

MINUTES  
**SENATE AGRICULTURAL AFFAIRS COMMITTEE**

**DATE:** Tuesday, January 19, 2021

**TIME:** 8:00 A.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Burtenshaw, Vice Chairman Bayer, Senators Patrick, Den Hartog, Johnson, Zito, Ricks, Nelson, and Rabe

**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 Burtenshaw** called the meeting of the Senate Agricultural Affairs Committee (Committee) to order at 8:01 a.m.

**MINUTES APPROVAL:** **Senator Rabe** moved to approve the Minutes of January 12, 2021. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

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

**DOCKET NO.: 02-0000-2000FA** **Rules for Weights and Measures - Omnibus Rulemaking**, p. 63. **Brian Oakey**, Deputy Director, Idaho State Department of Agriculture (ISDA), stated **Docket No. 02-0000-2000FA** (Rule 02.02.14) aligns with the Governor's recommendation for ISDA to begin its fee increase process. Idaho's population growth resulted in a significant rise in demand of ISDA inspection services. He mentioned that in order to determine appropriate fees, ISDA conducted a zero-based budgeting analysis that carefully analyzed the increase in demand of ISDA services and the rising cost associated with them. **Mr. Oakley** said the goal is to cover the cost of a new full-time position, to provide adequate funding for future capital replacement, and to provide funding for the increase of inspection for new commercially used weighing and measuring devices.

He emphasized that ISDA's negotiated rulemaking process started in 2019, and several industry groups were present and remained engaged throughout the course of the two-year negotiated rulemaking process. He added that ISDA also received substantial feedback from the community. Following extensive discussions and considerations, ISDA decided to increase fees incrementally in a three-year period instead of raising them all in one year. ISDA's tiered fee plan is outlined in attachment 1.

In addition, **Mr. Oakey** stated that the fee plan utilizes a "Not to Exceed" condition as indicated in attachment 2. The condition establishes the maximum amount fees can be raised. Once the fees max out, the graduated fee table will no longer be necessary.

**Mr. Oakey** introduced Bureau Chief Kyle Wilmot, ISDA, to further elaborate on the rule. Mr. Wilmot oversees the Weights and Measures program. He detailed all the changes in Rule 02.02.14. He also highlighted that the three-year tier schedule contains different fee increases for the total number of devices, types of equipment, and hours necessary to complete the inspection of devices.

In addition, **Mr. Wilmot** said Rule 02.02.14 also proposes the addition of two new devices: mass flow meter and electric vehicle charging system. Due to a more prevalent use of mass flow meters in the agricultural industry, and an increased number of electric charging systems, fee raises were proposed to cover inspections and additional trainings for ISDA inspectors.

**DISCUSSION:** In response to queries by Senators Den Hartog and Ricks, **Mr. Wilmot** explained that ISDA and industry stakeholders support the tiered fee plan. He gave examples of how the fee increase schedule will apply to the various devices.

**DOCKET NO.:** **Rules Governing Pesticide and Chemigation Use and Application - Omnibus 02-0000-2000FA Rulemaking**, p. 93.

During his presentation, he focused and elaborated the four proposed substantive changes:

- an update on the pesticide categories to make sure that the rules remain consistent with federal government requirements on certifications and trainings;
- the addition, renaming and redefinition of several applicator license categories to better describe the type of pesticide applications performed by the licensed individual;
- the amendment of rules related to wind restrictions during pesticide spray operations; and
- the deletion of certain statutes of the rule that apply specifically to the aerial application of pesticides, which includes limiting the low-flying spray operations.

**Mr. Oakey** indicated that other rule changes in the docket are non-substantive and conform with the Governor's directive on Red Tape Reduction Act.

**DISCUSSION:** **Senator Patrick** informed Mr. Oakey that there are factors that will affect the pesticide spray operations and asked him to elaborate on the how ISDA came up with the wind restriction rule. **Mr. Oakey** acknowledged that wind velocity, pesticide application, type of pesticide, and equipment used during spraying operations vary, and are difficult to account for when drafting this rule. After a considerable amount of time assessing the factors, the stakeholders pointed out that it is advisable to have wind restrictions in the rule.

**Senator Johnson** inquired on the public notification process during the negotiated rulemaking process. **Mr. Oakey** responded that ISDA is the primary enforcement authority that regulates pesticides in Idaho. He added that if notification requirements need to be enhanced, they could be further discussed in the next negotiated rulemaking process. ISDA would invite counties to participate and weigh in with their concerns.

**Senator Nelson** requested Mr. Oakey to further explain the history of enforcement action for the removal of the provision on low-flying spray operations. **Mr. Oakey** affirmed that the complexity to enforce the section led to its deletion. He emphasized that ISDA is focused on regulating and ensuring pesticides are sprayed properly. He also informed the Committee that the Federal Aviation Administration (FAA) was informed of the proposed change of the provision.

In response to questions by Chairman Burtenshaw and Vice Chairman Bayer, **Mr. Oakey** specified that the minimum age requirement for the professional applicator license is 18 years old. He cited that the license is valid and renewable for two years. He also described the stipulations on the renewal of the license.

In response to a question by Senator Ricks, **Mr. Oakey** confirmed that the rules on aerial application aligned with neighboring states' regulations.

**TESTIMONY:** **Tyler Harris; Jonathan Oppenheimer**, Idaho Conservation League; and **Martha Bibb** spoke in opposition to Rule 02.03.03. They advocated for more stringent ISDA regulations and guidelines in the application of pesticides for the protection of farm workers, and safety of public and environmental health.

**Christina Stucker-Gassi**, Northwest Center for Alternatives to Pesticides, recommended an improved guidance to prevent drift of pesticides to rural houses, schools, and other hazard areas as well as increased regulations.

**Elizabeth Criner**, Far West Agribusiness Association; **David Lehman**, Idaho Agricultural Aviation Association; **Bob Naerebout**, Idaho Dairymen's Association; and **Patxi Larrocea-Phillips**, Idaho Noxious Weed Control Association spoke in support of Rule 02.03.03. They commended ISDA's robust job in taking action on the issues that were brought up last year. **Mr. Naerebout** encouraged people with concerns to still get engaged and contact ISDA to assist them with their complaints and compliance with the rule.

In closing, **Mr. Oakey** assured the Committee that ISDA took the negotiated rulemaking process seriously, and analyzed the issues adeptly and thoroughly.

**MOTION:** **Senator Ricks** moved to approve **Docket No. 02-0000-2000FA**. **Senator Patrick** seconded the motion. The motion passed by **voice vote**.

**PASSED THE GAVEL:** Vice Chairman Bayer passed the gavel back to Chairman Burtenshaw.

**ADJOURNED:** There being no further business at this time, **Chairman Burtenshaw** adjourned the meeting at 9:43 a.m.

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Senator Burtenshaw  
Chair

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Rellie Wisdom  
Secretary