

MINUTES
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: Thursday, January 17, 2013

TIME: 8:00 A.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Bair, Vice Chairman Guthrie, Senators Brackett, Tippetts, Rice, Nonini, Patrick, Durst, and Buckner-Webb.

ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Bair** called the meeting to order at 8:04 a.m.

MINUTES: The minutes for January 10, 2013, were presented to the committee for approval.

MOTION: **Vice Chairman Guthrie** moved, seconded by **Senator Durst** to approve the minutes from January 10, 2013. The motion carried by **voice vote**.

RS 21740 **Chairman Bair** introduced **Stan Boyd** , Idaho Wool Growers Association to present RS 21740.

RS 21740 would allow the Idaho Sheep and Goat Health Board to amend both **Section 25-127, Idaho Code**, revising the provisions relating to the membership requirements, allowing for the addition of goat producers as board members and technical corrections; and **Section 25-131, Idaho Code**, adding a new provision reserving the right of the State of Idaho to audit the funds of the Board at any time, and is responding to "H512": a complete revamp of the Idaho Sheep Commission that changed the name to the Idaho Sheep and Goat Health Board and revised the membership and funding requirements. **Mr. Boyd** stood for questions. **Chairman Bair** reminded the committee that this is a print hearing.

MOTION: **Senator Tippetts** moved, seconded by **Senator Rice**, to print RS 21740. The motion carried by **voice vote**.

PASSED THE GAVEL: **Chairman Bair** passed the gavel to **Vice Chairman Guthrie** to present the pending rules for the consideration of the committee members.

RULES REVIEW: **Vice Chairman Guthrie** thanked **Chairman Bair** and gave a brief overview of the process of hearing the rules.

DOCKET NO. 02-0602-1201 **Vice Chairman Guthrie** introduced **Lloyd Knight**, Administrator, Division of Plant Industries, Idaho State Department of Agriculture (ISDA), who outlined the pending fee rule relating to the Idaho Commercial Feed Law. The following changes that included are:

- Section 004. incorporation by reference changing the official publication date of The Association of American Feed Control Officials (AAFCO), from the 2012 edition to the 2013 edition. Most of the changes have to do with tweaks of definitions to feeds, ingredients and standards that change every year; it will give the Department the most up to date version. The 2013 edition will be in effect next month.
- New section 011. Exemptions, includes the same exemptions that have been in statute for some time. This will help the department when making decisions regarding exemptions or clarification on different products that fit better under an

exemption. In addition, this pending rule should provide for a more transparent process when the need to add or discontinue exemptions arises to meet the changes in the feed industry or state needs.

- Subsection 011.08 is added and it deals with By Products or Production Waste. These items were always in statute but were not included in the original publication. This encompasses a number of things that were in the original statute, and puts them into the one section.
- New section 020. Registration and Fees, revises the fee structure to a per product registration fee of \$40. This section was not in the original program language of the statute and replaces the old fee structure of \$5 per product plus a tonnage fee. The \$40 per product fee is slightly less than what it actually costs to run the program, which is about \$45 per product. There is a reserve fund balance in place to help offset this difference. There is a product registration fee exemption for those sellers who sell under \$500 per product and selling feed is not their primary business. Much of framework for this section comes from other programs within the agency.
- New section 050.01.H, relates to labeling that includes all statements, websites and other internet based customer interfaces, and is a carbon copy of language that was changed in statute last year. This allows the department to ensure that the product promoted on websites is consistent with what was approved during the labeling registration process.

Mr. Knight stood for questions.

Senator Tippets asked what the balance of the reserve fund is and what the approximate costs to the program are. **Mr. Knight** responded that the reserve fund balance is approximately \$2.1 million. Operating expenses are approximately \$700,000 a year, but would change this year due to the costs associated with the lab rehabilitation and construction. This will leave a fund balance of approximately \$1.5 million.

Senator Tippets followed up with another question regarding the balance in the reserve fund being approximately two years of operating costs. **Mr. Knight** responded that typically there would be only a year reserve in this fund; however, this year there are some unknowns. First, the department originally thought the number of registrants would decrease due to the increase in the registration fee. However, this number has actually risen with close to 1000 more registrants since the summer when this new fee structure was first introduced. Second, there are changes coming from the Federal Government related to the Food Safety Modernization Act (FSMA). Two pieces of the rules have been released, but the third, which relates to feed, has not been released and may require the states to help implement this new act. Being conservative with the balance makes sense. Once more is known they may consider reducing the per product fee registration amount to reduce some of this reserve.

Chairman Bair asked if this was an account where the agency had lump sum spending authority. **Mr. Knight** responded that they do not. It is a dedicated fund and the only money used to run the program comes out of that fund. The agency would need to come before the legislature to ask for spending authority.

Senator Patrick asked how the FSMA ties into commercial feed. **Mr. Knight** responded that commercial feed is considered food under the FMSA because so much of feed goes to food animals. They have been very broad with what they call food in relation to the FSMA. **Senator Patrick** then asked that if it costs \$45 to process the permit for the product and an annual registration is required, wouldn't it be more cost effective not to require registration if there are no changes? **Mr. Knight** responded that label review is only part of what the agency does. There are two parts to the program: registration and label review; and to have a program in place that pulls samples and runs the lab. Annual registration will help to keep track of those companies that make changes without notifying the agency, and gives everyone a fair chance to know what's happening in the marketplace.

Senator Brackett commended the Department's efforts in the negotiated rules process. It is a complicated process and one that is taken seriously by the legislature. **Senator Brackett** then noted that there is no reference to the bill that was passed last year referenced in the Authority for Negotiated Rulemaking and wondered why it was not included. **Mr. Knight** responded that the Senate bill 1236 was referenced in the Fee Summary in the Authorization to Set the Fee, and thought this was just an oversight.

Senator Brackett then asked what the plans are for utilizing the Quality Assurance lab at Twin Falls. **Mr. Knight** responded that last year's plan to move the Feed and Fertilizer Lab from leased space in Boise to vacant lab space in Twin Falls was completed. This is where the Food Quality Assurance Lab is located, and has been occupying a portion of the space since the mid 1990's. The Department has also consolidated a number of offices in Twin Falls and the Magic Valley into that building, and also moved the chemistry lab for Feed and Fertilizer into that building to utilize the whole building more effectively. What is being planned now is a method of development that would allow the Department to do some of the tests they do not have equipment for in the Feed and Fertilizer Lab, by using the Food Quality Assurance Lab equipment. The Food Quality Assurance Lab is a service lab, with the Feed and Fertilizer Lab as a client for any samples that are sent there. There are two labs there, one is a service lab the other a regulatory lab, and each are staffed separately. The Department anticipates some sample work may be needed, and the equipment at the Food Quality Assurance Lab is better suited for some tests in detection levels of certain residues.

Senator Brackett asked if there was an uncertainty going forward as it might pertain to the fund balance. **Mr. Knight** asked if that question related to Food Quality Assurance. **Senator Brackett** said in relation to the fund balance and it being saved in case it was needed. **Mr. Knight** responded that the funds in Feed and Fertilizer are there if needed in case there are significant samples being run through the Food Quality Lab. Once the FSMA rules are more clear and are published there will be a better idea of what will be required, and that may include upgrades in equipment.

Senator Durst asked what sort of commodity or business would or would not benefit from the change from tonnage to the labeling registration. **Mr. Knight** explained that in the past a company could have 25 products registered but they may, for example, have \$120,000 in fees because they had a limited number but high volume products and may have been producing livestock feed. Then, for example, there are some companies that register 1,500 products that they get very little tonnage from. The companies that have the 1,500 products registered take significantly more work than is covered by the \$5 the per product fee being charged, especially if they are not reporting any tonnage for those products. Those companies now may consider themselves the losers because they will be paying more; the winners might be the companies that have high volume product and were paying a larger burden on what it cost to run the program. **Senator Durst** then

asked of the items listed as exemptions, had any of them paid the previous tonnage and labeling fee system or have they always been free. **Mr. Knight** responded that none listed have paid before and were exempt under the old system with all the definitions coming from the original statute.

Senator Durst asked if there is concern about the low volume, high quantity producers and what impact does this have on the small producer that might have only two clients in the State of Idaho and not willing to spend the fees to get this registered. **Mr. Knight** responded that when products are initially registered with the Department, the Department has no idea what the distribution plan is or what the value of the product is. It may very well be that a when a boutique feed is sold, it may only sell a small amount each year. However, it still requires the same amount of work for the program. This is why the Department moved to this per product registration fee.

Vice Chairman Guthrie introduced **Doug Jones**, who represented some larger feed companies located out of state (ADM, Cargill, Purina). Some have manufacturing facilities here in Idaho, as well as three northwest trade associations (two of which are national and one regional), and participated in the rulemaking process for this pending rule and was finishing up the tail end of this project from last year. He was asked to work on this project because of the change from tonnage to label registration. His clients were not in favor of these changes to the rule. **Mr. Jones** stated they would like to see the Department adjust the fees once the program has run for a couple of years and the unknowns regarding FSMA are clear. They would like to have some kind of cap on the reserve fund, to go to a multi-year registration system until a label is modified in some way and split the pet food segment from the commercial livestock fee segment. **Mr. Jones** stood for questions.

Vice Chairman Guthrie introduced **Brent Olmstead**, a registered lobbyist on behalf of the Milk Producers of Idaho. The members of Milk Producers of Idaho not only include dairies and the purchasers of feed, but include feed distributors and feed manufacturers as well. The dairy industries in Idaho are the largest purchasers of feed in the State. The members participated in the rulemaking process and are in favor of this rule. The labeling program is very important to the members, and assures them that the ingredients in the products fit the label. The new fee structure spreads the costs more evenly between the livestock feed and dog food industries. **Mr. Olmstead** commended the Department for their hard work and efforts in making these changes and stood for questions.

Vice Chairman Guthrie introduced **Elizabeth Criner** of the Northwest Food Processors Association (NWFPA), an advocate for and a resource to enhance the competitive capabilities of member food processors of Idaho. Many food processors operate feed programs as a means of reducing waste and can offer a high-quality, low-cost source of food to livestock and these programs are an ancillary function often operated at a break-even or low-cost recovery basis. NWFPA supports the updates and changes, especially the rule that retains the exemption from registration for processing by-products and production waste, consistent with S1236, the law passed by the legislature last session. **Ms. Criner** stood for questions.

MOTION:

Senator Rice moved, seconded by **Chairman Bair**, to adopt Docket No. 02-0602-1201. The motion carried by **voice vote**.

**DOCKET NO.
02-0612-1201**

Vice Chairman Guthrie introduced **Katie Mink**, Section Manager, Feed and Fertilizer's Program, Division of Plant Industries, Idaho State Department of Agriculture, who outlined a pending rule relating to the Idaho Fertilizer Law with the following change:

- an incorporation by reference, and is updating the existing incorporation by reference of the Association of Plant Food Control Officials (AAFCO) from the 2012 to the 2013 official publication. The AAFCO publication is what the agency, as a regulatory entity, uses and what other regulatory entities as well as industry use, to determine consistent terms, ingredient definitions, and policies related to the manufacturing, packaging, regulatory review, registration and lab analysis of fertilizer products. To keep up with the current changes and policies, the agency updates yearly to the new publication of AAFCO.

Ms. Mink stood for questions.

MOTION:

Senator Durst moved, seconded by **Chairman Bair**, to adopt Docket No. 02-0612-1201. The motion carried by **voice vote**.

**DOCKET NO.
02-0613-1201**

Acknowledging he went out of agenda order, **Vice Chairman Guthrie** welcomed **Mike Cooper**, Bureau Chief, Division of Plant Industries, Idaho State Department of Agriculture, to the podium, who outlined a pending rule relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho with the following changes:

- technical corrections and additions to the definitions and changes some terminology for clarification; and
- changes to the testing procedures for blackleg disease.

Mr. Cooper stood for questions.

MOTION:

Chairman Bair moved, seconded by **Senator Durst**, to adopt Docket No. 02-0613-1201. The motion carried by **voice vote**.

**DOCKET NO.
02-0616-1201**

Vice Chairman Guthrie introduced **Mike Cooper**, who outlined a pending rule relating to Honey Standards. This new rule chapter is an incorporation by reference" of the United States Standards for Grades of Extracted Honey, adopted by the Agriculture Marketing Service, USDA, effective May 23, 1985, which mirrors the existing standards adopted by other states relative to the identity, quality and labeling of honey, complaint procedures and enforcement criteria. This labeling process will require disclosure of all ingredients of honey, specifically if it's been flavored or if there are additives or changes.

Chairman Bair commended the department on the well-written rules, but wanted to know why there were no rules for pasteurization included. **Mr. Cooper** responded that it was discussed in the meetings; because there are no real standards for it, it was not included. **Chairman Bair** asked if there are any USDA rules regarding pasteurization. **Mr. Cooper** responded that he would need to check.

Senator Nonini asked if this rule would apply to individual producers or commercial producers. **Mr. Cooper** responded that this rule would apply to anyone that sells honey but, more appropriately to honey that has been adulterated and improperly labeled.

Vice Chairman Guthrie introduced **Nick Noyes**, representing Noyes Apiaries Inc., is in favor of this rule; specifically the stopping of corn syrup blends being labeled as honey. In response to the previous question from **Chairman Bair** regarding pasteurization, the only reason honey is heated is to stop it from granulating so that it will stay in the liquid form. **Mr. Noyes** stood for questions.

Vice Chairman Guthrie introduced **Dale Reisinger** representing Reisinger Apiaries, and who is also on the State Honey Commission. **Mr. Reisinger** responded to the question from **Chairman Bair** regarding pasteurization and stated that honey has no known pathogens. Honey is heated to control shelf life; the less heat the shorter the shelf life. **Chairman Bair** commended the Commission and the individual honey growers of the State for participating in this rulemaking process and making a good final work product. **Vice Chairman Guthrie** concurred and thanked everyone as well.

Rick Waitley, Executive Director for the Idaho Honey Industry Association, commended the Department of Agriculture and Representative Boles for the excellent cooperation they had with the industry. **Mr. Waitley** shared that extreme allergies can be balanced if local honey is used and adulterated products can mislead consumers who look to honey to help them with their allergies. These rules help to protect a very important industry; all bees are important to Idaho as well as other states that rely on pollination.

MOTION: **Senator Durst** moved, seconded by **Senator Rice**, to adopt Docket No. 02-0616-1201. The motion carried by unanimous **voice vote**.

DOCKET NO. 02-0641-1201 **Vice Chairman Guthrie** introduced **Katie Mink**, who outlined a pending rule pertaining to the Soil and Plant Amendment Act of 2001 with the following change:

- an incorporation by reference, and is updating the existing incorporation by reference of the Association of Plant Food Control Officials (AAFCO) from the 2012 to the 2013 official publication. The AAFCO publication is what the agency, as a regulatory entity, uses and what other regulatory entities as well as industry use, to determine consistent terms, ingredient definitions, and policies related to the manufacturing, packaging, regulatory review, registration and lab analysis of fertilizer products. To keep up with the current changes and policies, the agency updates yearly to the new publication of AAFCO

Ms. Mink stood for questions.

MOTION: **Senator Brackett** moved, seconded by **Senator Patrick**, to adopt Docket No. 02-0641-1201. The motion carried by **voice vote**.

DOCKET NO. 02-0614-1201 **Vice Chairman Guthrie** introduced **Mike Cooper**, who outlined a pending rule concerning Annual Bluegrass, (*poa annua*) with the following changes:

- adds language regarding the Analysis Certificate; and
- adds the Idaho Crop Improvement Association as a resource for inspections.

Mr. Cooper stood for questions.

MOTION: **Senator Durst** moved, seconded by **Chairman Bair**, to adopt Docket No. 02-0614-1201. The motion carried by **voice vote**.

DOCKET NO. 02-0631-1201 **Vice Chairman Guthrie** introduced **Dan Safford**, Program Specialist, Noxious Weed Management/Invasive Species, Plant Industries Division, Idaho Department of Agriculture, who outlined a pending rule concerning the Noxious Weed Free Forage and Straw Program. **Mr. Safford** explained that the purpose of this program is to eliminate the production of noxious weed seeds in Idaho public lands, specifically on Bureau of Land Management lands and Forest Service lands, and use of the hay and straw must be certified noxious weed free. Participation by farmers in this program is voluntary. They participated in the negotiated rulemaking process, a meeting was held on July, 19, 2012; no comments submitted and no one attended. The Idaho Association of Weed Control superintendents actually do the hay inspections for the farmers; they had no concerns and approved with no comments. The two key changes to the rule relates to scope and purpose which clarifies what the department inspects, inspection, certification and marking of the

bales as certified for use in Idaho in addition to other states that have requirements; and the forage tags for each bale that is certified will not include the year. **Mr. Safford** stood for questions.

Senator Rice asked if this improves the ability to sell the hay interstate for producers as well as used in the back country. **Mr. Stafford** answered that the majority of the hay is for back country use and straw is used for fire rehabilitation on steep ground. Neighboring states of Oregon, Washington, Montana, Wyoming and Utah have similar requirements. If hay is sent to other states, some counties require that it be certified noxious weed free.

Senator Nonini asked if the listed noxious weeds were the entire list known to mankind and how often is this list updated when new species are found. **Mr. Stafford** answered that the North American Weed Management Association (NAWMS), of which Idaho is a voluntary member, compiled this composite list of weeds from the 21 states that are members. There are 64 noxious weeds in the State of Idaho and are certified to the North American Standard. The 54 noxious weeds on the NAWMS list plus our 64, have a 39 weed overlap, so inspections look for the presence or absence of 82 noxious weeds.

Senator Durst asked why was "official sample" struck from page 49, line 23. **Mr. Stafford** answered that NAWMS felt that this was not scientifically sound, so it was struck from the rules about four years ago and has no connection now.

MOTION: **Chairman Bair** moved, seconded by **Senator Nonini**, to adopt Docket No. 02-0631-1201. The motion carried by **voice vote**.

DOCKET NO. 02-0635-1201 **Vice Chairman Guthrie** introduced **Mike Cooper**, who outlined a pending rule concerning Roughstock Bluegrass, (*poa trivialis*) and the following changes:

- Section 101 which adds language regarding the Analysis Certificate
- Section 102 which includes the Idaho Crop Improvement Association as a resource for inspections.

Mr. Cooper stood for questions.

MOTION: **Committee Members, Senator Durst** moved, seconded by **Chairman Bair**, to adopt Docket No. 02-0635-1201. The motion carried by **voice vote**.

PASSING OF GAVEL: Upon conclusion of the presentations and testimonies on the pending rules, **Vice Chairman Guthrie** passed the gavel back to **Chairman Bair**.

ADJOURNED: **Chairman Bair** adjourned the meeting at 9:40 a.m.

Senator Bair
Chairman

Denise McNeil
Secretary