

Idaho State Department of Agriculture
IDAPA 02.06.27 Rules Governing Bacterial Ring Rot
June 17, 2014
Lloyd Knight, Facilitator

Present in person:

Stephanie Mickelsen, Farm Bureau; Dennis Brower, Farm Bureau; Chad Neibaur, ICIA/Seed Grower; Alan Westra, ICIA; Phillip Nolte, U of Idaho; Garry West, ISDA; Sean Costello, ISDA/Office of Attorney General; Wyatt Penfold, ICIA/Seed Grower; Dirk Parkinson, Parkinson Seed Farm; John Hoggan, ICIA; Jim Griggs, Parkinson Seed Farm; Jared Stuart, ISDA; Angel O'Brien, ISDA, recording.

Present via telephone:

Travis Blacker, Idaho Potato Commission; Pat Kole, IPC; Dan Moss, IPC; Boyd Foster, IPC; Ritchey Toevs, IPC; Jeff Harper, IPC; Mike Telford, IPC; Pamm Juker, ISDA.

AGENDA ITEMS

WELCOME

Lloyd Knight convened the meeting at 10:00 a.m.

Mr. Knight stated that the goal of the meeting is to develop a draft of the rule text that can be published in the October bulletin of the Idaho Administrative Bulletin. It must be published in the October bulletin as a proposed rule in order to be presented to the 2015 Legislature.

Mr. Knight provided the current temporary rule text on the projector screen. Several meetings were held to finalize the temporary rule which ultimately went into effect in February 27, 2014. Since then a number of cases of ring rot have been reported to ISDA, and ISDA has done trace back investigations. All of the investigations are still officially open today with no definitive answers as to the source of infection.

Mr. Knight put a working copy of the rule text with proposed changes by the Idaho Potato Commission highlighted in yellow on the projection screen. Mr. Knight noted that there are wording changes in the section regarding mandatory and voluntary reporting. The new Rules Governing Seed and Plant Certification, which were approved by the State Board of Education a few months ago, are now incorporated by reference.

On page two, there are changes to the definitions. The definition for "cutting operation" has been deleted and definitions for "export shipment" and "seed potato certification process" added. Mr. Knight discussed that on page three, the biggest change is in Section 101, reporting of ring rot. Mandatory reporting of ring rot in seed potatoes is still required, but it is voluntary elsewhere.

Dan Moss stated that the current temporary rule implicates all the people in the whole supply chain. If the seed grower is being tested and everything comes out clean, responsibility should transfer from the seed grower down the line.

Mr. Knight stated that under the new draft rule, if laboratory confirms ring rot in seed prior to final certification, and when the potatoes are still at the grower's facility, reporting those findings would be mandatory with a trace back. Reporting BRR in seed potatoes post-certification and after they have left the grower's facility, and in any commercial lots, would be voluntary.

Mike Telford asked if it was redundant to have mandatory reporting for seed potatoes in this rule, because ICIA already has a zero tolerance for BRR in seed potatoes. If BRR is found in seed potatoes, they are rejected for certification. Mr. Knight responded that it is ISDA's understanding that the Idaho Potato Commission wanted a third party (ISDA) to do the investigations and trace back. Pat Kole agreed that was what was discussed in Pocatello. Also someone from ICIA said they didn't have the authority or resources to do a trace back.

Mr. Moss discussed the importance of ensuring objectivity of the trace back investigation.

John Hoggan stated he doesn't see any reason for a third party to be involved if in fact Idaho Crop is doing their job, and they are. ICIA already has a zero tolerance for ring rot in their standards, and both the University of Idaho and IPC are limited in what they can do. ICIA is really the best qualified to conduct the investigation.

Dirk Parkinson reiterated that Idaho Crop has a zero tolerance for ring rot, and if seed potatoes have ring rot, the lot is rejected for certification.

Chad Neibaur requested clarification on where the mandatory reporting ends and the voluntary reporting begins. The real issue for the seed grower is the hold order, and being held liable for the seed once it has gone off the seed grower's farm. One seed potato grower requested that Mr. Neibaur address this issue on the record. The seed grower had one tuber that went to a commercial grower that tested positive. The seed grower's lot was placed under hold order, and while it was under hold order, the market went away from him. The seed grower reported that he lost 45,000 sacks of rangers to the hold order, and lost the sale on russet Burbank for \$43,000. He finally resold those for a \$4 loss on that. So his hold order cost him three quarters of a million dollars while we were waiting to determine whether it was negative or not. Tests on the potatoes under hold order were ultimately negative for ring rot. Mr. Neibaur questioned when the mandatory reporting requirement would end and voluntary reporting would begin.

Mr. Knight responded that under the existing temporary rule, reporting is mandatory for all potatoes. He asked whether the group wanted the mandatory reporting requirement to remain in place after seed potatoes leave the seed farm – ISDA would like consensus on that issue.

A stakeholder [unidentified] asked why tags would be placed on seed potatoes if they are not clean, and noted that the tag is the final spot in certification

Mr. Neibaur asked whether the Department has the authority at any time past certification to put a hold

order on the seed. Mr. Knight responded that under the current rule, ISDA has that authority. If mandatory reporting is no longer required, that may affect when and whether ISDA would issue a hold order. The rule can be written a number of different ways.

Alan Westra stated that in his opinion the hold order should not extend past the sealing of that truck, due to the possibility of contamination from sources other than the seed farm.

Mr. Knight asked whether mandatory reporting should continue when the seed goes off the piler into the truck, is sealed and leaves the seed potato grower's facility. It is ISDA's understanding that the seed growers' preference is that after the seed potatoes leave the seed grower's facility, the mandatory reporting requirement ends. However, ISDA wants to know what IPC thinks.

Ritchey Toevs stated that mandatory reporting should end when the seal is broken.

A stakeholder noted that the seed grower has no control over the trucks that carry the seed potatoes.

Mr. Westra stated that even if the truck was disinfected on the seed grower's farm by the seed grower that would not preclude the possibility that the seed lot could be infected by being loaded on the truck. Under the seed management area law, 75% of seed is subject to mandatory reporting. His understanding is that the mandatory reporting requirement occurs at the shipping point inspection, not once the seed is in the truck. The seed management area rules and the BRR rules should be consistent.

Mr. Toevs agreed with Mr. Westra's statement about transfer of ownership of seed potatoes.

Mr. Knight clarified that Mr. Toevs and Mr. Westra intended that mandatory reporting would end when the truck hauling seed potatoes is sealed and leaves the seed farm.

Wyatt Penfold noted that language on the certification tag provides that since the use of certified seed is beyond the control of the grower, the seller, the inspector, the Idaho State inspection service and Idaho Crop Improvement Association, there is no warranty of any kind, expressed or implied. The tag also states that by accepting these seed potatoes, the buyer expressly agrees that he is in charge of them as soon as the truck leaves the seed farm. Mr. Toevs concurred.

Mr. Parkinson questioned why the BRR rule is needed, given the existing laws and rules.

There was a general discussion about the seed potato arbitration process, and whether and how that relates to the BRR rule. Mr. Knight stated that they are different. He also stated that when ISDA was originally approached about handling the reporting and investigation, those making the request wanted a more formal enforcement process.

Mr. Westra commented that seed arbitration requests may not be made very often because the seed grower and the customer work it out informally.

Mr. Knight inquired whether everyone agreed that the mandatory reporting requirement should end when the seed tag is attached and the seed potatoes leave the seed grower's facility. Attendees indicated

agreement, and no one indicated disagreement.

Mr. Knight stated that ISDA will amend the language in Section 101 accordingly, and asked whether there were any other issues with Section 101. He further emphasized that if ISDA receives a report of BRR, whether the report is mandatory or voluntary, ISDA is still required to do a trace back investigation. That requirement is found in Section 103.

Mr. Hoggan asked whether that adequately addressed Mr. Neibaur's questions or issues regarding the hold order situation. A speaker asked whether hold orders could be issued once the tag was applied and ownership changed.

Mr. Knight responded that if ISDA received a positive BRR report on commercial potatoes, and determines during the trace back process that the seed from which those commercial potatoes were grown had been certified and tagged, ISDA would not place a hold order on the seed potatoes.

Mr. Kole noted that at that point in time the seed potatoes would all be gone.

Mr. Knight then provided the example of a commercial grower who has taken delivery of seed potatoes in the spring, and spots a potential issue with the seed. The grower then sends a seed tuber for BRR testing, and the results are positive. Assuming that the seed had gone through the certification process and been certified, the question is whether, under the new version of the rule that is being discussed, ISDA would issue a hold order on any seed from that lot that is remaining on the seed farm.

Mr. Kole responded that it is a difficult question. ISDA may find, during the trace back investigation, that the commercial grower sent a truck to the seed farm. There may be many possibilities and different scenarios. ISDA should weigh those facts and be very judicious about issuing hold order, depending on the circumstances.

Mr. Knight noted that having that much discretion can be problematic. He provided an example from one of ISDA's trace back investigations, in which a commercial grower was cutting seed potatoes, send samples to ICIA, and the samples were positive. The commercial grower had hauled the seed potatoes from the seed farm to his own storage, and cut the seed potatoes using his own cutter. He cut potatoes only from the one seed potato grower. The commercial grower's operation looked clean and well taken care of. In other cases, commercial growers might hire trucks that may have hauled potatoes for other growers or from other seed farms and those trucks might have questionable sanitation practices. The seed potato grower might maintain that the seed was clean when it left his facility, and ISDA would not, at that point, be able to examine the trucks. Mr. Knight requested input on when ISDA should issue a hold order, because there are participants on both sides.

Mr. Kole stated that ISDA should be very reluctant to issue a hold order unless it is extremely clear that the problem came from the seed potatoes.

An unidentified stakeholder recommended that a hold order should not be issued unless there is an independent test on the actual seed lot that remains on the seed potato farm.

Stephanie Mickelsen noted that bacterial ring rot can be in the cellars, from the dirt, anywhere in that process. Placing a hold order immediately on the seed potato grower damages their reputation, and can cause financial harm. Unless and until ISDA can pull potatoes from the seed potato's facility and test them, a hold order should not be issued on the seed potatoes.

Mr. Neibaur noted that the issue is one of timeliness and losing control once the seed potatoes leave the grower's facility.

Mr. Knight summarized his understanding of the group's recommendation regarding hold orders: No hold order will be issued on seed potatoes on the grower's facility unless ISDA is able to sample seed potatoes from the same lot that remain on the seed potato grower's facility, and the seed potatoes test positive. If the seed potatoes test negative, or if there is no seed from that lot left to sample, ISDA would not issue a hold order. ISDA would have some discretion, but it would have to be pretty clear cut for ISDA to issue a hold order. Is IPC okay with ISDA not issuing a hold order until there is a positive test on the seed farm?

A general discussion followed regarding the need for a positive test on seed potatoes on the seed farm before ISDA issues a hold order on the seed potatoes. Mr. Toevs stated that if there is a clear positive on a commercial farm, ISDA is expected to do a trace back.

Mr. Knight reiterated that the rule should set criteria for determining when to issue a hold order and do testing. Both sides (seed and commercial growers) need to know what will happen in the event of positive tests.

Mr. Kole recommended that there should be an evidentiary standard upon which hold orders are going to be issued. He suggested that ISDA work with its legal counsel to draft language setting forth an evidentiary standard that will be used (substantial evidence, significant causation, etc.).

Mr. Telford commented that the discussion had been worthwhile.

Mr. Knight noted the latency of ring rot, and the issues that presents.

Mr. Moss called the group's attention to the export requirement, and proposed that the seed growers who are exporting seed potatoes have the opportunity to work with ISDA to develop rules regarding export shipments. Mr. Knight responded that ISDA is working to set up a meeting with the seed growers who export.

Ms. Mickelsen cautioned that Idaho should not set rules that put Idaho at a disadvantage in trade. Putting in higher rules for Idaho growers to export to other places than those countries or those states have, puts Idaho growers at a disadvantage to those other markets. The rules of the importing state or the import country should be the rules that govern those shipments – Idaho should not have higher standards. A participant on the telephone agreed.

Mr. Knight then directed the group to the recordkeeping requirement for cutting operations, and noted ISDA received a recommendation to delete the recordkeeping requirement on cutting operations. He

requested comment. There was general agreement from the group (heads nodding) to go ahead with the deletion of the cutting operation recordkeeping requirement.

A participant asked about the status of ICIA's standards, which ISDA has incorporated by reference into the BRR rule. Mr. Knight stated that the University of Idaho had adopted the ICIA standards as temporary rules. Sean Costello, Deputy Attorney General for ISDA, confirmed that had occurred, and that University of Idaho's temporary rule was published in the June Administrative Bulletin.

Ms. Mickelsen suggested that as to hold orders, the language on page five of the draft rule be changed to provide that the Director may authorized a hold order only after an investigation, trace back and sample analysis are complete. Another stakeholder stated that the hold order should be left to the discretion of ISDA. Ms. Mickelsen suggested taking the hold order language out of the rule.

Mr. Costello and Mr. Knight explained that the authority for ISDA to issue a hold order is statutory, in the Plant Pest Act, and that under that act, ISDA has a duty to prevent plant diseases and pests from spreading in the state. Mr. Knight stated that ISDA can set forth conditions in BRR rule under which ISDA would issue a hold order. The language cannot be completely removed. Ms. Mickelsen clarified that she was recommending that ISDA tweak the language.

Mr. Knight noted that most of the changes to the rule would be for the reporting requirements, and that ISDA would adjust the hold order language on page 5 if necessary.

Mr. Costello discussed the difference between the authority and duty set forth in a statute such as the Plant Pest Act, and the importance of providing clarification and criteria in a rule. The rule would clarify how and when ISDA would identify something as infected, and the circumstances under which ISDA would issue a hold order.

Mr. Knight stated that the group could try to draft something during the meeting, or the meeting could be adjourned, with ISDA drafting changes based on the discussion during the meeting, and provide that language to the group for discussion at the next rulemaking meeting.

Mr. Telford suggested that the meeting be adjourned, and that ISDA draft the changes for circulation.

Mr. Knight informed the group that ISDA posts rule drafts throughout the process to ISDA's website. He also has email addresses for some participants, and will send a draft via email as well.

Mr. Penfold noted that ISDA would definitely receive input regarding hold orders.

Mr. Knight stated that there will be at least one more meeting. It is scheduled for July 9 in Pocatello.

Lloyd Knight adjourned the meeting at 11:35 a.m.

Next meeting: July 9, 2014 @ 10:00 a.m.

Respectfully submitted by Angel O'Brien