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Equal Opportunity in Employment and Services

**Testimony of Judy Carlson
Plant Industries Director
Chapter 7-06-01 NDAC – Administrative Rules Committee
Roughrider Room
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Chairman Klein and members of the Administrative Rules Committee, my name is Judy Carlson. I am the Plant Industries Director for the North Dakota Department of Agriculture (NDDA). I am here today to testify on rule changes to Chapter 7-06-01 of the ND Century Code, including repeal of Section 7-06-01-01 regarding weed control officers' certification and amendment of Section 7-06-01-02, the noxious weeds list. The proposed rules result from a review of the state noxious weed list as required by recent legislation (NDCC § 4.1-47-05(2)). The rules are not related to any federal statute or regulation.

We are repealing Section 7-06-01-01 which requires weed control officers be certified under two categories (agricultural pest control and right-of-way) under NDCC Chapter 4-35. Section 4.1-47-13(3) of the N.D. Century Code states that a county weed control officer must "[m]eet the pesticide certification requirements set forth in chapter 4-35." Since the certification requirement is already in statute, there is no need to re-state it in an administrative rule. The attorney general recommends that rules not repeat statutes. If a

weed board wants its weed control officer certified under Chapter 4-35, it could require that without a statute or administrative rule imposing the certification requirement.

In the second section, we are amending the noxious weed list by removing field bindweed and yellow starthistle, and adding yellow toadflax. These changes are based on information gathered from five area meetings of county and city weed boards and the North Dakota Weed Control Association board (NDWCA), advice from North Dakota State University, a statewide survey conducted by the NDDA, and the annual reports from weed boards.

We are removing yellow starthistle because:

- It has not been reported in North Dakota for at least 2 years.
- It was first collected in Grand Forks County in 1964.
- It has been eradicated in Kidder, Mountrail, Williams, LaMoure and Ransom counties.
- It was added to the list because of concern that it would spread rapidly and become a major problem. Addition to the list increased public awareness and made state funds available for control and eradication.

We are removing field bindweed because:

- New herbicides have greatly improved control of the weeds since its addition to the list.
- It does not seem to have a significant economic impact.

Rod Lym, professor of weed science at NDSU, said he has not heard any concerns about field bindweed from any North Dakota farmer or land manager. He also said it is considered a low priority in states where it is still listed as a noxious weed.

We are adding yellow toadflax because:

- It is an escaped perennial ornamental that produces about 500,000 seeds per plant, which spread by wind, rain, wildlife and movement of forage and livestock.
- The roots can grow up to 10 feet in length and can produce new plants from root buds. It infests rangeland, pasture, meadows, ditches and lawns.
- It could become a major problem in North Dakota because it aggressively outcompetes native plants and it is very difficult to control. Dr. Lym says yellow toadflax has the potential to be the next leafy spurge.
- In 1997, only 69 acres were reported, but that number grew to over 200 acres in 2003 and 1,688 acres in 2008. Reports indicate that yellow toadflax now infests 1,300 acres. Twelve counties now list yellow toadflax as a county noxious weed.
- NDSU scientists recommend adding it to the list, since they have recently discovered an herbicide mix that will provide effective control. Adding yellow toadflax to the state noxious weed list will allow state funds to be used for its control as well as increase outreach and education concerning this weed.

As part of the rulemaking process, NDDA published a public notice in each official county newspaper. The notice was published once at least 20 days before the public hearing, which was held Jan. 12, 2010 at the Best Western Seven Seas Hotel in Mandan. The notice identified the location where the text of the proposed rules could be reviewed, provided an address to which written comments could be sent, provided a telephone number at which a copy of the proposed rule and regulatory analysis could be requested, stated the time and place for the public hearing and stated the deadline for submission of written comments. During the 10-day comment period following the public hearing, the department received

comments (two written and one oral) from three county weed boards. The comments are summarized as follows:

- The Cass County Weed Board opposes repeal of Section 7-06-01-01. The board feels that it is a necessary rule given the duties of a weed officer.
- Elvin Johnson, Nelson County Weed Board chairman, suggested that language requiring weed officers be certified applicators in North Dakota should not be omitted from the Noxious Weed Law.
- Shauna Berg Schneider, Cavalier County weed officer, said houndstongue should be designated a state noxious weed because of its ability to spread easily and because it is poisonous to livestock.

NDDA requested advice from the Attorney General's office regarding the comments on requiring weed officers to be certified applicators. After reviewing the question, our attorney, Mr. Charles Carvell, responded with the following conclusion:

Section 4.1-47-13(3) of the N.D. Century Code states that a county weed control officer must "[m]eet the pesticide certification requirements set forth in chapter 4-35." (There is a similar provision for city weed control officers in Section 4.1-47-24 of the Century Code.) Because the certification requirement for weed control officers is in a statute there is no need to re-state the same requirement in an administrative rule, in fact, the attorney general's office in reviewing the legality of rules recommends that rules not repeat statutes. Even if there were no statute requiring certification, there is no reason why a county weed board could not require that its weed control officer be certified and condition employment on certification. And so if the Cass County Weed Board wants its weed control officer certified under Chapter 4-35, it could require that without a statute or administrative rule imposing the certification requirement.

After considering Shauna Berg Schneider's comment, the NDDA decided to not re-consider adding houndstongue. In 2006, houndstongue was proposed for the list, however

NDSU recommended against it, taking into account there are many other plants like houndstongue that are considered weeds and poisonous that are not listed as noxious weeds on the state list. Another reason against adding it to the noxious weed list is the lack of evidence that houndstongue has caused significant economic damage once it invades an area. An NDSU range scientist said he has not seen houndstongue populations high enough to warrant listing it as noxious. He also said it is no more troublesome than weeds such as curly-cup gumweed and field sowthistle, which are not on the noxious weed list. With regard to houndstongue's toxicity, livestock would have to eat relatively large quantities to feel its effects and it is no more toxic than lamberts crazyweed (locoweed).

NDDA recommends that counties add houndstongue to their county noxious weed list if it is a problem in their jurisdiction. NDDA will continue to monitor houndstongue infestations.

A small entity regulatory analysis and economic impact statement, takings assessment and a regulatory analysis of the proposed rule changes were completed and issued. Copies of these documents are attached to my testimony. The rules were not adopted as emergency rules under NDCC Section 28-32-03.

Costs associated with the rulemaking process for the department included \$1,730.54 for publishing newspaper notices and \$40 to conduct the statewide survey to gather the opinions of interested individuals. These costs do not include staff time and meetings with the NDWCA.

Chairman Klein and members of the committee, I urge you to approve the amendments to Chapter 7-06-01 of the noxious weed law. I would be happy to answer any questions.