staff sits down with lab folks and inspectors to pinpoint problems. Our current lab staff is made up of folks of short tenure. After the move to Twin Falls is complete he expects productivity to increase. He also stated that we don't pull enough samples now, and need to do better. Mr. Knight added that most of the \$46.00 expense per product is for feed program people. None of Lloyd's salary is included, and only a portion of Ms. Mink's is.

Representative Batt stated that there is too much disparity and there needs to be a consensus reached. The system is out of kilter, and some companies have been footing the bill for the program for years.

Mr. Bodine added that there is really no good, fair way to do this, we need to meet in the middle. Ms. Wilkinson added that shifting the burden will cause small businesses to re-evaluate whether or not to do business in Idaho. Mr. Bodine stated that a decrease in product registration could restrict consumer choice.

Mr. Jones re-stated his opinion that the fee should be set low and then come back in two years to re-evaluate. By then, we would have a true idea of operating costs, and revise the fee if needed through the legislative process.

Mr. Knight shared his uneasiness with both options of doing a cash burn or setting the fee based on what we know today. There are unknowns on both sides. If the number is too low, and something happens with FSMA, for example, will the program be able to accommodate?

Ms. Juker asked the group what they felt about setting the fee at \$46.83?

RE: FSMA, Sean Costa asked if ISDA samples exempt items? Mr. Knight said that some are sampled to check for adulteration.

Neal Bosshardt stated that whatever we do, let's move toward simplification. He advocates a simple registration fee structure. He would much rather pay a fee than be required to produce cumbersome tonnage reports. He also voiced concern about who is responsible for registration, the manufacturer of the product or the distributor? Sometimes he may sell to a distributor in Nevada who then distributes the product in Idaho without his knowledge. Mr. Knight answered that ISDA works with the manufacturer first, if that is unsuccessful, then we work with distributor. Statue really puts the responsibility on the distributor.

Mr. Bosshardt feels it should be the manufacturer's responsibility to register. Feels ISDA should do a stop sale on unregistered items.

Mr. Knight called for comments. Next meeting is August 1, 2012. The purpose of that meeting is to wrap up. He wants to get together with a small group to talk about byproducts.

There was discussion about fees for small producers. Also, there are non-profits who sell homemade dog treats, etc. for fundraisers. Could we possibly offer an exemption from registration fees for producers who sell less than \$500.00 of products in Idaho? They would still have to go through the registration process, but would be exempt from paying the fee.

Mr. Olmstead stated that we need to clarify that byproducts not enter into food chain because of food safety issues. Ms. Wilkinson added that FDA is very concerned about food safety issue.

Representative Batt suggests doing this in a separate paragraph so the entire rule isn't thrown out. Mr. Jones cautioned that we need to be very clear about this issue.

After thanking all for attending and giving input, Mr. Knight adjourned the meeting at 11:52 a.m.

Next meeting: Next meeting is August 1, 2012.

Respectfully submitted by Melinda Bouldin