

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 19, 2003, in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
 Amy VanHouse, Legislative Research Department
 Gordon Self, Revisor of Statutes Office
 Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Greg Foley, Acting Secretary, Kansas Department of Agriculture
Wendy Harms, Associate Director, Kansas Aggregate Producers' Association

Others attending: See attached list

Hearing and action on HB 2245 - Standards of commercial weighing and measuring devices.

Chairman Johnson opened the hearing on **HB 2245**. Raney Gilliland explained that when the weights and measures statutes were updated by the 2001 Legislature, aggregate producers' scales were allowed a greater tolerance (+/- 100 pounds) for accuracy than allowed by weights and measures standards until July 1, 2003. This legislation would extend the exemption until August 31, 2005.

Greg Foley, Acting Secretary, Kansas Department of Agriculture, appeared in support of **HB 2245** to extend the exemption period to allow the Kansas Aggregate Producers Association to pursue changing the tolerance requirements through the National Conference on Weights and Measures. He explained that the reason for having the association pursue the tolerance change at the national level was to maintain uniformity of weights and measures laws between Kansas and other states. This uniformity is one statutory mandate of the weights and measures program. He said that if the proposal is withdrawn or fails at the National Conference on Weights and Measures, the aggregate industry is expected to comply with the tolerances for scales without any special consideration or further extensions. (ATTACHMENT 1)

Wendy Harms, Associate Director, Kansas Aggregate Producers' Association, testified in support of **HB 2245** to allow their association the opportunity to present their issues to the National Conference on Weights and Measures concerning the granting of this exemption to be published in the National Institute of Standards and Technology Handbook 44. She said that due to the timing of their conferences, additional time is needed to resolve this issue. (Attachment 2)

Chairman Johnson closed the hearing on **HB 2245** and opened the floor for discussion.

Representative Feuerborn moved to recommend **HB 2245** favorable for passage and, because the bill is of a noncontroversial nature, be placed on the consent calendar. Seconded by Representative Freeborn, the motion carried.

Discussion and action on HB 2027 - Control of prairie dogs, moles and gophers.

Chairman Johnson opened discussion on **HB 2027**. Raney Gilliland reviewed the bill for the committee.

Chris Wilson, representing the Kansas Agricultural Aviation Association, Kansas Dairy Association and Kansas Seed Industry Association, and Keith Foster on behalf of the Finney County Commissioners submitted written testimony in support of **HB 2027**. (Attachments 3 and 4, respectively)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE at 3:30 p.m. on February 19, 2003, in Room 423-S of the Capitol.

Representative Freeborn moved to amend **HB 2027** on page 4, after line 5, by adding a new Section 4 and renumbering the sections accordingly: "New Section 4. Trapping and transplanting prairie dogs outside of the Kansas traditional home range of the prairie dog is prohibited except when done in conjunction with a scientific, education or exhibition permit issued pursuant to K.S.A. 32-952 and amendments thereto. As used in this section, "Kansas traditional home range" means that area of Kansas extending from the Kansas-Colorado border eastward and ending with the easternmost boundary of Washington, Clay, Dickinson, Marion, Harvey, Sedgwick and Sumner counties and including all counties in between." (Attachment 5) The motion was seconded by Representative Feuerborn. It was agreed to add clarifying language by inserting the words "to any location" after "...prairie dogs" and before "outside of the Kansas traditional home range..." After much discussion, the motion carried.

Staff recommended a technical amendment to **HB 2027** on page 2, line 25, to strike "others" and insert "other." Representative Gatewood moved to make the necessary correction. Seconded by Representative Feuerborn, the motion carried.

Representative Powell moved to table **HB 2027**. Seconded by Representative Ostmeyer, the motion failed.

Representative Powell moved to amend **HB 2027** on page 4, after line 5, by inserting a new subsection: "(f) Notwithstanding any provision of law to the contrary, the secretary of wildlife and parks shall not adopt rules and regulations to carry out the provisions of this section and K.S.A. 80-1201, and amendments thereto." (Attachment 6) The motion was seconded by Representative Faber. Following a lengthy discussion, the motion passed.

Representative Feuerborn moved to recommend **HB 2027**, as amended, favorable for passage. Seconded by Representative Freeborn, the motion carried. Representatives Faber and Ostmeyer requested that their no votes be recorded.

Discussion and action on HB 2036 - Motor fuel labeled as bio-diesel required to contain at least 2% esters derived from vegetable oil or animal fat.

Chairman Johnson opened discussion on **HB 2036** and Raney Gilliland reviewed the bill for the committee.

Gordon Self, Revisor of Statutes, explained a proposed amendment that would, with only technical changes, move the basic language of **HB 2036** from the Kansas consumer protection act where violations would be handled by the Office of the Attorney General to the petroleum products inspection act administered by the Kansas Department of Agriculture where civil penalties could be imposed for violations. (Attachment 7) Representative Powell moved the amendment. Seconded by Representative Gatewood, the motion carried.

Representative Gatewood moved to recommend **HB 2036**, as amended, favorable for passage, however, because the bill was substantially changed to rename the bill **House Substitute for HB 2036**. Seconded by Representative Ostmeyer, the motion carried.

The meeting adjourned at 4:55 p.m. The next meeting is scheduled for February 24, 2003.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 19, 2003

NAME	REPRESENTING
John D. Pinegar	Kansas Legislative Policy Group
Angela DeBevoise	Intern for Rep. Ostromeyer
Tom Bruno	Farm Credit Bank
Andy Shaw	PMCA of Kansas
Denise Buncle	Doug Mays
marci francisco	Lawrence Preservation Alliance
Chris Wilson	Ks Dairy Ass'n
Kathryn H. Morgan	City of Wichita Hist. Pres. Office
Sally Hatcher	Ks Pres Alliance - Lawrence
DENNIS ENSLINGER	CITY OF LAWRENCE
Brenda Spencer	Kansas Preservation Alliance - Wamego
Kenon Johannes	Kansas Soybean Association
Steve Swatter	Ks Farm Bureau
Mike Beam	Ks LUSTK ASSN.
Chris Tymeson	KDWP
Mike Haydon	KDWP
Barbara Meyer	Intern - Rep. Gatewood
Wendy Proffers	KAPA
Judy Mohr	Ko Assoc of Counties

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 19, 2003

NAME	REPRESENTING
GREG FOLEY	KS Dept of Agriculture
Rulerseed	KS Dept of Agriculture
Constantine Cotsoradis	K D A



KANSAS

DEPARTMENT OF AGRICULTURE
GREG A. FOLEY, ACTING SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

House Agriculture Committee

February 19, 2003

House Bill 2245

Acting Secretary of Agriculture Greg A. Foley

Good afternoon Chairman Johnson and members of the committee. I am Greg Foley, acting secretary of agriculture. I appreciate the opportunity to discuss the impact House Bill 2045 will have on the Department of Agriculture.

In 2001, the Legislature decided that aggregate scales could, for a period of two years, be allowed a greater tolerance (+/- 100 pounds) for accuracy than originally allowed by weights and measures standards. In return, the Kansas Aggregate Producers Association was expected to pursue changing the tolerance requirements through the National Conference on Weights and Measures. The reason for having the aggregate association pursue the tolerance change at the national level was to maintain uniformity of weights and measures laws between Kansas and other states. This uniformity is one statutory mandate of the weights and measures program.

The aggregate association has made its proposal to the National Conference on Weights and Measures specification and tolerances committee. Because it still is being developed, we do not oppose HB 2245 and the two-year extension on the allowable tolerance. We believe it would be premature to revert to the original tolerance as long as there is a chance that it will change at the national level.

If the proposal is withdrawn, or fails at the National Conference on Weights and Measures, we expect the aggregate industry to comply with the tolerances for scales without any special consideration or further extensions.

Thank you. I will gladly stand for questions at the appropriate time.

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

Testimony

By The
Kansas Aggregate Producers' Association

Before the
House Committee on Agriculture

Regarding HB 2245

February 19, 2003

Good Afternoon, Mr. Chairman and members of the committee. My name is Wendy Harms, Associate Director of the Kansas Aggregate Producers' Association. Thank you for the opportunity to come before you today with our comments regarding HB 2245. The Kansas Aggregate Producers' Association (KAPA) is a statewide trade association comprised of over 75 producer members and one of the few industries to be represented in every county of this state.

HB 2245 provides for the extension of a limited tolerance exemption of aggregate scales used for the purpose of weighing aggregate products until August 31, 2005. This extension is to allow our association the opportunity to present our issues to the National Conference on Weights and Measures concerning the granting of this exemption to be published in the National Institute of Standards and Technology (NIST) Handbook 44.

The current exemption was authorized by the Legislature in 2001 in order to allow older aggregate scales greater flexibility to meet current weights and measures standards. Since this time, the Kansas Aggregate Producers' Association has met with Constantine Cotsoradis, Director, Kansas Division of Weights and Measures; on many occasions to amend these changes into the NIST Handbook 44, which is published by the National Conference on Weights and Measures. We have attended several of their conferences on this issue. At this time, we have asked the National Stone, Sand & Gravel Association as well as other industry associations for support in this change. Due to the timing of their conferences, the original two-year extension has not provided enough time to get these changes into effect. With the passage of HB 2245, granting a further extension, should provide adequate time to resolve this issue.

We urge this committee to recommend HB 2245 favorable for passage and, with no objection, that it be placed on the Consent Calendar. Once again, thank you for allowing me the opportunity to appear before you today. At this time, I am willing to respond to any questions you may have.

House Agriculture Committee
February 19, 2003
Attachment 2

NCWM Form 15

Proposal to a Standing Committee

Committee: Specifications & Tolerances

Date: April 19, 2002

Regional Association: Central Weights and Measures Association

Name, Address, Telephone of Contact Person:

Regional Actions: (votes for and against)

Edward R. Moses, Managing Director
Kansas Aggregate Producers Association
800 SW Jackson - #1408
Topeka, Kansas 66612
PHONE: 785-235-1188
FAX: 785-235-2544
EMAIL: emoses@ink.org

Constantine V. Cotsoradis, Director
Kansas Division of Weights & Measures
Forbes Field - Building 282
PO Box 19282
Topeka, KS 66619-0282
PHONE: (785) 862-2415
FAX: 785-862-2460
EMAIL: ccotsora@kda.state.ks.us

Please Attach Additional Pages and Information as Needed

Proposal: Amend NIST Handbook 44 (2001) by inserting the following text in the appropriate place on page 2-23: T.N.x-x. Vehicle Scales equipped only with weigh beam and used to weigh aggregate. The minimum tolerance applied to vehicle scales equipped only with weigh beam and used solely to weigh aggregate products shall be 100 pounds.

Problems/Justification: The purpose of this amendment is to provide limited relief to aggregate scale operators with older weigh beam type scales unable to change divisions in order to comply with current tolerances set forth in NIST Handbook 44 (2001). In many areas of the country where limestone ledges are shallow (thin) it is not uncommon for quarry operators to mine and crush 2 – 3 years supply of material over a 2 – 6 month period. The material is then sold and weighed during the 2-3 year time frame. In most cases this will amount to 10,000 – 20,000 tons per year. The majority of the material is sold to townships, counties and small villages. Scales used to measure products in this market are very old and in many cases it is impossible to or cost prohibitive, especially when the low volumes of material are considered, to modify the tolerances by changing the divisions to align with the unit of measure. Further it is equally difficult and distinctly uneconomic to maintain these scales at a ± 20 lbs. Tolerance. This is of national concern as; (a) many states have shallow ledges in some or most portions of their geology and geography, (b) it is easier to maintain uniformity in all states through adoption of the amendment.

Other Contacts:

Ms. Joy Wilson, President, National Stone, Sand & Gravel Association, 2101 Wilson Blvd, Arlington, VA 22201, Phone: (800) 342-1415, FAX (703) 525-7782

Mr. Robert Garbini, P.E., President, National Ready Mixed Concrete Association, 900 Spring Street, Silver Spring, MD 20910, Phone: (301) 587-1400, FAX (301) 585-4219

Other Reasons For:

1. Conserves resources for enforcement agencies.
2. Improve aggregate scale compliance.
3. Provides counties, townships and other small rural users with reasonably priced aggregate products.
4. Does not affect current tolerances in major markets as: (a) tolerances are current handbook the same over 50,000-ton level, and (b) most urban markets (99%) have modern scales with digital readouts.

Other Reasons Against:

Additional Considerations: Adoption of the proposal will provide greater uniformity for all parties, economic benefit to all parties, while not adversely affecting the accurate measurement of materials. Adoption of this proposal will allow for the equalization of measurement system for all devices weighing aggregate.

Attachments:

1. Proposed amendment in engrossed form.
2. Testimony of the Kansas Aggregate Producers Association before the Kansas Senate Agriculture Committee on March 14, 2001.

Suggested Action: The Specifications & Tolerances Committee of the Central Weights and Measures Association recommend the amendment as set forth above favorable for adoption by the National Conference on Weights and Measures.

Recommend NCWM: Adoption
Withdrawal

Submit as a Regional Developing Issue

Other (Please describe)

T.N.3.4. Crane and Hopper (Other than Grain Hopper) Scales. - The maintenance and acceptance tolerances shall be as specified in T.N.3.1. and T.N.3.2. for Class III L, except that the tolerance for crane and construction materials hopper scales shall not be less than 1d or 0.1 percent of the scale capacity, whichever is less.

(Amended 1986)

T.N.3.5. Separate Main Elements: Load Transmitting Element, Indicating Element, Etc. - If a main element separate from a weighing device is submitted for type evaluation, the tolerance for the element is 0.7 that for the complete weighing device. This fraction includes the tolerance attributable to the testing devices used.

T.N.3.6. Coupled-In-Motion Railroad Weighing Systems. - The maintenance and acceptance tolerance values for the group of weight values appropriate to the application must satisfy the following conditions:

(Amended 1990 and 1992)

T.N.3.6.1. - For any group of weight values, the difference in the sum of the individual in-motion car weights of the group as compared to the sum of the individual static weights shall not exceed 0.2 percent.
(Amended 1990)

T.N.3.6.2. - If a weighing system is used to weigh trains of five or more cars, and if the individual car weights are used, any single weight value within the group must meet the following criteria:

- (a) no single error may exceed three times the static maintenance tolerance;
- (b) not more than 5 percent of the errors may exceed two times the static maintenance tolerance; and
- (c) not more than 35 percent of the errors may exceed the static maintenance tolerance.

(Amended 1990 and 1992)

T.N.3.6.3. - For any group of weight values wherein the sole purpose is to determine the sum of the group, T.N.3.6.1. alone applies.

(Amended 1990)

T.N.3.6.4. - For a weighing system used to weigh trains of less than five cars, no single car weight

within the group may exceed the static maintenance tolerance.

(Amended 1990 and 1992)

T.N.3.7. Uncoupled-in-Motion Railroad Weighing Systems. - The maintenance and acceptance tolerance values for any single weighment within a group of non-interactive (i.e., uncoupled) loads, the weighment error shall not exceed the static maintenance tolerance.

(Amended 1992)

T.N.3.8. Dynamic Monorail Weighing System. - Acceptance tolerance shall be the same as the maintenance tolerance shown in Table 6. On a dynamic test of 20 or more individual test loads, 10 percent of the individual test loads may be in error, each not to exceed two times the tolerance. The error on the total of the individual test loads shall not exceed ± 0.2 percent. (See also Note in N.1.3.6.1.)

(Added 1986) (Amended 1999)

T.N.3.9. Materials Test on Customer-Operated Bulk Weighing Systems for Recycled Materials. - The maintenance and acceptance tolerance shall be ± 5 percent of the applied materials test load except that the average error on 10 or more test materials test loads shall not exceed ± 2.5 percent.

(Added 1986)

T.N.4.0 Vehicle Scales used to Weigh Aggregate The minimum tolerance applied to vehicle scales solely used to weigh aggregate products shall be 100 pounds.

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

Date: March 14, 2001
By: Wendy Harms, Associate Director
Kansas Aggregate Producers' Association
Regarding: HB 2102
Before: Senate Committee on Agriculture

Good Morning Mr. Chairman and Members of the Committee:

My name is Wendy Harms, Associate Director of the Kansas Aggregate Producers' Association. The Kansas Aggregate Producers' Association is an industry wide trade association comprised of over 250 members located in all 165 legislative districts in this state, providing basic building materials to all Kansans. I appreciate the opportunity to appear before you today in support of HB 2102 as amended by the House.

Unlike Missouri and many eastern states blessed with abundant sources of limestone in formations with thick ledges, the Kansas mining industry is forced to mine from several small widely scattered quarries. The common practice is to locate a portable crusher at the site and then produce and stockpile one to two years worth of inventory in a period of three to four months.

Customers then purchase this inventory and it is weighed by a set of scales permanently left at the site. The scales sited at these locations, while adequate the task of weighing rock in 100 lbs increments, are usually unable to meet modern testing and tolerances which require accuracy to within ± 20 lbs. The costs of sustained maintenance or complete replacement (up to \$50,000) to achieve a ± 20 lbs tolerance when only ± 50 lbs, is needed, is prohibitive. In a small quarry, this could add up to \$2.50 a ton to the price.

The high fixed operating costs and low sales volumes associated with these quarries simply make it more uneconomical to continue operations. To address this situation, we requested and received an amendment to HB 2102 granting our industry a limited exemption from the tolerance requirements mandated by the National Institute of Standards and Technology (NIST) Handbook 44 which Kansas adopts by reference. Please note this amendment would only allow a relaxation of the standard up to 50,000 lbs after 50,000 lbs, where most transactions occur, we are in full compliance with the NIST Handbook 44.

I have with me here today Mr. Marvin Zielsdorf of N.R. Hamm Quarries and Mr. Jim Waggle of W.H. Scale Co. to answer any questions you may have regarding this issue. In closing, I would simply request your favorable recommendation on HB 2102 as amended. Thank you.

February 19, 2003

TO: House Agriculture Committee

RE: HB 2027

Kansas Agricultural Aviation Association, Kansas Dairy Association and Kansas Seed Industry Association are in support of HB 2027. This bill is needed to be sure that prairie dogs do not become an endangered species in Kansas. Our members definitely do want prairie dogs controlled, but we definitely do not want them on the endangered species list. We do not want the land use controls that come with endangered species listing.

As national legislation chair of American Agri-Women, I frequently hear from those in other states of the often devastating effect that endangered species listing has on their farming and ranching operations. I am in charge of the schedule for our annual AAW trip to Washington, D.C. each June. This year, we will spend more time at US Fish and Wildlife Service than ever before and more than we spend at USDA, because of the importance of this issue to our members. Our members from around the country will continue to try to inform those administering the ESA. I know there will be women who will leave there in tears. The Endangered Species Act badly needs reform, and that is one of our top goals. But it will not come quickly.

So, because of the experiences of not only those in other states, but here in Kansas, we are aware of the problems that arise when a species is listed as endangered. Please support HB 2027 to avoid these problems with prairie dogs in Kansas.

Sincerely,



Chris Wilson

On behalf of KSIA, KDA, KAAA

House Agriculture Committee
February 19, 2003
Attachment 3

From: <noxiousweed@finneycounty.org>
To: <johnson@house.state.ks.us>
Date: Tue, Feb 18, 2003 1:42 PM
Subject: HB2027

Kansas House Agriculture Committee Chairperson
Representative Dan Johnson
Dear Representative Johnson,

The Commissioners of Finney County Kansas addressed HB 2027 in the regular meeting of the Finney County Commission at 11:00 a.m. on Tuesday, February 18, 2003. At that meeting the Finney County Commissioners unanimously issued a statement in support of the portions of HB 2027 pertaining to the black-tailed prairie dog. It is the hope of the Finney County Commission that this statement of support will positively assist in the future passage of HB 2027 into law.

Because HB 2027 is to again be addressed by the House Agriculture Committee on February 19 at 3:30 p.m., it was the desire and instruction of the Finney County Commission that I email you this announcement of a statement of support for HB 2027 today.

Respectfully submitted to you on behalf of the Finney County Commission,

Keith Foster
Finney County Noxious Weed Director
Finney County Wildlife Damage Control
Member; Kansas Black-tailed Prairie Dog Working Group

CC: <admin@FinneyCounty.org>, <engineer03@finneycounty.org>, <clerk@FinneyCounty.org>

House Agriculture Committee
February 19, 2003
Attachment 4

1 *rimental prairie dog population is found to have become established on*
2 *surrounding lands due to a landowner's failure or refusal to implement*
3 *an approved management and control plan, that landowner may be sub-*
4 *ject to the provisions of subsections (c) and (d) for necessary cost of prairie*
5 *dog control measures undertaken on those surrounding lands.*

6 Sec. ~~4~~ K.S.A. 80-304, 80-1201, 80-1202, 80-1203, 80-1204, 80-1205,
7 80-1206, 80-1207 and 80-1208 are hereby repealed.

8 Sec. ~~5~~ This act shall take effect and be in force from and after its
9 publication in the statute book.

New Sec. 4. Trapping and transplanting prairie dogs outside of the Kansas traditional home range of the prairie dog is prohibited except when done in conjunction with a scientific, educational or exhibition permit issued pursuant to K.S.A. 32-952 and amendments thereto. As used in this section, "Kansas traditional home range" means that area of Kansas extending from the Kansas-Colorado border eastward and ending with the easternmost boundary of Washington, Clay, Dickinson, Marion, Harvey, Sedgwick and Sumner counties and including all counties in between.

5

6

1 *rimental prairie dog population is found to have become established on*
2 *surrounding lands due to a landowner's failure or refusal to implement*
3 *an approved management and control plan, that landowner may be sub-*
4 *ject to the provisions of subsections (c) and (d) for necessary cost of prairie*
5 *dog control measures undertaken on those surrounding lands.*

6 / Sec. 4. K.S.A. 80-304, 80-1201, 80-1202, 80-1203, 80-1204, 80-1205,
7 80-1206, 80-1207 and 80-1208 are hereby repealed.

8 Sec. 5. This act shall take effect and be in force from and after its
9 publication in the statute book.

(f) Notwithstanding any provision of law to the contrary, the secretary of wildlife and parks shall not adopt rules and regulations to carry out the provisions of this section and K.S.A. 80-1201, and amendments thereto.

HOUSE BILL NO. _____

By

AN ACT concerning the petroleum products inspection act; relating to diesel fuel; misrepresentations regarding biodiesel; penalties; amending K.S.A. 2002 Supp. 55-443 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2002 Supp. 55-443 is hereby amended to read as follows: 55-443. (a) It is a violation for any person to:

(1) Act as or represent such person's self to be a technical representative without having a valid license issued by the department of agriculture;

(2) hinder or obstruct in any way the secretary or any of the secretary's authorized agents in the performance of the secretary's official duties under the petroleum products inspection law;

(3) failure to follow the applicable version of NIST Handbook as referenced in chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder when installing, repairing, calibrating or testing a device;

(4) failure to complete the testing or placing-in-service report in its entirety and to report the accurate description of the parts replaced, adjusted, reconditioned or work performed;

(5) filing a false or fraudulent application or report to the secretary;

(6) failure to pay all fees and penalties as prescribed by the petroleum products inspection law and the rules and regulations adopted and promulgated pursuant to the petroleum products inspection law;

(7) refuse to keep and make available for examination by the department of agriculture all books, papers, and other information necessary for the enforcement of the petroleum products inspection law or chapter 83 of the Kansas Statutes Annotated, and amendments thereto;

(8) failure to have any commercial dispensing device tested as required by the petroleum products inspection law or chapter

83 of the Kansas Statutes Annotated, and amendments thereto;

(9) sell, offer or expose for sale any petroleum product which does not comply with the provisions of the petroleum products inspection law;

(10) sell, use, remove, otherwise dispose of or fail to remove from the premises specified, any dispensing device, package or commodity contrary to the terms of any order issued by the secretary; and

(11) represent that diesel fuel is or contains biodiesel fuel blend or otherwise to represent that diesel fuel is made from renewable resources, unless not less than 2% of the diesel fuel mixture is mono-alkyl esters derived from vegetable oil or animal fat. Biodiesel fuel used in biodiesel fuel blends shall conform with specification D6751-02, issued March, 2002, by the American society of testing and materials; and

(12) violate any order issued by the secretary pursuant to chapter 83 of the Kansas Statutes Annotated, and amendments thereto.

(b) Any person who violates any provision of the petroleum products inspection law or any applicable provisions of chapter 83 of the Kansas Statutes Annotated, or amendments thereto, or any rules and regulations adopted thereunder, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (c) in an amount, fixed by rules and regulations of the secretary, of not less than \$100 nor more than \$5,000 for each such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(c) In determining the amount of the civil penalty, the following shall be taken into consideration: (1) The extent of harm caused by the violation; (2) the nature and persistence of the violation; (3) the length of time over which the violation occurs; (4) any corrective actions taken; and (5) any and all relevant circumstances.

(d) All civil penalties assessed shall be due and payable

within 10 days after written notice of assessment is served on the person, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary may file a certified copy of the notice of assessment with the clerk of the district court in the county where the weighing and measuring device or dispensing device is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

(e) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the secretary to the person who committed the violation or to the person whose agent or employee committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(f) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

(g) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty.

(h) Any civil penalty recovered pursuant to the provisions of this section or any penalty recovered under the consumer protection act for violations of this section, and amendments thereto, or any rules and regulations adopted thereunder, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund.

(i) This section shall be part of and supplemental to the

petroleum products inspection act, article 4 of chapter 55 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 2. K.S.A. 2002 Supp. 55-443 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.