

**Idaho State Department of Agriculture**  
**02.04.14 Rules Governing Dairy Byproduct**  
**May 30, 2019, 10:00 a.m.**  
**Dr. Scott Leibsle, Facilitator**

Present: Marv Patten, Milk Producers of Idaho; Russ Hendricks, Idaho Farm Bureau Federation; Rick Naerebout, Idaho Dairymen's Association; Bob Naerebout, Idaho Dairymen's Association; April Leytem, USDA – Agricultural Research Service; Austin Walkins, Idaho Conservation League; Katy DeVries, Office of Attorney General – ISDA; Pradip Adhikari, ISDA; Mitch Vermeer, ISDA; Scott Leibsle, ISDA; Dr. Bill Barton, ISDA; Brian Oakey, ISDA; and Janis Perry, ISDA.

**AGENDA ITEMS**

**WELCOME**

Dr. Scott Leibsle convened the meeting at 10:05 a.m. He explained that this is a continuation of a public negotiated rulemaking meeting for IDAPA 02.04.14 Rules Governing Dairy Byproduct. He indicated that the he hoped to accomplish the following at today's meeting:

1. Final language on the Dairy Nutrient Management Standard;
2. Final language on the actual rule;
3. Perform Red Tape Reduction to remove redundant and antiquated parts of the rule, particularly those parts that are repeated from statute;
4. Discuss the five-point environmental analysis that effects public health or the environment.

Starting with the Idaho Dairy Nutrient Management Standard, Dr. Leibsle pointed out the changes that had made since the group met before Christmas. This document replaces the '99 version of the 590 standard for dairies; the beef rule will still use the '99 version of the 590. Most were for clarification, such as "pounds per acre (lbs/A)" in place of volume. He reinserted "Nitrogen Balance Worksheet, where appropriate" in the Phosphorus Threshold E/NMP Requirements.

When Dr. Leibsle asked if there were other suggested changes, Rick Naerebout mentioned that on page one there was no delineation of when to soil test the second foot. April Leytem commented that since the rule only covers phosphorus there is no need to test the second foot and wondered if there should be anything in the box other than phosphorus. Austin Walkins asked if DEQ rules require other testing for ground water standards. April stated that if a producer is doing a nitrogen budget, the second foot should be tested. Dr. Leibsle offered that additional testing could be moved to the best management practices section of the standard. Austin stated that he would like to research how it relates to DEQ regulations. Bob Naerebout commented that dairy producers are going to test for nitrogen and potassium when they test for phosphorus since that is the cheapest package. The group agreed to leave in only phosphorus and remove the phrase "samples collected from the second foot should be analyzed for inorganic N."

Rick Naerebout questioned why on page four testing for material exported off site is included. April Leytem responded that most states document how much nutrient is exported. Rick commented that third

party export gives the benefit of the doubt to the receiver of manure, rather than the exporter. Marv Patten asked why add the cost of testing when book value may be representational. Dr. Leibslle responded that defaulting to book value is what we are trying to get away from. Bob Naerebout indicated that if the testing on exports is only for record keeping, not for regulating, he saw no value in it. Pradip Adhikari explained that acres needed are calculated in the NMP program and is another way to predict. Dr. Leibslle stated that the regulated portion is covered in the NMP with the acreage to be calculated based on the rationed crops. Austin Walkins asked if this is only applicable to low risk producers. Dr. Leibslle clarified that all nutrients being sent to a third party much be identified to whom and how much and they rely on the program to analyze what is sent. April Leytem asked when the nitrogen balance worksheet was appropriate. Mitch Vermeer indicated that this would eventually be part of the NMP program.

Dr. Leibslle then explained that due to the Red Tape Reduction Act he had reviewed the rule for anything that is spelled out in statute, so does not need to be in the rule. Marv Patton commented that having producers refer to both statute and rule is not easier for them. Austin Walkins asked if ISDA would be submitting temporary rules and following up with proposed. Brian Oakey explained that the process is still to be decided. Dr. Leibslle reviewed the suggested deletions including the second half of Section 001.02 Scope and Definitions that are repeated from statute. Marv Patton suggested that the definition of Dairy Animal should be from the PMO which is "hooved mammals used for milking." In the definition of Dairy Farms, "dairy animal" would replace "milking cows, sheep or goats." In section 030 redundant words "earthen dairy storage and" would be eliminated and the words for ASABE since it is defined. In section 031.01.a. the preamble clause can be deleted. Everything included in Section 050 to the end of the rule is a repeat from statute, so would be eliminated.

Bob Naerebout asked about the legislative process with all the rules to be approved. Brian Oakey responded that with all 85 chapters of the department's rules set to expire on June 30 and be re-promulgated, this rule is a weird one since the rulemaking bridge two years. He stated that we don't know the answer yet. We do know that the time frames are limited. Also Red Tape Reduction and reauthorization are mashed into the changes proposed in this rule. Dr. Leibslle agreed to keep stakeholders informed as we learn more.

Dr. Leibslle presented information regarding statute 22-101A that requires a five-point analysis for this rule and any that effect public health and the environment. The analysis is posted with the proposed notice and includes peer reviewed scientific studies that support the changes proposed. Bob Naerebout asked if this is new. Brian Oakey responded that this began in 2015, but ISDA is just getting started with meeting the requirements.

Next Dr. Leibslle reviewed the Soil Test Experiment explaining that five soil samples were sent to each lab that performs that testing. Also three different people collected soil samples on ten different fields and they were all sent to the same lab. Given the wide variability of testing or the person collecting the samples, Dr. Leibslle asked if a soil testing margin of error can be crafted. Rick Naerebout commented that some of the data need to be corrected for the record, but that doesn't change the discussion. Marv Patton stated that correcting the problem of variability needs to be enforceable. Rick stated that the group is trying to codify the common sense approach that ISDA currently uses. He suggested that the increasing trend standard be set aside and have two milestones 40 and 100. If a field tests between 40

and 100, threshold can be used, but over 100 indexing must be the standard. He also stated that the logical response to a wide variance in soil testing is to sample again. Brian Oakey responded that soil sampling is too variable for enforcement and we have to meet the requirements of 22-101A. Dr. Leibsle indicated that we have to redefine how and when threshold is available to producers. April Leytem commented that the scientifically defensible value is 20 and that 40 allows for testing variance. Brian Oakey reiterated that the standards must be set on peer review science. April responded that no one from a scientific side could support 40, since applying nutrients above what plants can take in, is described as waste. Brian stated that the legal issues are defensibility in front of a judge and compliance with the statute. In order to comply with the statute, we must have scientific studies. In response to Marv Patton's question about whether indexing is defensible, April responded that many studies report that indexing does a good job. Bob Naerebout stated that soil testing is only one variable in indexing, but the only factor in threshold. Dr. Leibsle suggested to the group that if threshold can only be defended up to 40 and that can be backed up with science, then we would not have to play around with variability of soil testing. He encouraged the group to find a way to narrow the scope if we stay with the threshold standard.

After a break, Dr. Leibsle recommended that the group set something that's enforceable and fair and be able to back it up with peer-reviewed literature. Marv Patton commented that there is literature that indicates that thresholding is okay. April Leytem stated that is not so. Rick Naerebout responded that the producers he heard most from regarding eliminating thresholding as an option were the smaller producers that were not CAFO size. He suggested that the best approach would be to allow more time to look for literature that supports thresholding. Dr. Leibsle explained that the proposed text for this rule should be submitted in the next six weeks and he would hope it could be published in the September bulletin. Russ Hendricks indicated that he could get input from his producers at a dairy meeting on July 18. Marv Patton stated that there is still time to see what criteria to use. April Leytem encouraged enforcing with a hard 40. Bob Naerebout indicated that it would be a mistake to delay another year. Dr. Leibsle suggested that he would like to try to keep moving forward, so he proposed another meeting either the last week of June or the second week of July. He offered to send suggested dates to stakeholders. Bob Naerebout advised that if anyone finds defensible literature to send to Dr. Leibsle to be shared with the group. Austin Walkins asked about research showing 20 as the recommended level.

Dr. Leibsle adjourned the meeting at 12:35 pm.

Respectfully submitted by Janis Perry