IDAHO DEPARTMENT OF AGRICULTURE

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Negotiated Rulemaking for IDAPA 02.02.03
Minutes of May 22, 2023, Meeting

Department Staff: Chanel Tewalt, ISDA

Lloyd knight, ISDA

Ryan Ward, ISDA

Brian Slabaugh, ISDA

Dallas Burkhalter, Deputy Attorney General

Hillarie Gray, ISDA

Elizabeth Palmateer, ISDA

Sherm Takakori, ISDA

Mike Watson, ISDA

Nick Zurfluh, ISDA

Jeremy Varley, ISDA

Blaine Sterling, ISDA

Stakeholders: Mitch Whitmill, Jefferson County/ Idaho Association of Weed Control Superintendents

Braden Jensen, Farm Bureau

Craig Nuthak, Locus Ag/IPMA

Pat Sherer, Simplot/IPMA

Chase Youngdahl, Bonner County Weed Dept.

Stacy Saterlee, Idaho Grain Producers Association

Ann Bates, IPMA

Bryce Fowler, Freemont County

Patxi Larrocea-Phillips, Idaho Noxious Weed Control Association

Alan Martinson, Latah County/Idaho Noxious Weed Control Association

Ben Miller, Simplot/IMPA

Kirk Dean, IPMA/Barrier

The meeting was called to order by Deputy Director Lloyd Knight at 8:32 a.m. MT. and advised attendees of recording.

Lloyd advised that there will be a third meeting already scheduled and opened up the floor to Ryan to begin discussion.

Ryan started with topic of recertification credit amounts based on previous comments. Explains how the current requirements of recertification credits compare to surrounding states, and the process of having them be a part of the C & T plan that needs to have EPA approval.

Ryan-presented 3 options for possible changes to recertification credit requirements.

Chase-wanted to know how option 3, the category specific credit requirement, would work for the statewide consultant license.

Sherm-explained that a possible statewide consultant seminar would be a broad scope, and the consultant category would possibly require a certain number of credits in different major categories.

Patxi- proposed dropping from 15 to 14 credits but keep the 60 minutes per credit.

Ryan- stated that is a valid option, still in line with neighboring states, and explained how seminar credit approval is calculated, and asked if that was preferred over option 2.

Mitch-stated his concern with the category specific option with applicators who hold several different categories. Stated it would be a burden to try to get category specific recertification credits, and it would be best to try to reduce it now if/when it is implemented at a later time. Also stated concern about the quality of training available to applicators.

Lloyd-provided clarification on the two issues of category specific credits and the number of credits. The possibility of EPA changing ISDA to option 3 is still a ways out and not necessarily something that has to be dealt with today.

Ryan-stated it would be best to start a discussion on what works for all parties before something else is handed down by EPA.

Mitch-stated that ultimately our goal is the same as ISDA's to see zero issues in the field and properly trained applicators.

Patxi-asked: what does shifting to any of the 3 options mean for ISDA and their resources and what kind of burden does this put on ISDA, cost wise, for tracking, compliance, people, and resources?

Ben-stated he doesn't have a problem with the points now and how they are obtained, but he does not like the difference in how the credits are approved for the seminars across the differing states, the 60 minutes compared to 50 minutes per credit. Would like to be more consistent with the other states on issuing credits.

Lloyd-asked for any further comments on the topic and for a consensus on the options.

There was general consensus was for option 2, but not wanting to go with option 1 or 3.

Craig-stated with the Q&A after seminar topics they should already be hitting the 60 mins.

Ryan-provided clarification on what kind of criteria qualifies for credits.

Mitch-stated that it is a good idea to be consistent with other states around us.

Chanel-wanted everyone to know that this isn't the only chance to look at it or to give input on it.

Lloyd-asked Ryan to get the change updated in the draft for it to be posted on the website for public review.

Chase-assumed if we stayed with option 1, and nothing changes with credits, could there be a change with better communication between seminar host and ISDA office staff.

Ryan-agreed that more transparency and communication during submittal process is in the works.

Patxi-asked if the 30-day submission rule could be updated to allow for late updates or changes to award credits for updates, or award credits in arears.

Ryan-stated that there already is already an option to make some updates as long as there are no major changes to go off topics during the 30 days before.

Chanel-stated that the 30-day prior submission is in rule and a different track than awarding points post seminar.

Paxti-wanted to know if the 30-day rule can be worked on.

Chanel-stated when negotiated rule making is open, everything in rule can be discussed. If the timeline is changed we may run the risk of not having the bandwidth to approve something in time.

Paxti-addressed 100.06.a.ii, discussed language of rule, there is no appeal if there is a late presenter, or changes to be made. Exceptional circumstance is being removed, and how is that defined?

Ryan-explained that exceptional circumstance is not defined and is not clear language and should be removed.

Lloyd-suggested that seminar planners help put together alternative language with division.

Patxi- does think a benchmark time is needed, but to allow for flexibility within the 30 days if resources are available.

Ryan-suggested Nevada's language, 'if a seminar is received after 30 days it may not be reviewed'.

Craig-felt like the language of 'must' does not allow flexibility.

Ann-liked the language afterwards that would allow changes for after submission, liked the Nevada wording, but that also leaves some not-knowing if it will be approved.

Alan-also liked wording from Nevada or something similar.

Mitch-also agreed that as long as there is cooperation and flexibility to add credits or lower credits after the submission time.

Kurt-suggested that language can be 'submit initial request prior to 30 days'.

Lloyd-suggested Ryan, Patxi, Ann, and anyone else to facilitate new language for seminar submission.

Lloyd-asked for any more comments on this section, no additional comments, moving to topic of categories.

Lloyd-discussed previous comments made from last meeting.

Ryan-addressed concern that potato cellar and wood preservative shouldn't belong with IISP.

Ben-discussed why the potato cellar category should be considered an ag category or a standalone.

Lloyd and Ryan discussed the necessity for consolidation of categories and possible subcategories.

Craig-addressed that the potato cellar applicators are not getting sufficient training and doesn't think consolidation would solve anything, other than having potato cellar applicators testing on cockroaches, and urban pest control applicators testing on potato cellar.

Ben-agreed that merging categories would reduce the percentage of questions related to competency for potato cellar.

Lloyd and Ryan discussed the potato cellar category possibly moved into an ag category and why it is not ag related, possibly moving commodity pest, potato cellar, and seed treatment together into a subcategory of IISP.

Patxi-agreed that would make the most sense to keep commodity and urban pest separate.

Ben-agreed on a subcategory.

Lloyd-action item for Ryan to draft a commodity pest subcategory.

Craig-asked when the categories are consolidated, how will 'partial categories' be implemented, if you have OI, but not OH for example, would everyone have to take an exam or retest.

Ryan-responded that applicators would most likely be grandfathered into the combined category.

Lloyd-moved on to the topic of proposed cheating prohibition.

Kurt-addressed 100.03.d.ii, the term 'memorization' and would like it to be removed. Memorization of study material is part of studying and that discussing study material with managers or others is reasonable.

Ryan-stated the 'memorization' is not addressing 'study material' and memorization of information coming into the exam session from study material but relates to memorization of exam questions themselves and discussion of exam questions with others.

Kurt-stated that the first line should be sufficient, and it would be an impossible endeavor to enforce, it is reasonable for someone to remember a topic they encountered on the exam to go back and study.

Dallas-suggested 'the removal by any means' in the language to address the concern of removal of exam material, differentiated between remembering subjects that need to be studied and writing down verbatim questions to share with others.

Pat-stated having a co-worker memorize a test and share that with someone is a form of learning too. Language is 'nit-picky' and sharing exam questions is a great way to learn material. Agrees physical removal is not ok.

Craig-agreed with Pat in that it's too 'nit-picky' and the language should be adjusted.

Ben-suggested a rotating bank of questions to deter cheating.

Mitch-suggested some verbiage that someone can't post it on social media or similar.

Ann-stated that section vi. still states what is prohibited and with the suggested changes says what needs to be said.

Dallas-stated it is an improvement from what is in rule now.

Anne-asked what is the consequence of cheating? Who enforces that? Are people informed that they can't cheat when they go to test?

Brian-discussed the possible consequences and cost of cheating, how people are notified of policies.

Lloyd-general consensus to draft changes IPMA suggested for next meeting. Moved to Exam fee topic.

Ben-stated that the $10 exam fee should be removed from rule.

Ryan-stated removing exam fees would possibly cause more no-shows and does not provide accountability for someone to sign up, take a seat in the exam session, and then does not attend. Idaho has one of the least expensive exam fee in the region.

Ben-stated that removing the language of the fee amount or increasing the exam fee would give ISDA more wiggle room.

Dallas and Brian-stated that it is in statute and must be referenced in rule.

Kurt-stated it should be left in at this time.

Pat-suggested re-wording it to make consistent with Metro or to leave it open-ended, not necessarily removing it completely.

Ryan-explained fee structure and funding for divisional resources.

Ann-asked if the fee must be listed in rule, or can it be left out, or even worded to be open-ended or flexible.

Ryan and Brian-discussed the potential implications of changing fees in rule at this time.

Kurt-stated it should be left in there.

Dallas-legislature typically wants to see a specific fee amount in rule.

Lloyd-suggested an internal conversation on fees and if/when they need to be addressed to make sure they would be supported by industry.

Kurt-stated that industry could support a very significant increase in fees if it meant more divisional resources.

Lloyd-moved on to next topic of Apprentice and Dealer licenses references.

Ryan-stated it's a good change and is grammatical in nature, will be address.

Craig-addressed an additional grammatical error in 400.07.b should be updated to his/hers.

Lloyd, moved to next topic of spill requirements.

Ben-stated pesticide retailers would be affected by this rule. Asked if once a pesticide is spilled, does it change from ISDA to DEQ's jurisdiction?

Ryan-explained where the jurisdictions can overlap concerning a pesticide spill and stated this is a regulatory gap in the state. Applicators have spills and do not know what to do, this will help applicators have a plan in place before that happens. If applicators are able to contain a spill, they can mitigate the potential cost for clean-up.

Ben-stated he is not against it but, it doesn't seem consistent for everyone, he guesses it only applies to licensed people. Secondary containment, like a big tank farm, isn't mentioned in this rule. The applicator is at the mercy of the company to provide adequate resources in the vehicle. Asked if these rules would conflict with DEQ rules, or with other agency rules? Stated it has some vague language.

Lloyd-asked Ben if there is any language regarding this topic that IPMA would support, or if he wants the rule to remain silent on it.

Ben-stated the way it is written right now, we would not back it at all.

Lloyd-asked Ben if this is a topic he wants addressed in rule or not.

Ben-answered No.

Mitch-stated it's already addressed in NPES under DEQ and EPA and it's not clear who wants to administer that code or rule. Asked how does that pertain to the private sector?

Ryan-discussed examples of what happens now when there is not a clear distinction on jurisdiction and responsible parties for clean-up. Stated the wording is careful not to step over DEQ. This is to make sure the applicator has resources for unexpected equipment failures or spills.

Mitch-stated he gets that question from people on who they should call if there is a spill. Does this need to be in rule or can it just be offered by ISDA as technical support?

Ryan-discussed the importance of opening up conversation about it, to help address retailers who may not have a spill response plan.

Craig-discussed his personal experience with a spill. Suggested rather than putting something into rule, offering information as a resource.

Lloyd-Consensus that there is no support from industry on the topic of spill response.

Kurt-asked for clarification on the purpose or idea of the proposed rule

Ryan-stated the intent was to provide a resource for applicators to know what to do and to have a plan prior to a spill and to have knowledge of how to dispose of it when they are done cleaning it up.

Kurt-responded that the liability is inherent in the act, and a rule won't prompt a company to be interested in mitigating a spill. Informational resource may help, but if a company doesn't already have a spill response, they aren't going to do it anyways rule notwithstanding.

Lloyd-moved to last topic on being grandfathered into new categories.

Ann-agreed that 'grandfathered' was the term IPMA wanted to hear in discussion on categories.

Lloyd-asked for any follow-up comments, shared some proposed language submitted by Patxi on seminar submission.

Lloyd-noted that group was in general consensus of the language and Ryan will work it in.

Craig-stated he thought the 10mph wind restriction was removed.

Ryan-responded that it was not removed and what the current rule is.

Kurt-asked about record keeping and where the requirements are drawn up from? Wanted to know why certain information needs to be kept in records.

Ryan and Brian-discussed the necessity of requiring the brand name and EPA# on records and why it is currently required.

Kurt-followed up with why is the full name of the person recommending the application and the property owner information required?

Ryan-discussed the necessity for having that information on the records for misuse or wrong application site.

Kurt-discussed the records can take longer to complete than an applicator's actual stop, and it can cause a time constraint. Stated if certain record requirements to be removed, specifically a. and m. under record keeping requirements.

Brian and Ryan-agreed those could be looked at for possible language updates.

Craig-stated throughout the rule there is reference to 'seminars, activities, and events' suggested cleaning up the language for consistencies.

Lloyd-went over language changes that were discussed, the consensus on credits with option 2, categories being divided into subcategories, review fees, integrate IPMA language on cheating, and possibly remove spill language. Asked if there were any other comments, no further comments were made.

Lloyd-advised the next meeting will be June 29, 2023, adjourned meeting at 11:34am