

MINUTES
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: Tuesday, January 27, 2015

TIME: 8:00 A.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Rice, Vice Chairman Bayer, Senators Brackett, Patrick, Souza, Lee, Den Hartog, Ward-Engelking, and Burgoyne

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 Rice** called the meeting to order at 8:00 a.m.

PASSED THE GAVEL: Chairman Rice passed the gavel to Vice Chairman Bayer.

DOCKET NO. 29-0102-1401 **Payment of Tax and Usage of Certification Marks and Trademarks**, Patrick Kole, Vice President and Government Affairs, stated that the Idaho Potato Commission (IPC) has a terrible counterfeiting problem on the East Coast. Potatoes are being misrepresented as Idaho Potatoes when they are from Wisconsin or Maine, because Idaho has created equity value in the brand. On average Idaho potatoes bring in a premium of 25 cents to 50 cents for a 5 pound bag. However, that value does not always get back to the grower because there are middlemen in the chain. The Commission tries to capture that value and bring it back to the growers, shippers and processors.

Changes to the rule are in containers:

- 1) Several forms of the Grown in Idaho Certification mark and the original Grown in Idaho seal say Grown in Idaho but do not have potato in the language. This has produced a disconnect with consumers. This led to the certification marks that have the language "Idaho Potato".
- 2) No container may use a "check off" box format for state of origin.
- 3) No seal, trademark, certification mark, brand, or similar device used to promote potatoes not grown in Idaho can be placed on the container.
- 4) The size change of the certification marks that can appear on containers. The rules governing No. 2 potatoes were structured in the rules governing No. 1 potatoes. The size requirements for seals were smaller for U.S. No. 1 potatoes. The change in the rule now requires that the size of the certification marks be the same for No. 1 potatoes as a No. 2 potatoes.

Senator Souza said on page 86 it states that the IPC would hold a formal hearing to ensure that the industry had an opportunity for input in this rulemaking. Did this meeting take place? **Mr. Kole** answered the hearing was held, but no one showed up. The IPC had conducted informal meetings around the State soliciting industry input, so the rulemaking negotiation process had been met.

Senator Patrick wondered what it costs to protect the Idaho trademark. **Mr. Kole** stated the IPC spent 13 years and \$10 million on 1 piece of litigation conducted in New York City. The IPC was in the 2nd Circuit Court of Appeals three times and petitioned for protection from the U.S. Supreme Court. The IPC lost part of the case. The 2nd Circuit and 9th Circuit Courts deemed certification marks are akin to patents as opposed to trademarks. As a result of that ruling, trademarks are not subject to a challenge based upon public interest. Certification marks are subject to a public interest challenge. The way the treaties are currently written in the trade negotiations taking place right now with Transpacific Partnership IPC is at a distinct disadvantage because they cannot protect their intellectual property rights.

MOTION: **Senator Patrick** moved to approve **Docket No. 29-0102-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

Rules Review Department of Agriculture

DOCKET NO. 02-0105-1401 **Governing Certificates of Free Sale**, Laura Johnson, Bureau Chief, said Idaho State Department of Agriculture (ISDA) issues certificates of free sale for processed food products so they can clear customs internationally. The ISDA issues approximately 3,000 of these certificates per year. Corporate payment does not operate on a 30 day time period. This proposed rule strikes the 30 day payment requirement to be more customer friendly.

Senator Patrick stated in the current language of the rule it speaks to payment due, it does not specify when it was past due. **Ms. Johnson** replied the rule required ISDA not to issue additional certificates until the customer's account was current. **Senator Burgoyne** asked how much money the certificates bring in annually. **Ms. Johnson** explained the fee is \$15 per certificate, and they collect approximately \$45,000 per year. **Senator Burgoyne** asked for clarification on the due date and whether there have been problems in collecting the fees. **Ms. Johnson** stated the customers have always paid their bills. **Senator Lee** asked could a customer not pay and then continually be issued certifications. **Ms. Johnson** replied that could be the case, but there are other statutes that would assist ISDA in collecting the fee. ISDA will not continue to issue certifications if a customer does not pay.

MOTION: **Senator Ward-Engelking** moved to approve **Docket No. 02-0105-1401**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 02-0602-1401 **Pertaining to the Idaho Commercial Feed Law**, Katie Mink, Section Manager, said the rule is an update to the current incorporation by reference from the 2014 to the 2015 Association of Official American Feed Control Officials (AAFCO) publication. ISDA has incorporated into the commercial feed rule the terms and ingredient definitions and policies as published in the AAFCO Official Publication. Updating ISDA current incorporation by reference allows ISDA and industry members who register feed products with the State to ensure they are jointly using the current terms and ingredient definitions and policies as they are published. With this pending rule ISDA is updating their current incorporation by reference from the 2014 to the 2015 Official Publication of AAFCO.

Senator Patrick asked if negotiated rulemaking was held on this docket. **Ms. Mink** replied that it was not negotiated. Traditionally ISDA does not negotiate their incorporations by reference. **Senator Burgoyne** asked if ISDA is aware of anyone in the industry having any objections to the adoption of the AAFCO Official Publication. **Ms. Mink** responded that ISDA had not received any objections to the adoption.

MOTION: **Senator Brackett** moved to approve **Docket No. 02-0602-1401**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
02-0605-1401**

Diseases of Hops (Humulus Lupulus), Jared Stuart, Section Manager, explained that early in 2014, ISDA received a request from the Idaho Hop Commission to amend the rules governing diseases of hops in Idaho. The rule changes the hops quarantine area to: allow free movement of hops material within the states of Idaho, Oregon, and Washington; add diseases of concern to the regulated pest area of the rule; create a uniformity of regulations with other hop producing states; add pests and diseases of quarantine; and change the areas under quarantine. Clarification changes were made to the rule to make it more concise.

Vice Chairman Bayer stated have the logistic of shifting to the lab procedures been assessed and are provisions in place to meet the workload for the interest. **Mr. Stuart** responded that the negotiated rulemaking discussed having everything pass through the clean plant center in Prosser, Washington. Language was added to avoid scheduling issues should the lab become overwhelmed with inspections. Language is included in the rule "or appropriate lab approved by the Director".

Senator Burgoyne clarified that the hop industry has had an interstate relationship with Oregon and now it is being expanded to include Washington. **Mr. Stuart** explained most of their sourcing for hops material is done within the tri-state area of Washington, Idaho, and Oregon. The diseases of concern are similar with these states. **Senator Burgoyne** asked is there a provision somewhere for quarantining a particular state or area within the region. **Mr. Stuart** answered under the Plant Pest Act, ISDA has the ability to create a quarantine area. **Senator Patrick** questioned the \$7.50 fee being raised to \$60.00. **Mr. Stuart** stated this fee rule had not been updated since 1980. The \$60 charge for a permit is the standard rate for any export certificate issued by ISDA, and this fee adjustment covers the costs of making the permits available for industry. **Chairman Rice** asked for clarification of Section 100, which deals with the quarantine area of Bonner and Kootenai Counties. **Mr. Stuart** stated the control area was originally Bonner and Kootenai Counties, the main producers of hops in the State. They were trying to eliminate the threat of powdery mildew within those counties. Other areas of the State started to produce hops and they had no safeguard against diseases of concern being imported.

MOTION:

Senator Patrick moved to approve **Docket No. 02-0605-1401**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
02-0612-1401**

Pertaining to the Idaho Fertilizer Law, Katie Mink, Section Manager, stated this is an update to the current incorporation by reference from the 2014 to the 2015 Official Publication of the AAPFCO. This rule updates the current incorporation and ensures that ISDA and industry members who register fertilizer products in Idaho are jointly using the most current definitions, terms, and ingredients as they have been voted on by AAPFCO members.

MOTION:

Senator Souza moved to approve **Docket No. 02-0612-1401**. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
02-0627-1402**

Governing Bacterial Ring Rot Caused by (Clavibacter Michiganensis Subsp. Sepedonicus) (Cms), Lloyd Knight, Administrator, stated ring rot is a bacterial infection in potatoes that can be devastating not only in the field but also in storage. In the investigation conducted under the old rule, ISDA had reports of ring rot in potatoes that were being shipped to processors after they had been in storage. ISDA investigated 19 of these cases, and they were not able to identify any definitive cause or source of that infection. ISDA has had 2 reports of ring rot under the new rule, and those were both during the seed certification process. The Crop Improvement Association led the investigations on the cases because it is part of their certification process.

- Reporting: The rule requires the reporting of ring rot if it is discovered prior to final seed potato certification by the Idaho Crop Improvement Association (ICIA).

If it is confirmed with a laboratory test and the positive tubers or plant parts are still in the possession of the original seed grower. The industry is concerned with identifying ring rot in seed while it is in the control of the original grower; so they know the infection did not come from any other source.

- Investigation: ISDA has the authority to investigate, access records, and pull samples.
- Infected Potatoes: May not be used for planting or seed.
- Testing: Any testing for ring rot will be congruent with the certification process. Any seed that is exported from Idaho has to meet the certification process.

MOTION: **Senator Lee** moved to approve **Docket No. 02-0627-1402**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 02-0641-1401 **Pertaining to Soil and Plant Amendment Act of 2001**, Katie Mink, Section Manager, explained this rule change is to incorporate by reference information and updates contained in the 2015 Official Publication of the AAPFCO as they pertain to the methodology and practice of conducting regulatory soil and plant amendment registration and label review.

MOTION: **Senator Souza** moved to approve **Docket No. 02-0641-1401**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 02-0801-1401 **Sheep and Goat Rules of the Idaho Sheep and Goat Health Board**, Stan Boyd, Executive Secretary, stated that the State has an emerging dairy goat industry. The estimated number of goats in the State is 18,000 and 180,000 breeding sheep.

- The proposed rule reflects the changes mandated by legislation passed in 2014 that require an assessment on goats of 80 cents per head and a 10 cents per pound on wool.
- The rule also clarifies the age at which dairy goats need to be tested for brucellosis prior to entering Idaho. The goat must now be six months or older to receive this test.
- Section 700, Sheep Assessment, an increased assessment from 6 cents to 8 cents per pound of wool. The 2014 Legislature passed H 431 that created a Wolf Control Board, and the increased fee of 2 cents per pound of wool is assessed to support that Board.
- Section 701, Goat Assessments, an 80 cent per head assessment has been added to the rule. This assessment will be collected at the auctions. Around 6,000 goats go through 3 primary auctions in the State. The 80 cents assessment on the goats will support the regulatory animal health program.
- The rule updates the name Idaho Sheep Commission to the Idaho Sheep and Goat Health Board.

Senator Lee asked for clarification on the fee collection. While the intention is to have the fee collected at the auction it could be assessed neighbor to neighbor but this is not the intention of the rule for situations such as FFA goats. **Mr. Boyd** explained if there is a goat sold in the country, technically that person owes 80 cents. This rule is directed at the auction sales.

Senator Den Hartog asked Mr. Boyd to explain the increase of the assessment from the 6 cents to the 8 cents; is the increase of 2 cents going to the Wolf Fund? **Mr. Boyd** answered that it was just the 2 cents increase that would go to the Wolf Fund. Of the current 6 cents, 3 cents went to the regulatory animal health program and the remaining 3 cents went to the Board.

Senator Brackett said that there was an emergency clause in H 431 that provided for the assessment in the last half of fiscal year (FY) 2014. **Mr. Boyd** stated that was correct H 431 provided an assessment in the last part of FY 2014.

Senator Brackett asked how much money was collected for the wool assessment. **Mr. Boyd** said the estimate is \$20,000 per year.

Vice Chairman Bayer stated under this rule change you are creating a liability for small operations. **Mr. Boyd** stated the assessment shall be levied and assessed to the producer at the time of the sale of the goat(s) and shall be deducted by the first purchaser from the price paid to the producer at time of such sale.

MOTION: **Senator Lee** moved to approve **Docket No. 02-0801-1401**. **Senator Brackett** seconded the motion. The motion carried by **voice vote**.

Senator Burgoyne requested that he be recorded as voting nay. He believes that this fee rule can be written in a way that stipulates which producers have to pay the assessed fee. **Senator Den Hartog** and **Vice Chairman Bayer** requested that they be recorded as voting nay.

ADJOURNED: There being no further business, **Vice Chairman Bayer** adjourned the meeting at 9:10 a.m.

Senator Rice
Chair

Carol Deis
Secretary