

***Idaho State Department of Agriculture
Negotiated Rulemaking
Rules Pertaining to the Idaho Commercial Feed Law
July 11, 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; Tressa Meenderick, Pioneer Commodities; Jennifer (*surname not provided*), Pioneer Commodities; Douglas Jones, Feed Coalition; Steve Busby, J.D. Heiskell & Co.; Pamm Juker, ISDA; Brody Miller, Western Stockmen's; Paul Head, Darling International; Ken Kage, Darling International; and Melinda Bouldin, ISDA, recording.

Via Telephone: Margerie Sedam, Pacific Northwest Grain & Feed; Leon Martineau, Western Stockmen's; Ty Pepplewell, Clear Springs Foods; Carli Mann, CHS; Tim Bedine, PerforMix; Maria Tharpe, Pacific Ethanol; Leah Wilkinson, AFIA; Roxanne Rydeen, Land O' Lakes; Sue Carlson, Cargill; Rick Naerebout, Idaho Dairymen's; Julie Johnston, Western Stockmen's; Robin Fisher, D & B Supply; JoAnn Goodwin, D & B Supply; Karen Suedmeyer, Cargill; Linda Lemmon, Idaho Aquaculture Assn.; Paul Marsch, Scoular; Patt Klevmoen, Rangin; and Doug Ramsey, Rangin.

AGENDA ITEMS

WELCOME

Lloyd Knight convened the meeting at 10:01 a.m., introducing ISDA staff members present. He reviewed the meeting agenda, explaining that today's goal was to focus on the exemption section of the rule. Next week's focus will be on the fee portion of the rule.

After reviewing what portions of the rule will be reviewed, Mr. Knight reminded all that while public comment is certainly welcome and will be taken into consideration, ultimately the changes to the rule will be ISDA's decision. There will be an opportunity to respond to the final rule in the fall.

Mr. Knight directed all to the handout provided by ISDA entitled "*Idaho State Department of Agriculture Commercial Feed rule, Meeting 1 July 11th, 2012*". He explained the role of ISDA staff listed in the document. He further explained that the plant lab is transitioning to a new location in Twin Falls, hopefully at the end of August.

Mr. Knight reviewed the list of exemptions with the group, explaining that this list came out of statute. Some items have been on the list for a very long time.

Brent Olmstead inquired as to whether or not the list had changed from last year. Mr. Knight answered that the list had not changed. Mr. Olmstead then asked if exemptions were determined at the discretion of the Director? Mr. Knight answered yes, which prompted Mr. Olmstead to inquire if there is a format the Director uses in making the determination. Mr. Knight explained that the Director has always had

this authority, that it is nothing new. Randy MacMillan asked why there were any exemptions. Mr. Knight answered that some already exist in the Association of American Feed Control Officials (AAFCO) official publication and this is consistent with states outside of Idaho. Mr. Knight directed the group to the paragraph 08., "Byproducts or Production Waste". Byproducts are not listed in the AAFCO publication. Mr. Olmstead asked if this portion will be all-encompassing? Mr. Knight explained that effort was made to be all inclusive and that input is needed from stakeholders on byproducts to be added.

Mr. Olmstead further inquired if there should be a basis for determining exemptions written into the rule? Mr. Knight answered that we certainly have that latitude. Douglas Jones asked what the process would be to add or remove a byproduct from the list, short of the process being laid out in rule? Mr. Knight answered that there is subjective interpretation involved, and some products are difficult to label due to inconsistency and variables associated with them. There is a need to capture in rule how to determine exemptions.

Mr. MacMillan asked in light of the Food Safety Modernization Act (FSMA), how do we insure that feed is safe for animals, and in turn for the humans who eat the animals? He further commented that he likes the idea of clarifying ground rules for determining exemptions.

Mr. Knight asked the group how many hoops they would be willing to go through to request an exemption? We could write into the rule that we would review and look for safety issues, adulteration, etc. Mr. MacMillan stated that would be helpful.

Pamm Juker raised the question of a cost increase. If we expand the program to include this process, would this cause an increase in ISDA's expense in running the program? Mr. Knight answered that it probably wouldn't make a significant change in the operation of the program, as each label is reviewed now anyway. Mr. Olmstead commented that perhaps the person making the request for exemption could bear the cost.

Mr. Knight asked about potential language – do we apply to everything moving forward? Do we keep established language, not changing the method for those on the list?

Mr. MacMillan asked if there is a food safety issue here; would want to feel confident that feed is safe to feed. Mr. Knight clarified that exempt items listed in paragraphs 01. through 07. Are consistent in all states. We do very little with those since these items are usually dealt with on farms.

Leah Wilkinson stated that there will be exemptions that FDA will put in rule for testing, but haven't seen anything yet. Mr. Knight stated that for Idaho, byproducts might be something that will fall under a different category after the new rule is in place.

Mr. Knight asked if Mr. MacMillan and Ms. Wilkinson would draft some language surrounding the FSMA concern regarding byproduct definition/exemption. The draft will be reviewed at the next meeting.

Douglas Jones suggested that for byproduct exemption, to think about what criteria the Department might use to make a determination, so the process is transparent. Mr. Knight stated that we would

welcome an outline.

Mr. Knight reminded the group that exemptions cited in paragraphs 01. through 07. are statutory and covered in AAFCO, so we will just be focusing on paragraph 08. Mr. MacMillan and Ms. Wilkinson will work on language to be distributed to the group for review.

Mr. Knight directed the group to fee information on the last page of the handout. This will be covered at the next meeting. He offered an explanation of the process used to determine what registration fees currently are. Costs incurred in moving the lab to Twin Falls were not used in the calculations. Based on today's costs, the cost per product is +/- \$60.00.

Mr. MacMillan asked whether or not fees would ever be decreased in the event a fee is set and ISDA ends up getting more money to run the program? Mr. Knight answered that we typically don't move fees around. Any given program may fluctuate from year to year, and don't want to be in the position of not having adequate funds to run a program.

Brody Miller asked if costs will increase if ISDA tests more? Mr. Knight answered that ISDA spends a lot of resources now dealing with tonnage reports. He anticipates shuffling some of that to enforcement and sampling. Ms. Wilkinson asked how ISDA will assign priorities to what to sample? Mr. Knight stated that we would try to put something together.

Mr. Jones stated that Mr. Knight's explanation of the program expenses for RY 10-11 and projected registrations for RY 12-13 is not detailed enough. Mr. Knight explained that he didn't want to inundate everyone with too much detail, but he feels comfortable with \$50 - \$60/per product range as being as accurate as possible taking into account all the variables involved.

Tressa Meenderick stated that when you register a product, you have to have a label. How can you give something a label if it is exempt? Mr. Knight reiterated the need for input from the group regarding labeling and working with AAFCO to account for variability and moisture. ISDA will try to research prior to next meeting. Mr. Knight asked the group to think about labeling. This area needs to be looked at.

Ms. Wilkinson asked Mr. Knight to clarify his expense estimate. Mr. Knight said all we can do is assume that today's expenses will be the same as tomorrow.

Mr. Knight adjourned the meeting at 11:17 a.m.

Next meeting: July 18, 2012 at the ISDA at 10:00 a.m.

Respectfully submitted by Melinda Bouldin