

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, January 22, 2018

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Souza, Senators Martin, Lee, Harris, Agenbroad, Foreman, Potts, and Jordan

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 Heider** called the meeting of the Health and Welfare Committee (Committee) to order at 3:00 p.m.

PASSED THE GAVEL: **Chairman Heider** passed the gavel to Vice Chairman Souza.

DOCKET NO. 58-0101-1601 **Rules of the Idaho Department of Environmental Quality Relating to Control of Air Pollution in Idaho.** **Tiffany Floyd** introduced herself as the Air Quality Division Administrator for the Idaho Department of Environmental Quality (DEQ). She explained that this docket updates rules regarding Crop Residue Burning (CRB). The changes to the rule reflect language from S 1009, which passed during the 2017 Legislative Session. S 1009 changed the ozone threshold for approving burns in the CRB program from 75 percent to 90 percent. **Ms. Floyd** stated that this change provides greater flexibility to farmers who burn residue as an agricultural practice. It also provides greater protection of public health by burning on better dispersion days.

Senator Martin asked how this docket will affect the environment. **Ms. Floyd** stated that the changes may increase the number of days that farmers may burn crop residue. She explained that these days will be better dispersion days; as such, the smoke can disperse more quickly, which will protect public health. DEQ believes that this docket will have a positive environmental impact.

MOTION: **Senator Foreman** moved to approve **Docket No. 58-0101-1601**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0101-1702 **Rules of the Idaho State Department of Environmental Quality Relating to Control of Air Pollution in Idaho.** **Ms. Floyd** explained that this docket is DEQ's annual incorporation by reference of federal regulations regarding air pollution. Adoption of federal regulations is necessary for Environmental Protection Agency (EPA) approval of Idaho's operating permit program and state primacy of the Clean Air Act programs. Alignment with federal regulators ensures that DEQ regulations are up to date with federal changes and simplifies compliance for the regulated community.

Ms. Floyd stated that this docket includes 37 changes. She summarized the most relevant changes. There were a number of administrative rule changes regarding implementation of the national ambient air quality standards (NAAQS). **Ms. Floyd** explained that these changes were minor. One change updated state agency requirements related to particulate matter standards, such as due dates and reporting requirements; another retained the current lead standard, and another

corrected the formula used to determine compliance with the particulate matter standard.

The EPA no longer requires notices of permitting actions to be published in newspapers, although DEQ is choosing to continue to publish such actions in local newspapers in order to be attentive to rural Idahoans. EPA also updated the state plan requirements for the regional haze rule by extending the deadline for states to submit their next plan update. **Ms. Floyd** stated that the EPA changed the emission threshold for when a landfill needs to install a gas collection system. These changes to federal regulations are reflected in this docket.

Ms. Floyd noted that DEQ did not conduct negotiated rulemaking for this docket. The DEQ received one written comment advocating for adherence to the highest environmental standards.

Senator Martin expressed his concern about maintaining state primacy. He asked who Idahoans should contact if they have questions regarding these rules. **Ms. Floyd** explained that individuals can find information about the rules on the EPA website. She suggested that Idahoans call DEQ for any environmental regulation questions.

Chairman Heider asked how DEQ tests air pollution emitted by landfills. **Ms. Floyd** explained that the trash in landfills emits methane gas. Landfills can use gas collection systems to contain methane gas.

MOTION: **Senator Harris** moved to approve **Docket No. 58-0101-1702**. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0105-1701 **Rules of the Idaho Department of Environmental Quality Relating to Standards for Hazardous Waste.** **Michael McCurdy** introduced himself as the Waste Management and Remediation Division Administrator for DEQ. He stated that this docket is the DEQ's annual incorporation by reference of federal regulations regarding hazardous waste. This docket ensures that DEQ maintains primacy over the hazardous waste program.

Mr. McCurdy noted that DEQ did not conduct negotiated rulemaking for this docket. No public hearing was requested or held. The DEQ received one written comment advocating for adherence to the highest environmental standards.

Mr. McCurdy stated that this docket included incorporation of the federal Hazardous Waste Generator Improvements Rule, which involves over 60 changes to hazardous waste generator regulations. The regulatory changes clarify existing requirements, increase flexibility, and improve environmental protection. **Mr. McCurdy** explained the changes that were most relevant to Idaho.

Mr. McCurdy noted that the rules replace the phrase "conditionally exempt small quantity generator" (CESQG) with the phrase "very small quantity generator" (VSQG) to be consistent with the other generator categories. With this change, a VSQG (which account for approximately 86 percent of Idaho's generators) will have the option to send hazardous waste to a large quantity generator (LQG) for consolidation.

Mr. McCurdy noted that the rule changes allow a VSQG or a SQG to remain in its current generator category even if it generates a quantity of hazardous waste in one calendar month that would otherwise move it to a more stringent generator category.

MOTION: **Senator Foreman** moved to approve **Docket No. 58-0105-1701**. **Chairman Heider** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
23-0101-1701**

Rules of the Idaho Board of Nursing. **Sandra Evans** introduced herself as the Executive Director of the Idaho Board of Nursing (BON). She stated that this proposed rule simplifies the process for issuing a limited license to a nurse with a substance use and/or mental health disorder. It eliminates the requirement that a nurse surrender his or her license for up to five years and instead imposes restrictions for up to five years. These restrictions include a non-practice restriction that is enforced until the nurse is deemed safe to return to strictly monitored practice.

Ms. Evans noted that this docket clarifies qualifications for faculty in programs for advanced-practice registered nurses. It allows qualified non-nurse faculty, such as pharmacists, psychologists, dieticians, and physicians, to teach in these programs. It also clarifies qualifications for nursing education program administrators.

Ms. Evans stated that the BON did not receive any public comments regarding this docket.

Vice Chairman Souza expressed her appreciation that these changes create more flexibility for nursing program faculty.

Senator Lee cited the requirement that nursing program faculty hold a graduate degree with a major in nursing. She asked what kind of professional would hold a graduate degree with a major in nursing but not be a nurse. **Ms. Evans** explained that the BON used to require faculty members to be licensed nurses. This new requirement is meant to allow other professional to teach in nursing programs. **Ms. Evans** also noted that there is currently a trend in health professions to incorporate multiple disciplines into a single course. **Ms. Evans** explained that the BON eliminated the requirement for faculty to hold a master's or doctoral degree, instead allowing faculty to hold a graduate degree of any kind.

Senator Lee noted the omission of the word "degree" following the word "graduate" in Subparagraph 643.02(c)(i). **Senator Lee** worried that this omission could cause confusion. **Ms. Evans** clarified that this was a typographical error and would be remedied.

Chairman Heider inquired as to how nurses are tested for mental health disorders and substance abuse disorders. He asked if there are mandatory drug tests for nurses. **Ms. Evans** stated that evidence of these disorders often results from a complaint process. Complaints may indicate impairment or drug usage at work. When a suspicion of substance abuse or mental health disorders arises, the nurse is referred to an evaluator to diagnose the disorder and suggest treatment. Such evaluation may involve psychometric testing and/or fluid testing. Nurses with these disorders are enrolled in an alternative program where they are monitored. Monitoring involves random fluid testing and regular reports from the nurse's health care provider.

MOTION:

Senator Potts moved to approve **Docket No. 23-0101-1701**. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

Rules of the Idaho Department of Health and Welfare Relating to Procedures and Testing to be Performed on Newborn Infants. Jacqueline Watson

introduced herself as the Maternal and Child Health Section Manager and overseer of the Newborn Screening Program for the Bureau of Clinical and Preventive Services. The Newborn Screening Program ensures that all babies born in Idaho are screened for 47 serious conditions using just a few drops of blood. The program also ensures that babies in need of treatment are linked with appropriate care.

Ms. Watson stated that this docket adds Critical Congenital Heart Disease screening to the Newborn Screening Program. Congenital heart defects are the most common birth defect; they impact approximately eight out of every 1,000 babies. In Idaho, approximately 55 babies are born each year with Critical Congenital Heart Disease. The screening for this defect is a noninvasive test that measures oxygen saturation in the babies' blood within the 24-48 hours after delivery. Without early detection, babies with Critical Congenital Heart Disease have higher rates of mortality or can experience significant disability later in life.

Ms. Watson noted that some hospitals in Idaho already conduct the screening, but many small hospitals do not. The Idaho Department of Health and Welfare intends to add this screening information to the birth certificate system in Vital Records. This would allow the Newborn Screening Program to monitor screening compliance, provide technical assistance to hospitals and providers, and ensure linkage to follow-up care for failed screens. Because of the need to make modifications to the Vital Records system, **Ms. Evans** requested that this rule be effective July 1, 2018.

Ms. Watson stated that negotiated rulemaking was not conducted, but stakeholders were included in drafting the rule. **Ms. Watson** received 11 written comments, all in support of this docket. Four of the comments suggested clarifying changes; some of these changes were incorporated. Implementing this rule will cost approximately \$20,000 annually; this will be covered by federal funds. There will be no impact to state general funds.

Senator Harris asked how midwives will comply with this rule. **Ms. Watson** explained that midwives will use the same screening equipment as doctors. Portable equipment is available for midwives.

Senator Lee asked why the Newborn Screening Program decided to add this particular screening to the list of required screenings. She also asked if there are other screenings that may be added in the future. **Ms. Watson** stated that the federal Department of Health and Human Services (HHS) offers recommendations to states regarding which screenings should be performed on newborns. There are currently 36 conditions on the recommended screening list. Idaho screens for 47 conditions. HHS recommends screening for Critical Congenital Heart Disease; as such, it was added to Idaho's Newborn Screening Program.

Senator Potts asked if most midwives already have the equipment necessary for this screening or if they would need to purchase new equipment. He asked if federal funds will cover this potential cost. **Ms. Watson** stated that most midwives are unlikely to have the equipment already. However, she noted that the Idaho Midwifery Council has purchased the screening equipment and undergone training in anticipation of the rule change.

Senator Potts asked if insurance will cover this cost for midwifery. **Ms. Watson** explained that this screening will be reimbursed as part of the standard service bundle provided to newborns. If a newborn does have a failed screening, there will be a diagnostic code that will allow the screening to be billed directly.

Senator Potts asked if that this test occurs 24-48 hours after birth. **Ms. Watson** responded in the affirmative.

MOTION: **Senator Lee** moved to approve **Docket No. 16-0212-1701**. **Senator Potts** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Souza passed the gavel back to Chairman Heider.

ADJOURNED: There being no further business, **Chairman Heider** adjourned the meeting at 3:35 p.m.

Senator Heider
Chair

Rachel Goodman
Secretary