

Idaho State Department of Agriculture
IDAPA 02.02.14 Rules for Weights and Measures
June 23, 2020
Kyle Wilmot, Facilitator

Present: Suzanne Budge, Idaho Petroleum Marketers; Pam Eaton, Idaho Petroleum Marketers; Melinda Merrill, NW Grocery Association; Ron Berry, Berry Oil; Roger Titmus, Stinker Stores; Bob Naerebout, Idaho Dairymen; Colby Cameron, Division of Financial Management; David Hahn, Division of Financial Management; Brian Oakey, ISDA; Cindy Stark, ISDA; Kevin Merritt, ISDA; Kelly Nielsen, ISDA; Pamm Juker, ISDA; Vic Mason, ISDA; Katy DeVries, Office of Attorney General – ISDA; Dallas Burkhalter, Office of Attorney General – ISDA; Janis Perry, ISDA; Kyle Wilmot, ISDA.

AGENDA ITEMS

WELCOME

Kyle Wilmot convened the WebEx meeting at 9:10 am. Kyle explained the procedures for this virtual negotiated rulemaking. He asked that participants hold questions, comments, and concerns until after his presentation. He asked if anyone had feedback regarding the new process of sending out a discussion paper prior to the meeting. Pam Eaton responded that it was helpful.

Kyle displayed the current rule and explained that potential fee adjustments are reflected in Table 1A of the rule. He described the zero-based budgeting process that provided a detailed analysis of the Weights and Measures program revenues and expenses. He indicated that each device has potential fee adjustments along with two additions to the table including mass flow meters and electrical vehicle charging systems. The proposed changes would be presented to the 2021 legislature and would not be seen by licensees until February 2022 when invoices are sent out.

Kyle explained that in 2020 the program was approved to add a new investigator in North Idaho since that region has the largest number of devices in the state. The total cost for the new position is \$116,600 with \$53,800 coming from one-time general funds. This includes expenses for personnel, operating costs and capital outlay. Going forward the program is expected to cover the entire \$116,600. Kyle described that the fee increase would help cover the program's current and future operating and personnel costs, as well as the upcoming needs related to capital purchases. He explained that they plan to keep the ten work trucks (one for each inspector), four scale trucks, and the ten trailers on a consistent replacement schedule since repairs are more expensive on older equipment. He indicated the program's current needs are for three work trucks, two scale trucks, and two gas trailers.

Kyle displayed two spreadsheets showing the budget forecast without a fee increase and with a fee increase. He explained that 2019 is the last complete year for financials and the forecast is through 2026. In 2020 personnel costs will increase due to the added position plus an internal programmer to create a new software program to help increase efficiency. On the forecast without a fee increase the cash balance is depleted by 2021. In the forecast showing the proposed increase the regulatory revenue increase begins in 2022. According to Kyle, the general fund revenue will probably remain the same so

the percentage of revenues from general funds which is currently 56% would flip to 44% with the proposed fee increase.

Kyle displayed a spreadsheet showing fund revenues, including the actual 2019 receipts for each device type and what the results of the proposed fee increase by device. With 33,079 current devices, the regulatory license revenue would be \$762,025 with an increase of \$331,122. The spreadsheet also shows the percent of increase, the percent of new revenue and the percent of total devices. Kyle described what was considered in setting the proposed fee increases including capital outlays needed and the hours used for inspecting each device. He explained that gas pumps occupy the largest percentage of time but the unit cost is lower due to the number of gas pumps that are tested. Large scales use more time per unit. He stated that investigations related to complaints use time and most are related to fuel pumps.

Kyle showed a fee comparison chart that compared fees by device in surrounding states. He explained that the overall proposed fee increases are still lower than the other states.

Kyle concluded his presentation by stating that the comment period of this rule is open until July 7, 2020. Written comments should be submitted to Brian Oakey. Kyle then asked for questions and comments.

Melinda Merrill asked if the stakeholders will get the presentation. Brian Oakey responded that the slides will be put on the website and stakeholders will get email notification. Melinda asked about the weighmaster fee going away. Brian commented that it was an outdated regulation and was removed in statute. Melinda asked if weighmasters would still have to get a license. Kyle stated that the statute is still in place but the process and fee was removed. Melinda asked what the forecast is for capital outlay. Kyle Wilmot responded that the program is projected two new work trucks, two scale trucks and two prover trailers in 2021. Pam Eaton asked how long the trucks last. Kyle responded that the program plans on 16 to 20 years for scale trucks, 8 years for work trucks and 15 to 30 years for trailers.

Pam Eaton commented that after 2022 the forecast shows a hefty cash balance. Kyle stated that the cash balance would be monitored, but that equipment cannot be purchased if there is not enough cash on hand. Pam stated that she is concerned by the cash balance. She also expressed that since these are public safety issues why the general fund shouldn't pay 50 percent. Kelly Nielsen explained that yes the cash balance is building up but is needed to buy another scale truck after 2026. He indicated that ISDA is not in a position to ask for an increase in general fund moneys for this program, but he noted that so far there is no decrease and that is why the percentages would flip.

Pam Eaton asked about the complaints mentioned in the discussion paper. Kevin Merritt responded that the vast majority are from people who have concern at gas pumps or grocery stores including fuel quality. Pam asked what percentage turn out that everything is fine. Kevin stated that about 10 to 15% of the gas pump complaints warrant the device being rejected. He said that Idaho does not have a fuel quality testing lab so those complaints are more difficult. Pam asked if charging fees to reinspect had been considered so everyone is not paying for businesses that need more work,

Bob Naerebout had questions with the total scale truck cost but Kelly had answered them. He expressed support for the heavy scale increase.

Melinda Merrill asked what industry uses mass flow meters. Kevin Merritt responded that is a unique item but used with multiple products including liquid sugar, agrichemicals, fertilizer and some petroleum industry terminals. Melinda asked how the fee for electric charging stations was set and whether other states have that fee. Kevin Merritt indicated that California is leading the way in developing procedures. He indicated that equipment to test these stations would need to be purchased and that he anticipates that by 2022 more electric charging station would be online.

Suzanne Budge asked if the scale trucks are diesel and if so could they be rebuilt. Kevin Merritt responded that they are diesel but the 20-year-old technology is harder to maintain. Suzanne expressed concern of the percentage split. She commented that the presentation was good, but stated that presenting this increase to the House Ag Committee would be a challenge this year. Brian Oakey responded that a fee increase is always problematic and would be especially challenging with the economy slowing. He expressed the importance of stakeholder support since this is the direction from the governor's office. He stated that the program will need personnel and equipment to provide the service and he hoped that industry is satisfied with the work being done. He encouraged feedback from stakeholders.

Suzanne Budge reiterated that the program provides consumer protection but the increase is not defensible when they are all born by industry. She mentioned that Wyoming and Utah, states that were not on the chart, have lower fees. She stated that her constituents support the program but are concerned by the increases. She appreciated the changes made, but her intention is not to move forward without substantive changes. Brian Oakey responded that if there is a reason for another meeting, ISDA is open to the will of the group. Suzanne identified concerns that her constituents would probably address including a 50/50 funding split, so more is born by consumers rather than all of the increase on industry. Kyle Wilmot explained that Wyoming and Utah have different fee structures based on devices, not types, so they cannot be compared. Also, Utah charges for scanning devices.

Pamm Juker invited those from the governor's office to weigh in on this issue. Colby Cameron explained that he handles regulatory affairs but offered that for two years in a row in the budget process, ISDA was asked to move more to dedicated funds for this program. David Hahn stated that since this is a fee-based program, the fees should be offsetting the costs since this is the governor's emphasis. He stated that the governor's office is unloading a general fund shift as quickly as possible. He foresees the 2022 budget as the same appropriation as 2021.

Pam Eaton commented that since everyone has been asked to tighten their belts, where is that happening with this proposal and where are the reductions. Kyle responded that the analysis was done with zero-based budgeting. Some positions have been left open for a longer time, but then the service provided can be hampered. Pam stated that to justify the increase to the legislature she felt showing where cuts are made is important. Kelly Nielsen explained that ISDA has had holdbacks from its budget, but programs with less impact have been strategically chosen and none from Weights and Measures.

Kyle Wilmot thanked the participants for their time and encouraged them to provide written comments. Brian Oakey suggested that those who would like to extend the negotiated rulemaking to another session indicate so in their comments. The comments are due by July 7, 2020, and he asked that participants

keep in mind what was heard from the governor's office. He would like to find what will work, but if the program does not have the ability to replace equipment, service may be impacted.

Suzanne Budge said she appreciated that, but wanted to be unambiguous in expressing concerns of her members who are experiencing an economic reality and should not have to bear all of the fee increase. She feels that this request is ambitious and the program growth needs to be reviewed. Brian Oakey responded that he hears what is being said and all comments received will be evaluated.

Pam Eaton thanked those involved for the work that has been done.

Kyle Wilmot adjourned the meeting at 10.57 a.m.

Respectfully submitted by Janis Perry