

Idaho State Department of Agriculture

02.04.09 Rules Governing Milk and Cream Procurement and Testing

June 18, 2018, 1:00 pm

Dr. Scott Leibsle, Facilitator

Present: Cody Udy, Gossner Foods; Erin Ferrell, Sorrento Lactalis; Michael Campbell, Darigold; Nicholas Thompson, Darigold; Chris Tucker, Rocky Mountain DHIA; Linda Harris, Agropur; Jennifer Tilton, Agropur; Marv Patten, Milk Producers of Idaho; Russ DeKruyf, Glanbia; Ellen Koenig, Dairy Farmers of America; Rick Naerebout, Idaho Dairymen's Association; Leeroy Cienega, Idaho Dairymen's Association; Mitch Vermeer, ISDA; Martha Walbey, ISDA; Owen Moroney, Office of Attorney General – ISDA; Dallas Burkhalter, Office of Attorney General – ISDA; Scott Leibsle, ISDA; Janis Perry, ISDA. Telephone participants include: Micola Mulchay, Glanbia; Craig Mueller, Schreiber; Mike Majumdar, Schreiber; and Mack Johnson, Schreiber.

AGENDA ITEMS

WELCOME

Dr. Scott Leibsle, Deputy State veterinarian and Deputy Administrator of the Division of Animal Industries, convened the meeting at 1:05 pm.

After introductions of all present, Dr. Leibsle explained that the rule changes are a result of a joint petition received from the Milk Producers of Idaho, Idaho Dairymen's Association, and the Idaho Milk Processors Association to clarify language in the rule regarding the definition of terms, sample tolerance standards, enforcement protocols and the recertification process for labs that fail to meet performance standards. He described that this is an official rulemaking meeting with minutes posted on the website. He stated that subsequent meetings will be cancelled if the work of reviewing changes to the rule is accomplished. A public comment period is open until August 3, where written comments are accepted. He encouraged all stakeholders to bring up issues regarding this rule.

Martha Walbey distributed copies of the proposed changes to the rule along with the most recent component testing from May 31, 2018. Dr. Leibsle explained that the proposed changes were based on previous meetings held with milk processors. In the 008. Definitions section, 05. Clearance Test is defined as "A set of milk component samples issued to an official laboratory, by the Department, to maintain a probationary testing license or reinstate a suspended testing license". In the same section, 20. Rolling Group of Thirteen (13) is defined as "A series of thirteen (13) consecutive sample testing dates where the lab performance error of each biweekly component test is averaged together to represent the long term accuracy of the lab. To be considered a valid testing date, a lab must evaluate and provide results on no less than nine (9) component samples from each round of testing." Dr. Leibsle stated that he had simplified the definition of 22. Tolerance to "The acceptable performance error from the control values of each group of component samples as determined by the sample provider." Russ DeKruyf asked if the specifics are included later to which Dr. Leibsle stated that they are included in Section 302.04. Regulatory Sample Tolerances. Marv Patten questioned whether "error" would be a better word than "tolerance," to which Dr. Leibsle indicated he did not think so.

Dr. Leibsle explained that at industry request he added Celsius values to Section 120. Sample Integrity. Erin Ferrell asked why the temperature of 33° is listed. Dr. Leibsle indicated that this was in the original rule. Several in attendance discussed whether it would be better to say “if not frozen, but below the temperature.” It was decided to leave it as it is.

Dr. Leibsle stated that he had corrected an error in Section 121.01.c. to list Section 111.

Changes to Section 302, Regulatory Samples, were then explained beginning with “02. Regulatory Sample Results.” This subsection was simplified to read “The regulatory sample results will be compiled and evaluated by the department in rolling groups of thirteen (13).” In Subsection 04. Regulatory Sample Tolerances was clarified to state “Each rolling group of thirteen (13) average shall be within the following tolerance for those components used as a basis of payment by the processor or procurer: a. Plus or minus two hundredths percent (.02%) for milkfat and protein.” Dr. Leibsle explained that going forward there would only be a single standard of the six-month rolling 13 average and the changes would get rid of the rolling one thousand provision because there was no feasible way to simultaneously enforce both a short term and long term accuracy standard. This would promote accuracy in testing and a clear and feasible method of regulation. Marv Patten suggested adding “sample set” to Section 302. 01 and 02. He stated that a definition of Sample Set would be needed. Dr. Leibsle agreed that would be clearer. Russ DeKruyf expressed concern regarding the wording “The department will provide” in section 302.01. He asked if that could be explained better to provide some oversight for the integrity of samples. Martha Walbey explained that the department contracts with some outside people for out-of-state samples. Dr. Leibsle asked the group if it is obvious and easy to switch channels when an inspector arrives. How do we maintain the integrity? The suggestion to include “component samples shall be run as Idaho producers with identical parameters that evaluate Idaho milk.” Russ DeKruyf asked if rotating inspectors could provide a check valve or implement an annual audit of the process. Dr. Leibsle indicated that the department could not offer rotations.

Ellen Ferrell recommended adding “other” to 302.04.b so that it would read “Plus or minus sixty-five thousandths percent (065%) for other solids, other than milkfat or protein.” The group agreed. It was also suggested to add “other solids” to 303.01. Dr. Leibsle explained Subsection 303.01. 2 out of 4 violation as “Whenever the average performance error of two (2) of the last four (4) rolling groups of 13 exceed the tolerance for milkfat, protein or other solids as set forth in Subsection 302.04 of this rule, the department will issue a written notice to the official laboratory. This notice shall be in effect as long as two (2) of the last four (4) rolling groups of 13 exceed the allowable tolerance for component testing.” He further stated that Subsection 303.02 License Suspension will now read “If two (2) out of four (4) of an official laboratory’s rolling group of 13 averages are out of tolerance pursuant to Section 302.04 of this rule, the department will evaluate the following items prior to suspending the testing license: **a. Records Review** The Department shall review records kept by the official laboratory pursuant to Section 350 of this rule.

b. Clearance Test. The official laboratory must be within plus or minus .031% protein, .033% milkfat and .065% other solids on all scheduled rounds of regulatory component test samples, until the official laboratory no longer exceeds the performance tolerance on two (2) out of four (4) rolling group of 13 averages. If an official laboratory does not meet these performance requirements on each component of the clearance test, the testing license shall be suspended.

- c. Probation.** The Department may place an official laboratory on probation for two (2) weeks if:
- i. The records demonstrate all calibration and performance checks of all testing devices were performed, as required under these rules, and are operating within the tolerances set forth in Sections 110, 111 and 130, and;
 - ii. The average performance error in the clearance test samples was plus or minus .031% protein, .033% milkfat and .065% other solids.

In response to a question, Dr. Leibsle indicated that if the clearance test is requested/delivered within the normal biweekly testing schedule there would be no charge, but if the lab needed to request an immediate clearance test that was outside of the normal shipping schedule for sample sets, the lab would pay for shipping costs. Marv Patten asked if the clearance test would be included in the rolling 13. Dr. Leibsle indicated that it would not. Linda Harris suggested that the word “within” be added to Subsection 303.02.d.ii. so that it reads “The average performance error in the clearance test samples was within plus or minus .031% protein, .033% milkfat and .065% other solids.”

Subsection 303.03 License Reinstatement now reads “An official laboratory may seek reinstatement of a suspended license by completing the following: a. Written Request. The official laboratory shall provide the Department a written request for reinstatement of their testing license. The request shall include documentation detailing the procedural corrections that have been made to the testing device(s), as well as a minimum of two (2) weeks of component testing results demonstrating that the testing device(s) have been and will remain in tolerance. Cody Udy asked for further explanation of “detailing the procedural corrections.” Documentation of what had been done to correct the problem was the answer.

Dr. Leibsle gave the following definition for Sample Set. “A group of not less than nine (9) milk samples issued by the Department to each official lab to evaluate component testing accuracy.”

Dr. Leibsle indicated that a comment had arrived by email asking if a lab messes up one of the ten samples received, can the extra one be used instead. The group agreed that the answer is no, as the tenth sample is not meant to be a safety net.

Linda Harris asked about sample integrity. Dr. Leibsle will add language that says the sample set will be tested using the same parameters that Idaho producers are paid. He indicated that we have integrity and accuracy, but may have to educate couriers as to the process.

Dr. Leibsle stated that he would cancel the other two meetings and send out an email with the draft rule language that was agreed upon to the group by the end of the week. There would be time to receive comments on that draft followed by publishing a proposed rule and another comment period.

Marv Patten suggested adding “all labs testing milk for Idaho producers for payment must meet Idaho standards.” Dallas Burkhalter suggested that producers not sell outside the state since jurisdiction does not go beyond the state’s border. Russ DeKruyf responded that the negative impact is within the industry. He felt that this is a non-issue.

Nicholas Thompson asked under the Written Request if those are the normal business tests for two weeks. It was agreed that they are.

Dr. Leibsle adjourned the meeting at 3:00 pm.

Respectfully submitted by Janis Perry