

***Idaho State Department of Agriculture***  
***IDAPA 02.04.19 Rules Governing Domestic Cervidae***  
***July 1, 2014***  
***Dr. Scott Leibsle, Facilitator***

Present in person: Gary Queen, Rose Lake Elk Ranch; David Miller, Idaho Elk Breeder's Association; Greg Golightly, Idaho Elk Breeder's Association; Shawn Schafer, North American Deer Farmers Association; Steve Nadeau, Idaho Fish and Game; Dennis Stevenson, Office of Administrative Rules; L. Gail Ansley, Idaho Elk Breeder's Association; Kathy Jones, Idaho Elk Breeder's Association; Rulon Jones, Idaho Elk Breeder's Association; Sean Costello, OAG/ISDA; Cody Burlile, ISDA; Stan Boyd, IEBA; Jeff Siddoway, Elk Breeder; Brian Oakey, ISDA; Scott Leibsle, ISDA; Bill Barton, ISDA; Miranda Juker, ISDA; Deb Lawrence, ISDA; Angel O'Brien, ISDA, recording.

Present via telephone: Senator Steve Bair.

**AGENDA ITEMS**

**WELCOME**

Dr. Scott Leibsle convened the meeting at 10:35 a.m. He explained that the negotiated rulemaking meeting is a result of House Bill 431 in the 2014 Idaho Legislature that went into effect July 1, 2014, and that five sections of the rule will require revision. Dr. Leibsle stated that there has been discussion about implementing the changes under a temporary rule. However, he explained that ISDA believed it to be appropriate to negotiate the rule and ask for feedback. He stated that an option is to go through negotiated rulemaking, and then, based upon comments received, ISDA implement a temporary rule.

A PowerPoint presentation was provided to assist in navigating rule changes.

Dr. Leibsle directed to the group to page four (4) of the presentation which reflected the changes to the annual assessment fees in Idaho Code 25-3708. Page five (5) of the presentation provided the proposed changes to section 090, annual assessment fees and import, export and movement fees.

Dr. Leibsle stated that it was his understanding that the ten dollars (\$10) was to be applied only to elk, and reindeer and fallow deer per head fee will remain at three dollars (\$3).

Senator Bair stated that Dr. Leibsle was correct in his understanding.

Dr. Leibsle directed the group to page five (5) of the presentation regarding the proposed rulemaking language related to reserve funds.

Stan Boyd asked if the reserve fund balance would include other fees such as the license plate fee.

Dr. Leibsle replied that, yes, the fund would include any license plate fees but that another option would be to re-direct cost savings to the wildlife disease fund and have the money apply toward CWD testing expenses.

Senator Bair asked Dr. Leibsle how he came to the one hundred thousand dollar (\$100,000) figure.

Dr. Leibsle stated that he had discussed this figure as a hypothetical with members of the industry.

Senator Bair asked Dr. Leibsle to refresh his memory of how much the annual budget is.

Dr. Leibsle stated that the most recent annual expenses were forty nine thousand dollars (\$49,000) with revenue of forty eight thousand two hundred dollars (\$48,200), which caused the program to shut down for a period of time. He projected that revenue for the next fiscal year would be approximately sixty four thousand dollars (\$64,000) and anticipate expenses to be below that.

Gail Ansley requested that the term “not to exceed” be left in the rule.

Senator Bair asked if ISDA has the authority to set up a reserve fund. He suggested that it may be a good idea for the legislature to consider or create a reserve fund.

Mr. Boyd asked if there was authority to create a reserve fund that is not in statute.

Dr. Leibsle answered that he used the term "reserve fund" simply to define the program revenue funds in excess of \$100,000.

Mr. Boyd suggested that the words “reserve fund” be struck from the rule and leave “program”.

Dr. Leibsle read the definition of reserve fund.

Mr. Boyd suggested that placing the language from the definition of reserve fund into the rule should wait until a reserve fund can be established.

Senator Bair stated that for transparency reasons, a reserve fund is needed.

Brian Oakey agreed that if ISDA will be establishing a separate fund, it will have to be done legislatively. He stated that he believed the intent of the dedicated fund account was if more than \$100,000 is accumulated in any one year above operating expenses of the program, that would trigger the reduction in fees. He agreed with the idea of a separate fund.

Mr. Oakey stated that Gail had brought up a good point with the “not to exceed” language. He stated that if the language is eliminated as currently proposed a reduction in fee would require rulemaking. To avoid that outcome, Mr. Oakey stated that ISDA could leave “not to exceed” in rule.

Industry representatives in the group agreed.

David Miller asked whether ISDA could put the money collected in the domestic cervidae program in the livestock disease control and tuberculosis indemnity fund.

Mr. Oakey answered that the creation of the reserve fund is due to the livestock disease control indemnity fund being pooled. Once a balance of more than \$100,000 over program costs accumulates,

funds will be moved to a line item dedicated to domestic cervidae.

Dr. Leibsle clarified that the domestic cervidae fund is a separate line item. No programs can touch that fund except the domestic cervidae program.

Senator Siddoway asked whether the reserve fund is necessary if ISDA has an account dedicated to domestic cervidae.

Mr. Oakey clarified that the reserve fund is not required, but it would be for transparency sake. The livestock disease control indemnity fund is a pooled fund.

Dr. Leibsle reiterated that he understood that ISDA is to keep “not to exceed” in the rule and take out the definition of “reserve fund”.

Ms. Ansley stated that it should say “[t]he annual assessment fee may be reduced if the program accumulates \$100,000 above the budgeted amount.”

Cody Burlile added that if “reserve fund” was taken out of the definitions it could be inserted into the wording of the rule.

Senator Siddoway asked if the program fees are sufficient to carry the program and whether or not it would be prudent for a temporary rule to collect fees before December 31<sup>st</sup>.

Dr. Leibsle stated that he believes the program will be fiscally solvent.

Mr. Oakey added that FY15 started July 1, 2014. The fees ISDA collected beginning January 1, 2014, will be applied to FY15. Historically the program has had enough money to run through the first three quarters of the fiscal year.

Dr. Leibsle stated that the frequency of facility inspections is a great cost to ISDA. If the consensus of the industry is to reduce the frequency of inspections, that will result in immediate savings to the program. ISDA is proposing to reduce facility inspections to once every five years, which would result in a reduction of about 80% in inspection costs. In addition, the increased revenue in import, export and transfer fees will likely result in increased revenue for the program.

Dr. Barton added that from a managerial standpoint the annual per head fee has always been due December 31<sup>st</sup>. In the new import, export, and change of ownership fee language, it states “that ISDA requests all movement fees be submitted within five (5) business days of the movement...”

Senator Bair stated that historically, as a producer has needed to import or export, the fees have always been due at the time of the issuance of the permit. By rule that policy should be kept so that the import fees come in commensurate with when the work is accomplished. He suggested that the rule be written in a way that the fees are due when the permit is granted.

Mr. Oakey suggested leaving the language as is with the payment due by December 31<sup>st</sup>. ISDA could

create a form that goes with the required import, export, transfer certificates that allows the producer to pay at the time of transfer.

Mr. Jones asked whether the producer would be responsible for calculating transfer fees or whether ISDA would send an invoice.

Mr. Burlile stated that ISDA could provide the form to be filled out by the producer at the time of transfer.

Senator Siddoway added that electronic means would be ideal.

A stakeholder asked about the timeframe ISDA allows producers to notify it of a transfer.

Dr. Leibsle answered that the timeframe is five business days from the time of movement. He further suggested adding language stating that the transfer fees are due at the time intrastate movement paperwork is submitted.

Senator Siddoway reiterated that producers know of their responsibility for paying ten dollars (\$10) per head for each movement within one year. For example, if a producer imported an elk and that elk is shot on the property that year, the producer is required to pay twenty dollars (\$20) for that elk.

Dr. Leibsle asked for any additional comments regarding fees. He reiterated that he will make changes to the fee section including leaving “not to exceed”, incorporate the definition of reserve fund into the rule, apply dates along with the transfer fees so the fee will be expected to be paid at the time of movement and included with the declaration of transfer.

Dr. Leibsle directed to the group to Section 101, Domestic Cervidae Ranch Facility Requirements, and asked for comments.

Mr. Nadeau asked generally about domestic cervidae and Chronic Wasting Disease (CWD).

Dr. Leibsle replied that up to the present domestic cervidae producers have been required to test one hundred percent (100%) of dead domestic cervidae. Idaho has not had a positive result for CWD and federal rules require that any cervid that crosses state lines must come from a herd that has been tested for CWD and as a result no captive animals originating from a herd have come into Idaho without being tested for CWD.

Mr. Boyd requested clerical changes to 101.02(a) ...to aid in the prevention, control or eradication of disease or to ensure compliance with the provisions of this chapter...”

Mr. Oakey explained that the change in the statute says the facility has to be inspected at least every five years. ISDA is proposing that if there is something that is occurring on that facility that raises the level of risk, ISDA may require more frequent inspections, typically articulated in a herd management plan. Five year inspection cycles are appropriate for low risk facilities with no ingress or egress and good fences.

Dr. Leibsle directed the group to Section 500, Surveillance for CWD, as it pertains to ranch management plans, risk assessment and adjustments to frequency of inspections. He read the proposed changes to the ranch management plan language and emphasized that ISDA will move away from using waivers and focus on ranch management plans. Further, he stated that ISDA reserves the authority to raise a facility's inspection frequency to the appropriate level based upon risk assessment.

Ms. Ansley read Section 209.03(c)(i).

Mr. Burlile suggested Section 209.03(c)(i) be changed to read as: "Whether the domestic cervidae on the ranch have comingled with any cervids of unknown CWD status."

Mr. Miller suggested the addition of "domestic" before "cervids" in the proposed rule.

After further discussion, Dr. Leibsle reiterated for the record that the section will read: "Whether the domestic cervidae on the ranch have comingled with any domestic cervids of unknown CWD status."

Mr. Boyd asked whether or not there is any language in the rule that allows the producer to contest ISDA's risk assessment.

Mr. Oakey replied that the risk assessment would be the final agency action for purposes of the rights of the producer to appeal under the Administrative Procedures Act. If there is disagreement regarding the risk assessment, the producer may use contested case proceedings..

Dr. Leibsle directed the group to Section 500.01, Slaughter Surveillance. He stated that the proposed language would delete "one hundred percent" and add "no less than ten percent". No questions or comments were offered.

Dr. Leibsle read from slide eleven (11) of the PowerPoint related to domestic cervidae ranch surveillance. Discussion followed.

Some were under the impression that the ten percent (10%) testing requirement for CWD was across the board. That the total number of CWD tests would not exceed ten percent regardless of the cause of death. Further discussion followed.

Mr. Oakey stated if it was the will of the group to have ten percent (10%) testing across the board within the industry, then the group needs to back to legislature and get it changed.

Mr. Burlile added that the group should not get hung up on the ranch management plan. There are only two ways to get on a plan; one being voluntary and the other mandatory due to a violation.

Further discussion followed.

Dr. Barton asked for input from Shawn Schafer, president of North American Deer Farmers Association, regarding other states' perceptions of Idaho if the statute is implemented as-is.

Mr. Schafer stated one hundred percent (100%) testing is still required to conduct interstate commerce. No one really micromanages other states' programs. Idaho's trading partners are looking at the guy who is moving animals interstate. He stated that he is confident that Idaho does not have CWD.

Mr. Oakey directed the group to the draft rule and stated that: the group could schedule another meeting and that written comments will continue to be accepted.

Mr. Oakey stated that if the group determines that it wants ten percent (10%) CWD testing across the board, the group can go to the Legislature and clarify that in the statute. Mr. Oakey stated that ISDA takes implementing legislative intent very seriously in rulemaking. He stated that ISDA hires veterinarians who are professional and in his opinion some of the very best in the business and if there is science or research that would help ISDA make a decisions related to the rule, ISDA would consider and encourage it. More research is needed as it relates to CWD, but as of today the agency has to rely on the professional opinions of its state veterinarians.

Mr. Jones stated that he personally would like to see this rulemaking be finished but that he does not feel like the current changes show the legislative intent.

Mr. Miller asked if there was a way to stipulate that any animals that die of unknown cause be included in the ten percent (10%) testing.

Dr. Leibsle pointed out that during the last legislative session there was concern that a producer could pick and choose which animals to test.

Mr. Miller further commented that the group is looking at the difference between ten percent (10%) and twelve percent (12%). Ten percent on everything harvested and another two percent on the unknown. He reminded the group that the testing is dropping from one hundred percent (100%) to twelve percent (12%).

Ms. Ansley stated that her problem with the result is that she doesn't believe it was the result intended by the legislation.

Dr. Leibsle commented that Mr. Miller brought up a good point. The agency is trying to protect the industry from a few animals that slip through and the group is arguing over the difference between ten and twelve percent. There is a ninety percent (90%) reduction in testing of the animals that die. There will be a huge amount of money the industry will save. Dr. Leibsle stated that he supports group consensus and the group should move forward with a straw man that is supported by the industry and implement a temporary rule so the industry may realize the testing surveillance reduction and savings right away.

Senator Siddoway suggested that the group accept the rulemaking as-is.

Mr. Boyd added that the group really doesn't want to go back to the Legislature.

Mr. Oakey asked the group whether they want to have another meeting.

Mr. Miller answered no. An unidentified stakeholder also answered no.

Dr. Leibsle reminded the group that written comments are encouraged.

Mr. Oakey clarified the purpose of the meeting was to foster an informal negotiated rulemaking process. There is still an opportunity to comment after the agency proposes the rule and to have a hearing if requested by twenty-five (25) or more people.

Dr. Leibsle added that a temporary rule is the only way the industry can realize the testing reduction and fee increase this year.

An unidentified stakeholder questioned whether the import rule will be temporary as well.

Mr. Oakey clarified that the approved PARF was for a proposed rule rather than a temporary/proposed rule.

Senator Siddoway stated that the industry needs both rules to be temporary due to emergency.

Dennis Stevenson stated that he didn't think it requires an emergency if it confers a benefit to the industry.

Mr. Oakey stated that the consensus on the import rule will go a long way in helping get the PARF approved so it can be a temporary and a proposed rule. If ISDA is able to go to DFM and say the group is in agreement as it relates to the import rule. However, he added that there were still issues brought up by IDFG that need to be addressed.

Mr. Nadeau asked that the comment period for the import rule related to meningeal worm be extended to allow IDFG to properly comment and provide research materials.

Mr. Stevenson clarified that the temporary rule could be based on the negotiated rulemaking.

Dr. Scott Leibsle adjourned the meeting at 12:45 p.m.

Respectfully submitted by Angel O'Brien