

MINUTES
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: Tuesday, January 21, 2014

TIME: 8:00 A.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Bair, Vice Chairman Guthrie, Senators Brackett, Tippetts, Rice, Nonini(Nonini), Patrick, Buckner-Webb, and Ward-Engelking

ABSENT/ EXCUSED: None

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 8:01 a.m.

MINUTES: The Minutes for January 14, 2014, were presented to the Committee for approval.

MOTION: **Senator Ward-Engelking** moved, seconded by **Senator Patrick** to approve the Minutes from January 14, 2014. The motion was carried by **voice vote**.

PASSED THE GAVEL: Chairman Bair passed the gavel to Vice Chairman Guthrie to begin the rules review.

DOCKET NO. 02-0623-1301 **Vice Chairman Guthrie** introduced **Lloyd Knight**, Administrator, Plant Industries Division, Idaho State Department of Agriculture (ISDA), who presented **Docket No. 02-0623-1301**, Rules Governing Noxious Weed Free Gravel and Rock Products, a rule adopted by ISDA pending final approval of the 2014 Idaho State Legislature. This proposed rule is intended to provide a means for inspection and a way to certify that the materials delivered are certified noxious weed free. This rule came about at the request of the Association of Idaho Weed Control Superintendents and was patterned after the National Association of Weed Management (NAWMA) as it was similar to that of the ISDA Certification of Noxious Weed Free Hay and Forage rules.

There was no attendance at the rule making meetings nor written comments. This rule outlines definitions, references NOMA, and is a voluntary program. It specifically leaves out any language regarding fees or bonding so this can be dealt with at the county level. Lloyd Knight stood for questions.

In response to several questions from the Committee members, **Lloyd Knight** explained that the intent of this rule is to have all gravel and rock materials certified prior to moving or shipping, so that when it arrives at the job site it is certified weed free. Certifications done at the pit will be good for ten days and if that pile is not moved or shipped out by then, it will need to be certified again. This could potentially lead to the piles at the pits being inspected three to four times a month, but he thought it would be unlikely, as in most cases it is the producer that calls the inspector out to the pit only when that material is ready to be shipped out to the job site.

He continued that if a certified pile is moved from one area to another at the pit, that pile would need to be certified again. It would be extremely difficult for the inspector to identify that this is the same pile that was previously certified. If the certified weed free gravel stockpiled at the job site is not used within the 30 day time frame specified in this rule, it will require another certification and possibly an eradication prior to it being used. Any and all fees for inspection certifications will be set by the individual counties.

Vice Chairman Guthrie introduced several weed superintendents from various counties around Idaho who testified in support of this rule. They agreed that a standard is needed, especially in counties that work on federal projects. They shared their particular methods for certifying the gravel and rock, with most utilizing the methods in the existing Noxious Weed Free Hay and Forage rules. One superintendent testified in opposition to the rule as written. He said that with the way the rule is proposed, and the number of construction projects and rock piles they have, it would not be economically feasible.

Vice Chairman Guthrie introduced **Wayne Hammon**, Executive Director of the Idaho Association of General Contractors (IAGC), who spoke in opposition to the rule as it is written. IAGC is made up of a statewide network of construction industry leaders which include the owners and operators of most of the large commercial gravel pits in Idaho. **Mr. Hammon** explained that as this rule is written, an inspector would need to be there every day, because of the constant movement and mixing of gravel for projects in the pits. The issue with OSHA's rule that non certified personnel are not allowed on site during operations would result in the entire operation stopping for these inspections. Add to this the fees that would be required, this would impose a much greater burden than they have right now.

IAGC is concerned that this voluntary program will someday become mandatory, driving up the cost of construction. State agencies including ITD officials, stated that this is not their standard practice and they have no plans to include this in the future. Even though this is a requirement of several federal agencies and shows up in their bids, they are rarely enforced and most contractors have been able to have this waived. The IAGC is in favor of having a standard, and looks forward to working with the weed superintendents and ISDA to come up with a better plan that will work with their industry.

Chairman Bair asked what the negative impacts would be for not having this inspection process in place. **Wayne Hammon** said that with no standard, it leaves a question about what value the certificate really has to the outside entities that require this. There is no way to guarantee that they are delivering a certified product.

Senator Patrick commented that if the producers were controlling the site utilizing the methods in the Noxious Weeds Rule, the weeds should not be present in the gravel naturally. **Wayne Hammon** agreed that the best way to certify weed free gravel is to control the weeds growing around it.

MOTION:

Senator Rice moved, seconded by **Senator Buckner-Webb** to reject **Docket No. 02-0623-1301**. The motion was carried by **voice vote**. **Senator Tippets** voted nay.

Chairman Bair commented that the Committee is grateful for those that came here to testify today. He said the Committee would encourage the weed supervisors to work together with the IAGC to find a solution to this issue and they would be very supportive of this in the future.

Vice Chairman Guthrie introduced **Lloyd Knight**, Administrator, Plant Industries Division, ISDA, who presented **Docket No. 02-0609-1301**, Rules Governing Invasive Species, a rule adopted by ISDA pending final approval of the 2014 Idaho State Legislature. This rule amends the existing rule, adding definitions for energy crop invasive species, facility, and trap crop invasive species. Mr. Knight explained to the Committee that trap crops are special crops utilized for the treatment of pest infested fields, as in the pale cyst nematode, that has infected some potato crops in Eastern Idaho. Trap crops were originally regulated through the Noxious Weed Rule, and the Department did an emergency listing two years ago as a controlled species. This was done so that research could be done by the University of Idaho. These crops are now at a point where they need to be moved to the Invasive Species Rule because of the more stringent permit process.

The energy crop issue has begun popping up in other states where certain species are being grown specifically as bio-energy crops, but are potentially invasive here in Idaho. To date, there are none grown here in Idaho, but the ISDA felt it necessary to have a mechanism in place by which to deal with them. Oregon is working with a species called arundo, which may end up in Idaho. Mr. Knight stood for questions.

Senator Ward-Engleking asked if there is plan in place if these invasive species escape. **Lloyd Knight** responded that the rule addresses this process, and if they are found outside the designated growth area, they will be eradicated.

Senator Brackett asked about the issues with the bullfrogs. **Lloyd Knight** responded that bullfrogs have been on the Invasive Species List from the creation of this list. There are a couple of facilities in Idaho that grow them commercially for out-of-state laboratory use. In order to allow that to occur and not impede on these operations, the bullfrogs have been added to the Exempt Species List and dealt with through a permit process. This is a joint process with the Fish and Game Department, with the bullfrogs being monitored as to their potential impact in the wild. These facilities are treated like a aquaculture facility, with inspections made to insure they cannot escape.

Chairman Bair asked if any of the energy crops in the Noxious Weed List were listed as noxious weeds in other states and which ones were they. **Lloyd Knight** said yes some of the energy crops are listed in other states and they are Kudzu and Giant Reed. These particular energy crop species have been chosen for this list because they have shown up on other state or national lists. **Chairman Bair** asked what assurances there are to prevent an outbreak, and who has liability and bears the cost to eradicate it if this happens. **Lloyd Knight** responded that the rule assumes that these crops are purposely brought to the State to grow, but they can show up outside where they are not expected. to be. If they are found outside of the growing area they will be eradicated. He stated that liability is silent in the rule with the State doing the eradications. **Chairman Bair** said the person purposefully bringing this into Idaho should be responsible and bear the entire liability for cleanup, and they should consider a rule next year that addresses this issue. **Lloyd Knight** responded that this was probably good counsel.

Senator Rice suggested some bonding requirements might be a better approach if planning to add the liability issue into a rule. This might sideline possible bankruptcy.

Chairman Bair asked what the need is for the energy crops if there have been no proposals to grow these crops. **Lloyd Knight** said it's preemptive, and ISDA decided on including this because of the experience of working through the trap crop issue. The intent of this portion of the rule is to show openness to the possibility of new commercial enterprises, but with control mechanisms in place. This assures others that there are tools to deal with this and be able to track who is bringing these crops in.

Vice Chairman Guthrie asked if it would be possible for anyone to legally grow the plants on this energy crop list without this rule in place. **Lloyd Knight** responded yes.

Vice Chairman Guthrie introduced **Jeff Pettingill**, from Bonneville County Weed Control, who spoke in support of this rule. He passed out pictures of the Litche Tomato, an invasive species grown in Bonneville under controlled circumstances in conjunction with the University of Idaho. He also passed out samples of corn stover and arundo, both used as biofuel. He stated that bio-energy crops are right at our back door, and that Idaho National Laboratory (INL) just finished a brand new building and is shipping arundo in to use as a biofuel.

MOTION: **Chairman Bair** moved, seconded by **Senator Brackett** to adopt **Docket No. 02-0609-1301**.

Chairman Bair stated that he is uncomfortable with a few of the portions of the rules especially for providing opportunities for noxious weeds to be introduced into Idaho and is hopeful that the rule is strict enough to keep control of the weeds. He restated his concerns regarding the liability.

Both **Senator Buckner-Webb** and **Senator Ward-Engelking** indicated they were not comfortable bringing invasive species into Idaho.

Vice Chairman Guthrie stated that he sees this as the best way to manage this issue, because as it stands today, these crops can be brought in anyway and with no penalty. Now there will be control.

Senator Rice agreed that the entire Committee is concerned about this issue, but zero control is a worse option and it is important to have greater control and do things appropriately.

The motion to approve was carried by **voice vote**. **Senator Buckner-Webb** and **Senator Ward-Engelking** voted nay.

DOCKET NO.
02-0214-1301

Vice Chairman Guthrie introduced **Kevin Merritt**, Section Manager, Bureau of Weights and Measures, ISDA, who presented **Docket No. 02-0214-1301**, Rules for Weights and Measures, a rule adopted by ISDA pending final approval of the 2014 Idaho State Legislature. The proposed fee rule will

- Increase the minimum license fee to \$12 when only one device is at the location. The new fee doesn't cover the actual expense, but does a better job of charging a fee that is fair and closer to covering the costs. This increase will impact approximately 473 businesses currently licensing one commercial device by \$2,838.
- New emerging devices in the market place will be added that include Liquefied Natural Gas (LNG) or Compressed Natural Gas Meters that are being installed along the freeways for fuel for semi trucks.
- The language from Table 1-A that identifies petroleum as a descriptive to meters will be removed. ISDA tests all types of meters that are not petroleum related. This would make the cost for non-petroleum devices not on Table 1-A more transparent to the owners.
- Increase the fees for devices D, E, and F in Table 1-A that are classified as large capacity scales:
 1. Type D scales, primarily livestock scales, has the largest percentage of increase. Type D will impact approximately 390 owners and generate \$13,650.
 2. Type E and F scales will impact 1207 owners and generate an additional \$24,140.

The increases will take effect after February 2015, and should generate a \$40,628 overall annual increase, bringing costs more in line with actual expenses. The fuel and maintenance costs in 2012 were \$44,458, the overages have been supplemented in the past from the general fund. Kevin Merritt stood for questions.

Senator Patrick asked how could they possibly go to Riddle, Idaho for \$100. **Kevin Merritt** stated that those costs are covered either by the other license fees or supplemented by the general fund.

Senator Brackett asked if these are annual inspections, and if they are consistent with federal regulations or the Packers and Stockyard Act. **Kevin Merritt** stated the inspections are good for one year. The testing of these scales work in conjunction with the Packers and Stockyard Act, and requires two inspections annually, one provided by ISDA, and the owner would be required to hire a service agency to conduct the second.

MOTION: **Senator Patrick** moved, seconded by **Senator Rice** to adopt **Docket No. 02-0214-1301**. The motion was carried by **voice vote**.

DOCKET NO. 02-0625-1301 **Vice Chairman Guthrie** introduced **Mike Cooper**, Bureau Chief, Plant Industries Division, ISDA, who presented **Docket No. 02-0625-1301**, Rules Governing the Planting of Beans, Other Than Phaseolus Species, in Idaho, a rule adopted by ISDA pending final approval of the 2014 Idaho State Legislature.

This new rule was created at the request of the Idaho Bean Commission to deal with the varieties of seeds coming into the State that could transmit bean diseases and potentially infect the well established bean industry. A copy of the petition from the Idaho Bean Commission is attached. This new rule pertains to soybeans, azuki and mung beans. It was discovered that soybeans could be a host for a bacterial blight of beans. Garden and dry beans planted following soybeans had a higher incidence of bacterial blights showing up in that growing season. After this research came to light, it prompted the industry to act.

This rule is patterned after the bean rule and lists the diseases of concern, as well as the soybean cyst nematode. Any seeds coming into the State that are the species listed would need to be tested before they are planted, and would require a growing seed inspection and a pre-harvest inspection. The fee structure also follows the existing Bean rules, and charges the same for plant pathology analysis, about \$250.00 on a per sample basis. A charge of \$3.50 per acre for field inspections with a \$50 minimum is also proposed. Charges for nematode and soil testing will be at the prevailing rates of those labs capable and approved for that testing. Mike Cooper stood for questions

Vice Chairman Guthrie called attention to the packet from Lacey Manesco, Administrator of the Idaho Bean Commission.

Vice Chairman Guthrie introduced **Don Tolmie**, agronomist for Treasure Valley Seed in Homedale, Idaho and a warehouse rep for the Idaho Bean Commission, who testified in support the rule. Mr. Tolmie said there is potential for several thousands of acres of soybeans being planted if plans for the crushing facilities are followed through in the Columbia Basin. He said that typically soybeans are not a common crop due to small market opportunities, low profits and no processing facilities near by. This could change when the Columbia Basin crushing plants are completed. This rule should protect the established bean seed industry from uninspected, untested soybean seed and provide an opportunity for the production of Idaho grown certified soybean. This industry delivers over \$90 million in receipts annually as well as employing hundreds of workers.

MOTION: **Senator Patrick** moved, seconded by **Chairman Bair** to adopt **Docket No. 02-0625-1301**. The motion was carried by **voice vote**.

Due to time constraints, **Docket Nos. 53-0101-13014, 46-0101-1301** and **46-0101-1302** will be moved to the next Committee meeting scheduled on Thursday, January 23, 2014. **Chairman Bair** thanked all those who attended and being part of the legislative process.

PASSED THE 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 9:45 a.m.

Senator Bair
Chair

Denise McNeil
Secretary