



IDAHO FARM BUREAU FEDERATION

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June 30, 2020

Mr. Oakey:

On behalf of the more than 80,000 Idaho families who are members of the Idaho Farm Bureau (IFBF), I am writing to provide comments on the latest iteration of ISDA's phosphorus management rule.

As Idaho's largest general farming organization, since 1939 IFBF has been recognized as the "Voice of Idaho Agriculture."TM IFBF has hundreds of members who are dairy producers of all sizes across the state. We have many other members who sell their forage crops and straw to dairies, while yet others have some other economic tie and are directly impacted by the success of Idaho dairies. IFBF has a direct, vested interest in ensuring this rulemaking is concluded in a timely and satisfactory manner.

It is our understanding that there are two questions left to be resolved in this rulemaking and that all other issues have reached consensus. 1) should there be a "hard trigger" that requires dairy producers to switch from the threshold method to indexing; and if so, 2) what is that trigger?

It is the position of IFBF members that there should not be a "hard trigger" required since the current phosphorus indexing threshold is clear that phosphorus cannot be applied at a rate higher than crop uptake. This is meant to provide flexibility to the producer, allowing him to adjust application rates and reduce the soil phosphorus back under the threshold while still being able to apply some manure to the field for N and K, yet recognizing that both the sampling and the soil testing labs have wide variability inherent within the system. This current requirement is also complemented by the 2 out of 3 annual samples trending upward language, which is again meant to ensure that the sampling variation is not solely responsible for any regulatory action.

In a study that has been held up as an example of the "best available science" (*Phosphorus in the Calcareous Soils of Southern Idaho* by Carey, et al) it states: "The Idaho phosphorus threshold (IDPTH) for soils where surface water is the primary resource concern (i.e. the soil has a high potential for runoff) is 40 ppm." It does not say that should be the standard, it is simply reporting that NRCS has established a soil test "benchmark" to help producers "minimize P losses."

The study then goes on to state: “For areas where groundwater is the primary resource concern, (i.e. high potential for infiltration of water) the IDPTH is 20 ppm Olsen P for water tables less than five feet, and 30 ppm Olsen P for areas where the water table is more than 5 feet below the soil surface.” Again, the study does not comment on whether the benchmark is appropriate or not, it is simply reporting it exists. Yet this is being cited by some as “the best available science” to guide our rulemaking efforts. We do not concur.

The rest of the six-page report goes on to explain numerous variables that all have an effect on P availability and potential for transport. It is hardly conclusive, nor does it even attempt to suggest a standard that should be applied across the board for all fields in Idaho. The study does say “Phosphorus is lost from a cropping system primarily through overland runoff and soil erosion. **In extreme cases**, P can also be lost through leaching.” (emphasis added) Therefore, since Idaho has a separate zero-discharge regulation prohibiting any runoff from dairy fields, according to the study, it would take an extreme case before P was lost through leaching. Many other examples could be cited from this report, each of which raise more questions than answers.

Moreover, despite ISDA’s assertion that Idaho Code 22-101A requires the best available science for this rulemaking, the statute cited makes it clear that this rulemaking does not fall within its parameters. The proposed rule states on page one that it is being “adopted under the legal authority of Section 37-603” which is title 37, chapter 6. However, Idaho Code 22-101A requires the best available science only when “proposing any rule, or portions of any rule pursuant to chapter 49, title 22, Idaho Code, chapter 38, title 25, Idaho Code, or chapter 4, title 37, Idaho Code.” Therefore, requiring the use of the best available science for this rulemaking is outside the scope of the statute as stipulated by the rule itself.

However, setting that issue aside, the question at hand is inherently political in nature rather than scientific. The science that exists on this topic focuses upon the parameters and conditions under which phosphorus may transport from a field into surface or ground water. We are not aware of any studies, scientific or otherwise, that seek to determine the ideal “trigger point” when a dairy operator should be legally required to switch from using a phosphorus threshold standard to a phosphorus indexing regime.

Just as there are no peer reviewed papers to tell us what the appropriate allowance is for the ISDA demonstrated variance in soil sampling, or the lack of consistency of soil lab results, there is no “science” that tells us when one equally protective standard must be substituted for another. All of these are political decisions. Science provides a basis for informing those decisions.

Therefore, if it is ISDA’s position that a trigger must be included, then we support the document that was submitted by IDA which provides a trigger of 100 ppm in recognition of the wide variability in both sampling and testing of soil phosphorus. Our members believe the proposal that you received from IDA is an appropriate way to balance the needs of protecting citizens and the environment and providing flexibility to producers; while simultaneously ensuring that regulatory action is not inappropriately triggered due to the wide variance of results in both soil sampling and lab testing.

IFBF is, however, concerned that what started out as a simple request to remove the sunset clause requiring Idaho dairymen to switch from the threshold method to indexing, has become a drawn-out process that continues to leave many dairymen with great uncertainty as they renew their Nutrient Management Plans. Our members are frustrated that it has taken so long to get to this point, and they are anxious to see this issue finally resolved in an acceptable manner. Please see our comments from July 23, 2018 which are attached [here](#).

We want to again formally register our protest that our original petition to simply strike the sunset clause has been held hostage to ISDA's insistence on updating the phosphorus threshold standard. ISDA could have easily moved forward updating the threshold standard on a parallel, yet separate timetable. Producers could have had the certainty that they would be allowed to retain the ability to choose between both options for phosphorus management long ago while the fine details of the new threshold standard continued to be worked out.

As you are aware, during the original petition from IDA to ISDA to replace the threshold standard with the indexing standard, both IFBF and MPI requested that the threshold standard be retained and that producers be given the choice for their operations. At that time, we were told by ISDA "that is outside the scope of the petition" so it would not be possible to do so. Now, when our petition very narrowly requested only that the sunset clause be removed from the current rule, ISDA says that it must also update the threshold standard because it is "from 1999 and is an old standard."

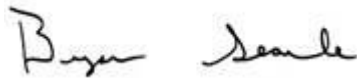
What is good for the goose is good for the gander. If it is outside the scope of the original petition to maintain both standards, how is it inside the scope of our petition to update the standard when our petition did not address that at all? ISDA cannot have it both ways.

Furthermore, just because a scientific standard is 20 years old, does not mean it is automatically out of date or no longer relevant or useful. Science does not change, only our understanding and application of science changes. If it was a good, solid standard in 1999, it should still be a good, solid standard at this time. We reject the notion that scientific standards must be updated periodically simply because they have existed for some arbitrarily determined timeframe.

In addition, there is no change to the standard being proposed, it will stay at 40 ppm for the new iteration of the phosphorus threshold. All that is being proposed is a change in the guidelines of how the standard is measured and other ancillary and logistical issues. But at its core, the proposed standard is exactly the same. Therefore, the sunset clause could have been resolved two years ago while ISDA simultaneously began the process of discussing these additional issues.

Thank you for the opportunity to comment on this important issue. If you have any questions about these comments, please contact Russ Hendricks in our Boise office at 208-342-2688.

Sincerely,



Bryan Searle, President

CC: Senator Jim Guthrie, Chairman, Senate Agricultural Affairs Committee
Senator Lori Den Hartog, Vice-chair, Senate Agricultural Affairs Committee
Representative Judy Boyle, Chairman, House Agricultural Affairs Committee
Representative Caroline Nilsson Troy, Vice-chair, House Agricultural Affairs Committee
Alex Adams, Administrator, Division of Financial Management
Sam Eaton, Office of Governor Brad Little