

**BEFORE THE STATE OF IDAHO
DEPARTMENT OF AGRICULTURE**

IN RE:)
)
IDAPA 02.06.02)
RULES PERTAINING TO THE) **PUBLIC HEARING**
IDAHO COMMERCIAL FEED LAW.)
)
)
_____)

**BEFORE THE HONORABLE KARL D. VOGT
HEARING OFFICER FOR THE DEPARTMENT OF AGRICULTURE
Idaho State Department of Agriculture
2270 Old Penitentiary Road
Boise, Idaho
Tuesday, November 27, 2012
2:00 o'clock p.m.**

**REPORTER'S TRANSCRIPT OF PROCEEDINGS
PUBLIC HEARING RE: IDAPA 02.06.02
RULES PERTAINING TO THE
IDAHO COMMERCIAL FEED LAW**

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PUBLIC HEARING RE: IDAPA 02.06.02 (11.27.12)

A P P E A R A N C E S

Appearing personally:

Mr. Karl D. Vogt, Hearing Officer
Mr. Lloyd B. Knight, Administrator,
Idaho State Department of Agriculture

Ms. Kathryn Mink, Section Manager,
Idaho State Department of Agriculture
Ms. Elizabeth Criner, Veritas Advisors, LLP,
representing Northwest Food Processors
Association
Mr. Zach Hauge, Political Director,
Idaho Association of Commerce and Industry

Mr. Jayson Ronk, Vice President,
Idaho Association of Commerce and Industry
Mr. J. Brent Olmstead, Governmental Relations,
MPIdaho, LLC, representing Milk Producers
of Idaho
Mr. Alan L. Prouty, Vice President,
Environmental & Regulatory Affairs,
J.R. Simplot Company
Ms. Fabiola Urena-Boeck, J.R. Simplot Company
Mr. Brody Miller, Feed Consultant,
Western Stockmen's

Mr. Ron Parks, J.R. Simplot

Mr. Wyatt Prescott, Idaho Cattle Association

Ms. Tina Eiman, Program Specialist,
Idaho State Department of Agriculture
Ms. Johanna J. Phillips, Program Specialist,
Idaho State Department of Agriculture

Mr. Jared Stuart, Idaho State Department
of Agriculture
Mr. Sam Routson, Idahoan Foods

A P P E A R A N C E S

Appearing personally:

Mr. Sean Costello, Deputy Attorney General

**Ms. Angela Schaer Kaufmann,
Deputy Attorney General**

**Ms. Melinda Bouldin, Legal Assistant,
Idaho State Department of Agriculture**

**Mr. Douglas Jones,
Coalition of Feed Manufacturers**

Mr. Monte Quast, Carne I Corporation

Mr. Tim Bodine, PerforMix Nutrition Systems

Appearing telephonically:

Mr. Leon Martineau, Western Stockmen's

Ms. Julie Johnston, Western Stockmen's

Mr. Bryan Culbertson, Western Stockmen's

Mr. Don Brown, Cargill

Ms. Sherry Hackworth, Cargill

Ms. Jillian Nash, Alltech

**Mr. David Fairfield, National Grain and
Feed Association**

**Ms. Leah Wilkinson, American Feed
Industry Association**

Ms. Martha Smith, ADM Alliance Nutrition

Ms. Patt Klevmoen, Rangen, Incorporated

Mr. Paul Marsh, Scoular Company

Mr. Brad Russell, J.R. Simplot Company

Mr. Brian Crawford, Basic American Foods

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Exhibit A	Packet of Information re:	
	Summary of Events leading up to	
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* * *

1 **THIS PUBLIC HEARING** was held on the 27th day of
2 **November 2012** at the State of Idaho Department of
3 **Agriculture, 2270 Old Penitentiary Road, Boise, Idaho,**
4 **before Lori A. Pulsifer, Certified Shorthand Reporter and**
5 **Notary Public within and for the State of Idaho, to be**
6 **used in the matter of the proposed changes to the Idaho**
7 **Commercial Feed Law pending before the Idaho State**
8 **Department of Agriculture. .**

9 **The following proceedings were held, to wit:**

10 *** * ***

11 **THE HEARING OFFICER: Good afternoon. This is**
12 **the time and date scheduled for a hearing of the**
13 **Department of Agriculture pertaining to temporary and**
14 **proposed rule-making, IDAPA Rule 02.06.02, pertaining to**
15 **the Idaho Commercial Feed Law.**

16 **My name is Karl Vogt. I am an attorney here in**
17 **town, and I have been appointed by the Department to be**
18 **the Hearing Officer on this rule-making today.**

19 **There are just some logistics before we get**
20 **started. We have some people on the phone, and we have**
21 **a number of people in the conference room. We are a**
22 **little bit spread out.**

23 **But just for the court reporter's sake, I think**
24 **that when, or if, you choose to give public comments, if**
25 **you would, maybe, come up a little closer and sit down**

1 up in this direction a little bit. That would be
2 helpful to us.

3 In terms of the format, I believe the
4 Department is going to give us an overview of the
5 negotiated rule-making that has taken place up to this
6 point, some background, the purpose, where we are at
7 today, and where we go from here.

8 So if the Department is ready to begin -- when
9 you give a comment, when you give testimony, would you
10 please introduce yourself? Tell us who you are
11 representing and maybe even spell your name.

12 Thank you.

13 MR. LLOYD KNIGHT: Do you want to get the roll
14 call of who is on the phone now?

15 THE HEARING OFFICER: You know, that is
16 actually a very good point.

17 Let's go around the room. Once we go around
18 the room, we will go to the conference call and identify
19 the folks that are here.

20 MS. KATHRYN MINK: Katie Mink, Section Manager,
21 Department of Agriculture.

22 MS. ELIZABETH CRINER: Elizabeth Criner with
23 the firm Veritas Advisors, LLP. I am here today on
24 behalf of the Northwest Food Processors Association.

25 MR. ZACH HAUGE: Zach Hauge, Idaho Association

1 of Commerce and Industry.

2 MR. JAYSON RONK: Jayson Ronk, Idaho
3 Association of Commerce and Industry.

4 MR. J. BRENT OLMSTEAD: Brent Olmstead,
5 MPIIdaho, LLC, representing the Milk Producers of Idaho.

6 MR. ALAN PROUTY: Alan Prouty, J.R. Simplot
7 Company.

8 MS. FABIOLA URENA-BOECK: Fabiola Urena-Boeck,
9 J.R. Simplot Company.

10 MR. BRODY MILLER: Brody Miller, Western
11 Stockmen's.

12 MR. RON PARKS: Ron Parks, J.R. Simplot.

13 MR. WYATT PRESCOTT: Wyatt Prescott, Idaho
14 Cattle Association.

15 MS. TINA EIMAN: Tina Eiman, Idaho Department
16 of Agriculture.

17 MS. JOHANNA PHILLIPS: Johanna Phillips, Idaho
18 Department of Agriculture.

19 MR. JARED STUART: Jared Stuart, Idaho
20 Department of Agriculture.

21 MR. SAM ROUTSON: Good afternoon. I am Sam
22 Routson with Idahoan Foods.

23 MS. ANGELA SCHAER KAUFMANN: Angela Schaer
24 Kaufmann. I am a Deputy Attorney General representing
25 the Idaho State Department of Agriculture.

1 **MR. SEAN COSTELLO:** Sean Costello. I am also a
2 **Deputy Attorney General** representing the Idaho State
3 **Department of Agriculture.**

4 **MS. MELINDA BOULDIN:** Melinda Bouldin, Legal
5 **Assistant, Idaho State Department of Agriculture.**

6 **MR. DOUGLAS JONES:** Doug Jones representing the
7 **Coalition of Feed Manufacturers.**

8 **MR. MONTE QUAST:** Monte Quast, Carne I
9 **Corporation.**

10 **MR. TIM BODINE:** Tim Bodine, PerforMix
11 **Nutrition Systems.**

12 **MR. LLOYD KNIGHT:** Lloyd Knight, Idaho
13 **Department of Agriculture.**

14 **THE HEARING OFFICER:** And those folks that are
15 **joining us on the phone? Could you identify who is on**
16 **the phone?**

17 **MR. LEON MARTINEAU:** Leon Martineau, Western
18 **Stockmen's.**

19 **MS. JULIE JOHNSTON:** Julie Johnston, Western
20 **Stockmen's.**

21 **MR. BRYAN CULBERTSON:** Bryan Culbertson,
22 **Western Stockmen's.**

23 **MR. DON BROWN:** Don Brown, Cargill.

24 **MS. SHERRY HACKWORTH:** Sherry Hackworth,
25 **Cargill.**

1 **MS. JILLIAN NASH: Jillian Nash, Alltech.**

2 **MR. DAVID FAIRFIELD: David Fairfield, National**
3 **Grain and Feed Association.**

4 **MS. LEAH WILKINSON: Leah Wilkinson, American**
5 **Feed Industry Association.**

6 **MS. MARTHA SMITH: Martha Smith, ADM Alliance**
7 **Nutrition.**

8 **MS. PATT KLEVMOEN: Patt Klevmoen; Rangen,**
9 **Incorporated.**

10 **MR. PAUL MARSH: Paul Marsh, Scoular Company.**

11 **MR. BRAD RUSSELL: I am Brad Russell, J.R.**
12 **Simplot Company, the IACI Potato Processors Chair.**

13 **THE HEARING OFFICER: It sounds like we have**
14 **everyone. Thank you.**

15 **I would like to turn it over to Mr. Knight to**
16 **give us where the Department is and an overview of the**
17 **rule.**

18 **MR. LLOYD KNIGHT: I am giving you an exhibit,**
19 **a packet of the materials from the last -- through this**
20 **whole rule-making process to the Hearing Officer. For**
21 **the record, it is marked Exhibit A.**

22 **We initiated our process of rule-making**
23 **following the end of the legislative session. The**
24 **original PARF was sent through the DFM and the**
25 **Governor's Office on April 16th.**

1 **The Notice of Intent of Rule-Making was**
2 **published on May 17th.**

3 **Original hearing dates were identified at that**
4 **time as July 11th, July 18th, and August 1st.**

5 **We did have some draft rule language that was**
6 **available as a working document, and that started on**
7 **July 11th.**

8 **The agenda for the July 11th meeting included a**
9 **presentation from the program regarding some program**
10 **background, some statistics, and information regarding**
11 **the registration fee.**

12 **That included a number of materials that talked**
13 **about the number of products registered, the cost of --**
14 **or the financials behind the program, and kind of a**
15 **review of some of those items.**

16 **We also discussed in that agenda for the July**
17 **11th meeting the exemption section of the rule. That**
18 **exemption section was originally -- the beginning of it**
19 **was copied over from statute. That was kind of our**
20 **starting point for the exemption conversation on the**
21 **July 11th meeting.**

22 **The July 18th meeting included some agenda**
23 **items that were carry-over items from the July 11th**
24 **meeting. Also, that was the first time we discussed in**
25 **detail the registration fee.**

1 **The August 1st meeting was meant to, obviously,**
2 **be a carry-over from the two previous meetings and a**
3 **final review of a final draft at that August 1st**
4 **meeting.**

5 **All three of those meetings were held here at**
6 **the Department, and there was also teleconferencing**
7 **available for those that needed to participate that way.**

8 **Also included in the exhibit packet is a list**
9 **of attendees at each of those three meetings, including**
10 **those that were participating via phone.**

11 **We published a temporary and proposed rule on**
12 **September 5th, in the September 5th bulletin. That had**
13 **three areas where amendments to the rule were made,**
14 **including exemptions, the fee, and the labeling language**
15 **regarding online electronic promotion of products.**

16 **That rule, as it was published on September**
17 **5th, included a comment period that ended September**
18 **26th.**

19 **Based on comments that we received in that**
20 **period, we published, on October 3rd, a Notice of Public**
21 **Hearing for this hearing today, November 27th, with a**
22 **public comment period ending tomorrow, November 28th.**

23 **As a quick summary of what is included in the**
24 **rule, the exemptions section is largely as it reads**
25 **originally in the statute, with the exception that one**

1 addition to that -- or one change to that exemption --
2 or to the exemption section included no exemption for
3 food processing by-products.

4 The fee is set in the rule, as it is drafted
5 today, and open for comment. The fee is set at \$45 a
6 product, and there is still the labeling language in
7 there regarding -- excuse me -- \$40 a product -- \$40 a
8 product. Sorry. I was looking at the wrong one for a
9 minute.

10 It also includes the labeling statement
11 regarding online promotion of products, and they have to
12 be consistent with the labels that were approved by the
13 Department.

14 I think that's it for my presentation.

15 THE HEARING OFFICER: Thank you.

16 I will accept Exhibit 1 -- or -- Exhibit A.

17 Excuse me.

18 Is this the complete Agency record?

19 MR. LLOYD KNIGHT: It's the complete record,
20 and it is also posted on our website.

21 THE HEARING OFFICER: Thank you.

22 (Exhibit A was received in evidence.)

23 THE HEARING OFFICER: Just in terms of format,
24 I would like to hear from those persons in attendance;
25 and I will get to the folks on the phone after those

1 **folks that are here have had a chance to comment.**

2 **Those folks that are in opposition or have**
3 **concerns about the temporary rule, could you please come**
4 **forward and put your comments on the record?**

5 **If you are more comfortable sitting and we can**
6 **hear you, you can sit where you are at. I want to make**
7 **sure that the court reporter has a chance to get those**
8 **recorded.**

9 **MS. CRINER: I will start.**

10 **THE HEARING OFFICER: Just identify yourself**
11 **and who you representing. Thank you.**

12 **MS. ELIZABETH CRINER: My name is Elizabeth**
13 **Criner. I am with the firm Veritas Advisors here in**
14 **Boise, Idaho; and I am here today representing the**
15 **Northwest Food Processors Association.**

16 **NWFPA is tri-state trade association. We serve**
17 **as an advocate and a resource to enhance the competitive**
18 **capabilities of member food processors in Idaho, Oregon,**
19 **and Washington.**

20 **NWFPA did provide written comments on September**
21 **24th. We have concerns about the proposed rules**
22 **pertaining to the Idaho Commercial Feed Law.**

23 **Specifically, we support the inclusion of a**
24 **food processing by-products and production waste**
25 **exemption to registration as a commercial feed operator.**

1 **Food processors operate food programs in order**
2 **to reduce the amount of processing by-products that end**
3 **up in landfills while offering a high-quality, low-cost**
4 **feed source for livestock.**

5 **This is an ancillary function of their business**
6 **that food processors don't have to do. This function is**
7 **often operated at a break-even or a low-cost recovery**
8 **basis.**

9 **So if it becomes expensive or cumbersome to do,**
10 **many processors will certainly consider discontinuation**
11 **of this beneficial practice.**

12 **Rules for animal feed that are being**
13 **promulgated by the FDA under the Food Safety**
14 **Modernization Act are expected to add costs to livestock**
15 **feed by-products due to the higher standards that will**
16 **be imposed.**

17 **Requiring Idaho commercial feed registration**
18 **will add additional costs on these programs.**

19 **We should encourage food processors to engage**
20 **in these types of waste reduction efforts that also**
21 **happen to benefit livestock operations, but this**
22 **requirement will have the opposite effect.**

23 **In addition to the concerns I have briefly**
24 **outlined, I would also note that exemption from**
25 **registration for processing by-products and production**

1 waste is consistent with the law passed by the Idaho
2 Legislature earlier this year in SB-1236.

3 We support an exemption from registration for
4 processing by-products and production waste and would
5 encourage the Department to include such an exemption in
6 the rule.

7 Thank you to the Department for this
8 opportunity to testify.

9 I would be happy to answer questions, if that's
10 appropriate.

11 THE HEARING OFFICER: Thank you.

12 MR. JAYSON RONK: My name is Jayson Ronk. I am
13 the Vice President of the Idaho Association of Commerce
14 and Industry.

15 I am here to, also, testify today on IDAPA
16 02.06.02, rules pertaining to the Idaho Commercial Feed
17 Law.

18 IACI has over 300 members across the state. It
19 also has a Potato Processors Division which represents a
20 commercial feed producer and six potato processing
21 companies across the state.

22 After a lengthy discussion amongst our Potato
23 Group, the overwhelming consensus was to oppose this
24 change, particularly the removal of feed by-products and
25 food processing production waste from exemption. We are

1 requesting the Department maintain the current exemption
2 for by-products and production waste.

3 While we are well aware of the potential Food
4 Safety Modernization Act, FSMA, regulation, we believe
5 this issue is for another discussion, to include all the
6 stakeholders that would be impacted by this rule before
7 changes are enacted.

8 We would thank the Department.

9 We also did submit written comments on
10 September 21st.

11 I would be happy to try to answer any
12 questions.

13 THE HEARING OFFICER: You have both talked
14 about additional costs involved in this rule. Could you
15 expand on that a little bit?

16 MS. ELIZABETH CRINER: I think, when you are
17 looking at a waste by-product of a process that is
18 already a low cost -- at times, a low-cost or a
19 break-even proposition, in its waste stream, if it
20 starts becoming a cost, both in the time to address the
21 concerns about content for registration, et cetera, it
22 becomes a greater challenge for a processor than the net
23 benefit.

24 They are going to look for other ways to
25 eliminate waste. It just creates an additional problem

1 of waste going into a landfill and a less attractive
2 environment for food processing, if that feed option
3 becomes less desirable, less financially viable.

4 **MR. JAYSON RONK:** Increasing costs is going to
5 make it less desirable for our folks to do that.

6 **THE HEARING OFFICER:** Also, you both mentioned
7 Federal Regulations that are enacted or being enacted.
8 Could you tell me a little bit more about those?

9 **MS. ELIZABETH CRINER:** Well, I think the
10 challenge for our group is we don't know what those
11 regulations are going to say. They aren't out yet.

12 We anticipate, based on the way the law is
13 drafted, that there will be new requirements. Again,
14 that would, we believe, further our argument that
15 including the exemption at a time when we don't know
16 what the FSMA regulations are going to include and
17 impose on processors -- that this would not be the time
18 to withdraw the exemption that historically has existed
19 in Idaho rules for by-products and food processing
20 waste.

21 Again, we would say maintaining the exemption
22 right now is even more important until we know what
23 those rules are going to state and require.

24 **THE HEARING OFFICER:** You are shaking your
25 head?

1 **MR. JAYSON RONK:** Yes. Our guys -- our folks
2 around the table have said, you know, we want to wait
3 until enacting any of this to be able to tell more
4 effectively where we're at. We don't see any reason to
5 get out in front of that until we know the entire lay of
6 the land.

7 **MS. ELIZABETH CRINER:** I have just one more
8 point. One of the beauties in Idaho is we have the
9 ability -- the Department has the ability to amend and
10 change the regulation at any point in time down the road
11 if the exemption becomes undesirable, inappropriate,
12 contrary to Federal law, et cetera.

13 So this is something that -- a year from now,
14 if those FSMA regulations are out and it would seem a
15 better environment to eliminate those exemptions, that's
16 perfectly under the purview of the Department to do
17 so.

18 **THE HEARING OFFICER:** Has the Federal
19 Government published proposed rules yet?

20 **MS. ELIZABETH CRINER:** I checked a couple of
21 days ago, and they had not. I didn't have a chance to
22 look this morning but --

23 **MR. LLOYD KNIGHT:** They are not moving that
24 quick.

25 **THE HEARING OFFICER:** Thank you.

1 **MR. ALAN PROUTY: My name is Alan Prouty. I am**
2 **the Vice President of Environmental and Regulatory**
3 **Affairs for the J.R. Simplot Company.**

4 **I am here to provide the following comments**
5 **that Simplot has in regards to this rule-making. These**
6 **comments are in addition to the written comments that we**
7 **provided on September 26th.**

8 **Simplot has a very direct interest in this**
9 **rule-making, as we manufacture commercial livestock**
10 **feed, and we also have three potato processing plants in**
11 **Idaho.**

12 **These facilities are sources of processing**
13 **by-products and production waste which are sources of**
14 **livestock feed.**

15 **My comments are going to focus on three aspects**
16 **of this rule, the first being exemptions; the second,**
17 **fees; and then, third, perhaps, where some**
18 **clarifications are needed.**

19 **First, in regards to exemptions from**
20 **registration, as we stated in our comments, we recommend**
21 **that the Department include an exemption from**
22 **registration for processing by-products and for**
23 **production waste.**

24 **Specifically, in the written comments we**
25 **provided on September 26th, we actually recommended the**

1 following language in the rule, which I will read.

2 For the list of exceptions, 08, by-products or
3 production waste, we recommended processing by-products
4 or food production waste, which do not undergo further
5 processing, received by the end user directly from the
6 feed, fuel, or food processor, when not adulterated with
7 the meaning of Section 25-2707, Idaho Code, or
8 misbranded within the meaning of Section 25-2708, Idaho
9 Code.

10 This includes feed by-products, grain
11 screenings, and potato production waste, including but
12 not limited to peel, potato waste, and potato products.

13 We recommend this change for several reasons:

14 1. Processing by-products and production
15 waste, because of variations in the production process,
16 can vary in solids, protein, fiber, and fat. Thus,
17 these materials are not suitable for registration.

18 Registration is best suited for those materials
19 commercially produced that are intended to meet specific
20 nutritional requirements or specific needs of the
21 livestock.

22 2. By-products and production waste from
23 potato processing are a valuable food source for
24 livestock in Idaho. Otherwise, such materials may end
25 up being disposed of as solid waste. This would be a

1 waste of valuable nutrients and feed and create
2 significant disposal problems and costs.

3 3. An exemption from registration for
4 processing by-products and production waste is actually
5 consistent with Senate Bill 1236, which is the
6 Commercial Feed Rule Law.

7 That Bill provides for the exemption of -- and
8 25-2703(3) is the introductory language that talks about
9 exceptions.

10 Subparagraph (h) talks about certain processing
11 by-products or production waste, identified by the
12 director in rule, without further processing when not
13 adulterated within the meaning of 25-2707, Idaho Code,
14 or misbranded within the meaning of Section 25-2708,
15 Idaho Code.

16 If the Department believes that -- so just to
17 summarize that, the legislation specifically did provide
18 for the exemption of these materials.

19 Simplot believes that, if the Department
20 believes that further guidelines need to be developed in
21 relationship to by-products or production waste, then
22 Simplot would recommend a work group be formed to
23 develop such guidelines.

24 We would recommend that such a work group would
25 need to include representatives from the various feed,

1 **fuel, and food processing industries.**

2 **So those are our comments in regards to the**
3 **exemption.**

4 **In regards to fees, once again, as we stated in**
5 **our September comments, it is our understanding that the**
6 **feed program fund is approximately two million dollars.**
7 **The Department has proposed that the fees be adjusted to**
8 **maintain a balance of one million dollars in the fund.**

9 **Simplot recommends that the fees be adjusted to**
10 **maintain a fund balance of one year of operating costs,**
11 **which we understand is approximately \$700,000, and that**
12 **the fund be capped at one million dollars.**

13 **Also, we recommend that the fees be used for**
14 **actual operation costs of this rule and not for other**
15 **costs such as the potential moving of the testing**
16 **laboratory to the Magic Valley area.**

17 **Finally, in regards to clarification, we will**
18 **submit some further written comments on this subject**
19 **tomorrow. We do think it would be good for the**
20 **Department, in the rule-making process, when they**
21 **finalize it, to clarify the exemption as it relates to**
22 **minerals, found in Section 011.07.**

23 **For example, does the statement "Minerals:**
24 **Individual mineral substances when not mixed with**
25 **another material" mean that each individual ingredient**

1 used in the mixing of commercial feed needs to be
2 registered by the commercial feed manufacturer; or do
3 these ingredients, together, need to be registered for
4 the customer formula fee?

5 We will provide some further written comments
6 tomorrow on that issue.

7 That concludes what I have to say.

8 THE HEARING OFFICER: Thank you.

9 I have one question. Were you involved at the
10 legislative level when this statute was enacted?

11 MR. ALAN PROUTY: I, personally, was not; but
12 Simplot did have representatives that participated in
13 the law-making process.

14 THE HEARING OFFICER: Do you know if the same
15 concerns were expressed to the legislature concerning
16 the language?

17 MR. ALAN PROUTY: I believe that is the case.

18 THE HEARING OFFICER: Thank you.

19 Is there anyone else in attendance who wishes
20 to comment on the proposed rule?

21 MR. DOUG JONES: Yes.

22 THE HEARING OFFICER: Thank you.

23 MR. DOUG JONES: My name is Doug Jones. I
24 represent a coalition of large feed manufacturers and
25 trade associations.

1 **I have participated in every meeting through**
2 **the summer. I participated in the legislative process**
3 **through the past session.**

4 **I would offer comments. We have already**
5 **submitted written comments previously, but I want to**
6 **reiterate today some of what has been touched on.**

7 **The previous gentleman talked about the size of**
8 **the reserve fund that the Department currently has in**
9 **this program. We also think that is excessive. We**
10 **would like to see that reserve drawn down to**
11 **approximately one year's operating costs, roughly**
12 **\$750,000 at this point.**

13 **It has also been mentioned that there are new**
14 **federal regulations coming out, which we have not seen**
15 **and we do not know what they will be. Potentially, they**
16 **will impact those folks who have already spoken and**
17 **others, as well as the Department, in terms of how the**
18 **rules are structured.**

19 **We may have to go through this same thing again**
20 **in another rule when the new federal rules come out,**
21 **depending on how they read.**

22 **There is a concern changing from the current**
23 **system of tonnage to a registration system. The**
24 **companies who have typically brought in high-value,**
25 **small-quantity products may not do that in the future.**

1 **They may drop those products because of the**
2 **registration costs. We don't know how that is going to**
3 **shake out until we get into this.**

4 **Our recommendation had been to set the fee at**
5 **no more than \$35, in anticipation of both drawing down**
6 **the reserve and looking out a year or two from now, with**
7 **the new federal rules, where we are, what it is costing**
8 **the Department to run the program, and making**
9 **adjustments at that point.**

10 **We would recommend to not set them too high**
11 **until we figure out what the cost is going to be to**
12 **those folks who will bring the product in and how many**
13 **products they will choose to register, which may be less**
14 **than they are currently registering and bringing in.**

15 **We also questioned, as Mr. Knight mentioned in**
16 **his presentation, the ability to regulate what is**
17 **expressed on an Internet website.**

18 **I am not an attorney, but I would question some**
19 **of the legal authority of the Department of Agriculture**
20 **doing something on the Internet. That's a legal**
21 **question the Department -- the AG's Office needs to**
22 **re-examine.**

23 **I know the rule parrots exactly, word for word,**
24 **the statute that was passed, but it is a question we**
25 **would continue to maintain.**

1 **The group I represent has not been and is not**
2 **concerned with the by-product -- the food by-product**
3 **registration that you have heard comment on by the**
4 **previous folks. That has not been one of our concerns.**

5 **My memory -- and you have the Department's**
6 **record -- is that there was very little discussion of**
7 **that over the summer, through the three rule-making**
8 **meetings that were held here at the Department. That**
9 **was not a major discussion topic at that time.**

10 **I would be happy to answer any questions.**

11 **Those would be our concerns -- the size of the**
12 **reserve, the level of the fee, the cap that is set on**
13 **the operating reserve, and setting the fee at a**
14 **relatively low level until we see what the new FSMA**
15 **regulations do both to the food processing industry and**
16 **to the Department and how they run the program.**

17 **I would be happy to answer any questions.**

18 **THE HEARING OFFICER: Thank you.**

19 **MR. J. BRENT OLMSTEAD: In support? Are you**
20 **ready for that?**

21 **THE HEARING OFFICER: I'm sorry?**

22 **MR. J. BRENT OLMSTEAD: In support of the rule?**

23 **THE HEARING OFFICER: Almost. We still have**
24 **folks on the conference call that may be in opposition.**

25 **I believe we are done with the folks that are**

1 here -- excuse me. I misspoke. We have more testimony.

2 MR. SAM ROUTSON: Sir, I apologize for
3 confusing the flow of this hearing.

4 My name is Sam Routson. I am here representing
5 Idahoan Foods. Idahoan Foods is one of the state's
6 largest potato processors. We have plants in
7 Lewisville, Idaho Falls, Rupert, and a sister plant near
8 Shelley.

9 We are proud to produce some of the finest
10 potato products based on the Idaho potato, and those
11 products are shipped not only nationally but worldwide.

12 We would like to join in the comments of
13 Ms. Criner, Mr. Prouty, and Mr. Ronk in opposition to
14 any change in the exemption that is already in place in
15 regards to production waste or what we call "process
16 waste," particularly in the sense of the cost and how
17 best to deal with what some might call a waste stream.

18 We look at it in terms of how we deal with a
19 by-product that may not have a great value further up
20 the processor economic chain but has some value and can
21 be utilized in forms of animal feed and things of this
22 nature.

23 Idahoan is currently undergoing what we believe
24 to be a substantial expansion in our production
25 facilities, which means increased employment and

1 economic activity in Southeastern Idaho.

2 One of the factors that we considered in
3 deciding to expand in Idaho, rather than expand outside
4 of the state, is the basis, among our things --
5 primarily, it is the basis of cost.

6 What we would like to see is stability in the
7 cost of our production and our processing, and we
8 believe that a change in this exemption would change
9 that factor and make Idaho a less desirable place for
10 the processing of potatoes and other value-added
11 products.

12 So we believe that the current exemption, as it
13 is focused on production waste, is very workable. If
14 things change at the federal level, perhaps we would
15 have to revisit that.

16 As for now, we agree with Ms. Criner and our
17 fellows in the potato processing field.

18 **THE HEARING OFFICER:** Thank you.

19 I have a question. I don't know -- maybe the
20 Department can answer it for me. In terms of these -- I
21 think, generically, I understand what types of potato
22 by-products we are talking about that are fed to cattle
23 or whatever.

24 What is going to be different than before for
25 these by-product producers? What are they going to have

1 to do differently that they are not doing now?

2 MR. LLOYD KNIGHT: They would have to register
3 those products, which would mean, I mean, obviously, the
4 registration fee per product but, more importantly,
5 attaching a label or describing a label with guarantees
6 of nutritive value to those products.

7 So any product now that is registered is
8 required to have a label that complies with what is
9 outlined in the rule and in statute with regards to
10 describing nutrients, describing ingredients, and those
11 sorts of things.

12 So that's, obviously, a requirement they would
13 have to do, if those products are required to be
14 registered, that they are not required to do today, at
15 least before this rule.

16 It is a one-time fee, which is different from
17 what, at one time, was tonnage that was required on
18 those products. So that is a change that would be
19 there; it is that requirement to register and attach a
20 feed label to it.

21 I think what we see -- I think, in looking at
22 the comments that have been submitted and what you
23 heard, there is some variability to those products.

24 For those companies to try to -- I think what
25 we are hearing in the comments is there are some issues

1 **there in that variability and trying to attach a label**
2 **to it.**

3 **MR. SAM ROUTSON: Mr. Hearing Officer, if I**
4 **may, I will follow up on that.**

5 **Comments were made concerning -- I believe**
6 **Mr. Prouty made comments concerning the difficulty in**
7 **labeling a waste stream, if I remember correctly.**

8 **In the potato industry, for instance, you may**
9 **be -- the input of what we call the raw material varies.**
10 **It can vary not only from seller to seller but from load**
11 **to load.**

12 **You may have a substantial amount of potatoes**
13 **that may have a high incidence of rot or spoilage. That**
14 **is nothing that is passed on to the ultimate consumer or**
15 **human consumption, but early in the process that**
16 **develops this waste stream that we are referring to**
17 **here.**

18 **For us to be required to identify that this**
19 **contains X amount of rot or X amount of peel or X amount**
20 **of some other material -- that is not going further in**
21 **the stream, but that is going to be taken to a feed yard**
22 **for consumption of cattle.**

23 **That material, at any given time, is perfectly**
24 **good for cattle feed and provides -- it is a very**
25 **desirable additive to their feed mix.**

1 **The purpose, I would think, for labeling and so**
2 **on is not met here when that waste stream, when that**
3 **production stream, is being diverted to a feed lot.**

4 **While I believe that Idahoan's waste stream is**
5 **far superior and preferable to, for instance -- not to**
6 **name names -- Simplot's waste stream -- ours is a far**
7 **better waste stream -- nonetheless, the difficulty in**
8 **labeling is going to be cost-prohibitive.**

9 **THE HEARING OFFICER: Can you help me**
10 **understand with some more specificity what would be**
11 **required on the label?**

12 **MR. LLOYD KNIGHT: At the very basics,**
13 **there's the nutritive value of, say, protein, fat, and**
14 **fiber, you know, those basic nutritive values would need**
15 **to be there and a description of what is there as an**
16 **ingredient.**

17 **You know, for some waste products, that will**
18 **probably be easier for some processors than others. You**
19 **know, what we have discussed some internally is that,**
20 **you know, we think those labels could be fairly simple**
21 **to do because, obviously, those waste streams, at least,**
22 **would appear to be basic, from the standpoint that it**
23 **all starts with the same raw product.**

24 **Probably, the challenge is going to be in**
25 **getting that all to fit with the dry matter content and**

1 identifying some of those things because, obviously,
2 that can be variable.

3 We understand there is going to be some
4 variability there that has to be dealt with, whether we
5 are talking about peelings or a slurry. We understand
6 there is a high degree of variability there.

7 You know, the purpose of labeling, at its
8 essence, though, is also to allow the consumer of that
9 feed product, which is what this ultimately is -- I
10 mean, this is a feed product that is being sent to
11 livestock production.

12 At some point there, it changes from being a
13 waste stream to a feed product and being able to
14 describe to the consumer of that feed product what it is
15 they are getting and what they can expect for a
16 nutritive value, you know, and that it's consistent with
17 what we do for registration of other feed products.

18 You know, we have some labels that are very --
19 I would say they are very basic for some products,
20 depending on what all is involved with those products.

21 Obviously, a milled product that has twenty
22 different ingredients in it is going to have a label
23 that looks quite a bit different and can be more complex
24 than something that has one ingredient, just based on
25 what it is you are dealing with.

1 **THE HEARING OFFICER:** Is a russet more
2 nutritious than a Norgold? I don't even know.

3 **MR. SAM ROUTSON:** Well, Mr. Hearing Officer, I
4 have yet to speak -- I have yet to have a conversation
5 with any cow that is concerned about the protein or the
6 fiber or the fat content of that mixture that they are
7 receiving.

8 I have yet to have an actual conversation with
9 any feed lot operator that is taking this material and
10 mixing it into their ration for their feed.

11 They are taking this because, one, they realize
12 that, whether it has two-percent protein or six-percent
13 protein or X fiber versus some other X fiber, it is a
14 good and viable part of the ration that they are mixing.
15 Key to them is that it is low cost or no cost to them.

16 It provides for the processors a means of
17 dealing with that waste stream in a beneficial and
18 economically sound and environmentally sound way and is
19 beneficial for everyone involved in the manner of
20 disposal.

21 **MR. J. BRENT OLMSTEAD:** Mr. Hearing Officer, if
22 I may.

23 I am Brent Olmstead with Milk Producers of
24 Idaho. We are purchasers of these products -- the feed
25 lot industry and dairy industry.

1 **Anyone of any substance with a large herd of**
2 **cows on their site will have a nutritionist -- normally,**
3 **it will be a Ph.D. nutritionist -- at the operation that**
4 **will be testing their feed and their rations.**

5 **What the good gentleman said is true. If there**
6 **is -- it is an additive to the mix. If something is out**
7 **of whack, the nutritionist will catch that; and**
8 **adjustments can be made with suppliers to fix that.**

9 **THE HEARING OFFICER: Thank you.**

10 **All right. Is there anyone on the conference**
11 **call that wishes to speak in opposition to or provide**
12 **comment on the proposed rule?**

13 **MR. DAVID FAIRFIELD: My name is David**
14 **Fairfield. I am with the National Grain and Feed**
15 **Association.**

16 **THE HEARING OFFICER: Yes.**

17 **MR. DAVID FAIRFIELD: I do have some comments,**
18 **if I can make them.**

19 **THE HEARING OFFICER: Yes. Go ahead. Thank**
20 **you.**

21 **MR. DAVID FAIRFIELD: Thank you.**

22 **Again, my name is David Fairfield. I am the**
23 **Vice President of Feed Services with the National Grain**
24 **and Feed Association, or the NGFA.**

25 **The NGFA is the national trade association that**

1 represents the interests of its grain- and feed-related
2 member companies. We about 400 member companies that
3 are actively involved in manufacturing and distributing
4 animal feed and pet food.

5 Several of our member companies manufacture and
6 distribute commercial feed in Idaho. So the NGFA has a
7 strong interest in the rule-making process that Idaho is
8 undergoing at this time.

9 At the outset, I do want to commend the
10 Department for all of the outreach activities that it
11 has entered into as this process has moved forward.

12 I think the Department has made an excellent
13 effort to engage stakeholders and has provided many
14 opportunities to provide input through the rule-making
15 process. So I am very grateful for that.

16 The comments that I want to make specifically
17 kind of pertain to the rule-making process, how it has
18 played out, and some of the current issues that are
19 being considered.

20 As the Department is aware, early on in the
21 rule-making process, the NGFA and the American Feed
22 Industry Association proposed revisions to Idaho's
23 Commercial Feed Law that incorporated three main
24 concepts.

25 One was to establish an appropriate facility

1 **licensing fee; one was to continue tonnage reporting**
2 **with associated fees at an appropriate level; and, last,**
3 **we advocated for repealing the requirements to register**
4 **products and to pay product registration fees.**

5 **In support of our recommendations to continue**
6 **tonnage reporting, our organizations noted that tonnage**
7 **figures provided by firms offered the Department**
8 **valuable information on the amount and types of products**
9 **that are distributed in the state which can be used to**
10 **direct feed program sampling and analytical activities.**

11 **In addition, we noted our belief that the fee**
12 **that is paid by a given company to fund the feed program**
13 **should inherently correspond to the volume of feed that**
14 **the company distributes within the state.**

15 **We just think it's common sense that a company**
16 **that potentially distributes hundreds of tons of**
17 **commercial feed should pay more into the program than a**
18 **company that distributes a few bags of two different**
19 **types of commercial feed. That is kind of a**
20 **philosophical argument.**

21 **In support of our recommendation to repeal the**
22 **requirements to register products and pay product**
23 **registration fees, our organization noted that a**
24 **product-registration-based funding program is costly and**
25 **inefficient for both feed companies and the Department.**

1 **That's because feed companies often are not**
2 **always aware of the specific states where their products**
3 **may ultimately be distributed; and, therefore, they are,**
4 **essentially, required to register all products that may**
5 **possibly be distributed within the state.**

6 **Under that type of a program, state resources**
7 **are spent reviewing products that may never be**
8 **distributed within the state; and feed companies are**
9 **likely paying fees to register products which may never**
10 **end up being distributed in the state, as well.**

11 **During the rule-making process, however, these**
12 **recommendations concerning tonnage reporting and**
13 **repealing the requirements to register products were not**
14 **accepted.**

15 **The draft rules adopted a framework that**
16 **eliminated tonnage reporting and maintained product**
17 **registration and product registration fees as the sole**
18 **means to fund the Department's activities.**

19 **So after the Department made the decision to**
20 **adopt this type of revenue framework, the negotiated**
21 **rule-making process, essentially, was focused on**
22 **determining how much to raise product registration fees**
23 **since these fees needed to be significantly increased to**
24 **offset the loss in revenue that previously had been**
25 **received through tonnage reporting and tonnage fees.**

1 **During that phase of the rule-making process,**
2 **the NGFA, the American Feed Industry Association, and**
3 **the Pet Food Institute, whose members represent**
4 **approximately 98 percent of the United States' dog and**
5 **cat food production, provided recommendations concerning**
6 **product registration fees.**

7 **In that regard, as Mr. Jones has already**
8 **mentioned, we advocated that the reserve fund for the**
9 **feed program that currently holds over two million**
10 **dollars be limited to be maintained at a one-year**
11 **operating reserve, approximately \$750,000.**

12 **Our organization has recommended that the**
13 **Department utilize money from this reserve to benefit**
14 **animal agriculture producers, specifically during this**
15 **time of economic stress caused by drought conditions, by**
16 **setting a lower product registration fee until one**
17 **year's operating budget remains in the fund.**

18 **Therefore, we have recommended, as Mr. Jones**
19 **already mentioned, that the Department set the product**
20 **registration fee at \$35 per product and use the**
21 **remaining reserve to cover costs for the program's**
22 **expenses.**

23 **We still strongly support this \$35-per-product**
24 **registration fee, instead of the fee that is being**
25 **currently proposed by the temporary rule; and we would**

1 **urge the Department to adopt the \$35 product fee as it**
2 **moves forward and finalizes the Commercial Feed Rule.**

3 **So in closing, again, I appreciate the**
4 **opportunity to provide comments and all of the efforts**
5 **that the Department has made to engage stakeholders.**

6 **Thank you for considering our recommendations.**

7 **THE HEARING OFFICER: Thank you, Mr. Fairfield.**

8 **I have one question. Did you provide -- did**
9 **you or your organization provide testimony to the Idaho**
10 **Legislature when they adopted the statute?**

11 **MR. DAVID FAIRFIELD: Mr. Jones testified on**
12 **our organization's behalf.**

13 **THE HEARING OFFICER: Thank you.**

14 **Further comment?**

15 **MS. LEAH WILKINSON: This is Leah Wilkinson**
16 **with the American Feed Industry Association. I would**
17 **just associate myself with the comments made by both**
18 **Mr. Jones and Dave Fairfield.**

19 **Our Association, as Dave mentioned, has**
20 **submitted written comments, as well as participated in**
21 **the legislative process jointly with the other**
22 **associations and some member companies of ours.**

23 **In those comments Dave just gave you, as far as**
24 **keeping the commercial feed fund at a one-year operating**
25 **budget, instead of stating a specific dollar amount of**

1 one million dollars, and then, also, lowering the
2 product registration fee that currently is proposed at
3 \$45 and lowering it down to that \$35-per-product fee, in
4 order to utilize the funds that are in the reserve that
5 are industry funds that have gathered over the course of
6 the last several years, as the industry has paid either
7 the tonnage fees or product registration fees.

8 So we think, while things need some time to
9 shake out to determine the number of products that will
10 be registered in the state, as the industry evaluates
11 the number of products that currently, really, are being
12 distributed in the state, that a lower fee will be
13 beneficial to the industry in utilizing the funds that
14 the Department already holds that are industry funds.

15 I would also just like to comment -- make a
16 comment on the exemption that was being discussed by
17 other commenters. I would just add in that I think --
18 it is not a position one way or the other but just to
19 challenge -- that the Department has -- because -- as
20 David mentioned, we advocated for a facility license
21 early on in this process.

22 I think the State has a challenge of knowing
23 what type of feed products are actually distributed and
24 used by the industry in the state. I think that was one
25 of the reasons for not having the exemption in the

1 **proposed regulation.**

2 **That would just be something to consider as the**
3 **new federal regulations are coming down. They have not**
4 **been proposed yet, Lloyd; but we anticipate them soon.**

5 **You know, the Department will need to know what**
6 **is actually being distributed in the state and have some**
7 **sort of handle on that if the State wants to be more in**
8 **charge of implementing any of those federal regulations**
9 **instead of federal inspectors coming down.**

10 **So I would just offer those and, again,**
11 **associate myself with the comments made by Mr. Jones and**
12 **Mr. Fairfield.**

13 **THE HEARING OFFICER: Thank you.**

14 **Any further comments from the folks on the**
15 **phone?**

16 **MR. BRIAN CRAWFORD: Hi. This is Brian**
17 **Crawford with Basic American Foods.**

18 **I don't have any additional comments, other**
19 **than just to endorse the comments made by Simplot and**
20 **Idahoan Foods. We are in alignment with their**
21 **positions, and we would endorse their statements.**

22 **THE HEARING OFFICER: Thank you.**

23 **MR. BRIAN CRAWFORD: Thank you.**

24 **THE HEARING OFFICER: Tell me who you represent**
25 **one more time.**

1 **MR. BRIAN CRAWFORD: Basic American Foods. I**
2 **may have missed the roll call.**

3 **THE HEARING OFFICER: Thank you.**

4 **Any further comment from the folks or people on**
5 **the conference call?**

6 **Very well.**

7 **If I could hear from anyone that would like to**
8 **speak in favor of the proposed rule?**

9 **Yes, sir.**

10 **MR. J. BRENT OLMSTEAD: Thank you, Mr. Hearing**
11 **Officer.**

12 **My name is Brent Olmstead. I am here today**
13 **representing the Milk Producers of Idaho. The Milk**
14 **Producers of Idaho is a dairy industry trade association**
15 **located in -- with dairies located in Idaho and the**
16 **state of Washington. They represent those in the state**
17 **of Idaho.**

18 **Also among their membership are affiliated**
19 **businesses that support the dairy industry. Included in**
20 **that group are feed suppliers, people that accept feed**
21 **from out of state, do mixes, do custom mixes for the**
22 **dairies, and deliver that product.**

23 **The dairy industry in Idaho is the third**
24 **largest in the nation. We are the largest agricultural**
25 **set component of the ag. segment in the state's economy.**

1 **While I have no documentation, I would dare say**
2 **we are probably the largest purchaser of bulk feed in**
3 **the state of Idaho. We pay these fees.**

4 **The check might be written by the feed supplier**
5 **or the feed manufacturer to the state; but that cost is**
6 **passed on to the purchaser of the feed, and that would**
7 **be -- that would be us.**

8 **We applaud the Department of Agriculture for**
9 **their efforts to make this program more efficient. That**
10 **is what they did during the legislative session.**

11 **This rule increases efficiency of the feed**
12 **inspection program and, ultimately, will save money for**
13 **the dairy operations of Idaho.**

14 **The current process of reporting by tonnage is**
15 **an unyielding process. It creates added expense,**
16 **especially on the part of bulk feed suppliers, having to**
17 **track and do, I believe, quarterly tonnage reports that**
18 **are due.**

19 **It increases the time involvement in the**
20 **office. It takes them away from their business,**
21 **creating additional expense that is passed on to our**
22 **industry.**

23 **We supported the legislation during the**
24 **legislative session, testified in favor of it, and**
25 **participated throughout the process. We supported**

1 the -- we participated in the rule-making throughout the
2 summer.

3 We support the rule as written. We have no
4 problem with returning to the current exemption for food
5 processing by-products. It seems to make sense. It's
6 an ease of operation that people are accustomed to, and
7 it works.

8 I do, however, have -- on the fees, as has been
9 talked about, the \$35 fee that has been mentioned was
10 proposed during the legislative session; and it was
11 rejected by the House Agriculture Committee at that
12 time.

13 The Committee determined to afford the
14 Department some flexibility in what they determined the
15 fee is, and the Department utilized that flexibility and
16 came up with the fee that is in the rule.

17 Contrary to what has been stated by my good
18 friend Mr. Prouty from Simplot, we feel that having an
19 excess fund -- having a balance in the fund is very
20 important.

21 The Department will be needing to modernize
22 labs. They will need to be purchasing added equipment,
23 additional equipment, and new equipment to fulfill the
24 duties that are in the code through this rule. That
25 money in the fund would pay for those additional

1 expenses.

2 We would not have to, then -- the Department
3 would not have to come back and raise the fee to just
4 raise the money to make those purchases. I believe that
5 has been the purpose of having a reserve fund balance in
6 that account over the years.

7 Overall, we are in support of the rule. We
8 feel that it brings efficiency to state government which
9 we, as an industry, appreciate; and we appreciate the
10 efforts of the Department in doing so.

11 I would be more than happy to answer any
12 questions.

13 **THE HEARING OFFICER:** Thank you.

14 Any other comments in support of the proposed
15 rule?

16 Any comment from people on the conference call
17 in support of the proposed rule?

18 Does the Department agree with the numbers that
19 I have heard? Those numbers -- I will just throw them
20 out. I have heard about a two-million-dollar balance in
21 the reserve fund currently, and I have heard about
22 approximately \$700,000 a year operating expenses to fund
23 the program.

24 **MR. LLOYD KNIGHT:** Yes. Those are numbers that
25 we have presented. We agree with them because we are

1 the ones who presented them over the course of the
2 rule-making process.

3 **THE HEARING OFFICER:** Thank you.

4 Does the Department have anything you wish to
5 add after hearing the comments that you have heard at
6 the hearing today?

7 **MR. LLOYD KNIGHT:** I don't think we have
8 anything to add, other than, you know, this has
9 continued to be -- this has been a long rule-making
10 process. We certainly do appreciate everyone's input
11 along the way.

12 This has been a -- I don't think we anticipated
13 it would be quite this complicated of a rule to do. We
14 do appreciate everyone's input.

15 This has been part of an on ongoing effort to
16 try to, I guess, renew and re-shuffle around our feed
17 program. It has been an important part. Certainly, we
18 have enjoyed the participation, really, that we have had
19 from everybody. That has been very helpful.

20 **THE HEARING OFFICER:** And could you just maybe
21 tell the people that are here and listening kind of
22 where this goes from here?

23 **MR. LLOYD KNIGHT:** Yes. We have to have any --
24 any additional changes that we are going to make to the
25 final rule will be presented to the legislature, and we

1 **have to have it in by this Friday to the Department of**
2 **Administration.**

3 **So what we will do is we will review the**
4 **testimony from today and whatever is submitted in**
5 **writing by tomorrow.**

6 **We will, obviously, give it to the Director and**
7 **identify any amendments to the rule that need to be**
8 **made. That will happen in fairly short order, by**
9 **Friday.**

10 **THE HEARING OFFICER: Thank you for everyone's**
11 **participation.**

12 **I will close the hearing at this point.**

13 **Thank you.**

14 **(The foregoing public hearing adjourned at 3:00 p.m.)**

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**I, LORI A. PULSIFER, Certified Shorthand Reporter,
do**

hereby certify that:

The foregoing proceedings were taken before me;

**The proceedings were recorded stenographically by
me and
were thereafter transcribed by me;**

**The foregoing is a true and correct record, to the
best of my skill
and ability; and**

**I am not a relative or an employee of any attorney, nor am I
financially interested in the action.**

**I have hereunto set my hand and seal this 29th day
of November
2012.**

/s/ Lori A. Pulsifer

**LORI A. PULSIFER, CSR, RDR, CRR
Idaho Certified Shorthand Reporter No. 354**