Idaho State Department of Agriculture
02.04.05 Rules Governing Grade A Milk and Milk Products
April 20, 2021, 8:30 a.m.
Lloyd Knight, Dr. Scott Leibsle, Chanel Tewalt, Hosts/Facilitators

Present: Dallas Burkhalter, Office of Attorney General – ISDA; Katy DeVries, Office of Attorney General – ISDA; Mitch Vermeer, ISDA; Martha Walbey, ISDA; Mat Myers, ISDA; Pam Juker, ISDA; Bob Naerebout, Idaho Dairymen's Association; Marv Patten, Milk Producers of Idaho; Mike Wiggs; Lindsey Dimond, DFA; Loren Green, Sorrento Lactalis; Shauntey Berber, Sorrento Lactalis; Brook Leguineche, Idaho Milk; Michelle Berry, High Desert Milk.

AGENDA ITEMS

WELCOME:

Lloyd Knight started the meeting at 8:37 a.m. by teleconference. Mr. Knight discussed the house rules and indicated this was the first of three rule meetings, he then turned the meeting over to Dr. Scott Leibsle to present the strawman.

Dr. Leibsle introduced himself and explained that the strawman basis was, the items highlighted in blue are attempts to simplify the rule, and yellow highlights are changes to the rule. Scott Leibsle started the meeting by explaining the fiscal budget for the Grade A program, IDAPA 02.04.05 Rules Governing Grade A Milk and Milk Products. Scott Leibsle explained where the revenue was taken from over the last three years, where expenses were from the last three years, and the year end balances for the last three years. The funding is through a butterfat mill levy that is now at 3.25 mills, and a list of the programs this is paying for: Grade A farm inspections, Grade A plant inspections, dairy lab testing, milk component program, raw milk program and dairy nutrient management.

Marv Patten asked if there should be a different fiscal year.

Scott Leibsle said this July it will be two full years.

Scott Leibsle discussed the strawman by explaining Grade A rules, manufacture grade milk rules, dairy plants and milk component, were previously four separate rules that have now been combined into one rule.

Grade A milk and milk products are part of four documents that have been incorporated by reference.

Bob Naerebout asked instead of changing the Incorporation by reference every two years why don't you just put the language use the most recent version.

Scott Leibsle responded by explaining this is the way the Legislature wants it, as they wish to review changes made, and make decisions based upon that review and to have a say in what has changed in each version on a year-to-year basis.

Scott Leibsle explained Idaho's bacteria standards are more stringent than PMO mandates, and this was specifically requested by industry.

Section 210 - 10 labs participate currently, this is to ensure all labs are paying producers correctly. The labs are required to perform to standards under this section and are expected to perform at a certain level.

Section 221 - Clarification was made on the intent of the license fee. The cost was intended to be for an entire lab and not for individual employees.

Section 230.01 & 230.03 - there are segments of this section that are not feasible to enforce by ISDA, and subsequently were removed.

Chanel Tewalt clarified the sections were not enforceable as written, but if it needs clarity it is up for discussion from the group.

Section 231, 240 also not feasible to enforce by ISDA.

Section 241 intro remains, but subsection 01, 02 and 03 are removed (same comment – not feasible to enforce). Lab requirements to calibrate their equipment remains, subsection b is removed and subsection c will remain in place.

Section 242 intro remains in place. Subsections are removed as not feasible to enforce by ISDA, with the exception of 242.03.

Section 243 is removed - redundant language.

Section 250, sample integrity, was discussed because there has been difficulty keeping sample sets within acceptable temperature tolerances. Labs receiving the samples can refuse samples that are not within the defined temperature tolerance. At the beginning of the pandemic, ISDA has began shipping samples directly to the labs, because inspectors were not permitted inside the buildings to observe the testing process.. This new procedure has resulted in fewer rejected samples due to temperature, than the previous procedure.

Bob Naerebout said Industry is going to want the oversight back.

Scott Leibsle said the previous protocol was when ISDA shows up, labs need to stop what they are doing and run the samples immediately. Since ISDA staff/couriers do not have time to sit and wait for labs to put the samples in the fridge and run them once the temperatures are stabilized, it results in more samples being rejected because of temp,.

Bob Naerebout asked are you saying economically that's not feasible to wait an hour for samples to reach the accepted temperature range.

Scott Leibsle replied it costs approximately $12,000.00 per year to pay three couriers out of state.

Marv Patten clarified that if samples arrive out of temperature, they can't be cooled down, somewhere along the line they have become compromised.

Scott Leibsle said when we were doing direct oversight, the lab would take the temperature and accept or reject right away. We can go back to the direct oversight, but understand more samples will likely be refused by the labs.

Bob Naerebout asked if we were using FedEx or private companies, who might stay around for that oversight.

Scott Leibsle replied that in the past FedEx delivered them to private individuals and they would take them to the lab within a day or two. It has been difficult to find people out of State to reliably fulfill this role.

Brook Leguineche said if samples get to warm, the protein will plug the machine and throw the machine off.

Scott Leibsle asked if 7.2 degrees was a good temperature?

Brook Leguineche replied she wasn't sure.

Scott Leibsle replied it is difficult to make sure the samples are not too cold or too hot.

Bob Naerebout asked if Marv Patten remembered in the original rule making why we couldn't use the Federal Milk Market results.

Marv Patten responded the margin of error was not as accurate.

Scott Leibsle said I'm hearing that Industry wants oversight, but understands the difficulties with regards to having acceptable temperature samples, meaning more samples will be rejected by the receiving labs.

Marv Patten asked if the departments' process was still the same in receiving samples, changing the order and then sending them out to the labs.

Scott Leibsle answered yes…the sampels are received from Ohio, re-labelled, packaged and shipped to each of the labs.

Marv Patten asked if we check the temperature when the samples arrive.

Scott Leibsle said yes.

Marv Patten clarified that if there is a problem it's from ISDA to the labs.

Scott Leibsle said yes.

Section 260 and 270 –no changes.

Section 281.01.b – this section had the testing oversight language before it removed due to the pandemic.

Bob Naerebout stated they want the oversight requirement put back in.

Marv Patten said what's the use in having a program if you don't have any oversight to insure compliance.

Bob Naerebout stated that processors have told him you can go out to the company's website and see the results of the samples you are sending to the labs.

Scott Leibsle said that was true, so that is why we randomize them so the labs can't decrypt the results.

Mitch Vermeer said the company we use is Eastern Labs and they do publish their results because they also ship their samples to labs, that is why we randomize once they reach ISDA.

Bob Naerebout said we need to make sure integrity is kept, to insure the program's validity.

Scott Leibsle replied we can make our process available to you. We think it would be virtually impossible for labs to match up the samples.

Marv Patten said that labs have different channels on their machines, so when they see ISDA entering, they can change the channel on their machine and switch it back again when they are running producer samples.

Mike Wiggs said depending on where the labs get their samples from to calibrate their machine whether it be from DQCI or Eastern the results could be different.

Scott Leibsle replied Idaho government agencies are required to go through a bidding process and are forced to use the vendor with the successful bid on the project.

Lindsey Dimond stated that we are closer now than when we started this program. Lindsey echoed that there are concerns that when ISDA shows up that labs do switch channels on their machines.

Scott Leibsle replied he doesn't have the technical knowledge to know how difficult it is to switch channels.

Shauntey Berber said the ISDA inspector has come in and checked, and we use the same channel.

Scott Leibsle asked if there were any other questions or comments. No comments provided.

Marv Patten stated in 282.01 we should put back in the 3 out of 5 language.

Scott Leibsle responded I'll put a placeholder in this part and insert language that is consistent with the other rules, which will be present in the strawman. Noting these tolerances are different than the rolling group of thirteen….this section is for clearance tests.

Section 290 – record keeping is the same as before except to strike .02 because it is not feasible to enforce as written.

Section 291 – stays the same.

Manufacture Grade Milk, Section 304 – striking .02. This document is no longer used by dairy labs. Incorporations by references are be added for sanitation inspection purposes for manufacture grade plants.
Section 310 - add a definition for adulterated milk. No other changes to definitions.

Section 320 – no changes.

Section 321 – propose striking language 01.a to .03d.

Mike Wiggs stated we still need sediment rules. USDA still requires that, if you eliminate it from the rules you might be in conflict with USDA.

Scott Leibsle replied when issues are identified that pertain to USDA manufacture rules, they will be addressed in a separate rule.

Mike Wiggs asked where else in your rules do you have sediment requirements.

Mitch Vermeer replied we are saying it doesn't need to be in our rule, it is incorporated by reference.

Scott Leibsle said we are not removing it, we are taking it out of this section because it is redundant.

Mike Wiggs said you better double check you are not removing it.

Marv Patten asked does this apply to a farm or a plant. Does it define sediment, we need more clarity.

Mitch Vermeer agreed with Marv Patten that we need more clarity.

Scott Leibsle asked if we wanted to designate sediment testing.

Marv Patten said when you are on a farm and if you want to ship Grade A milk to a plant, but its manufacture grade, why would you want to take out appearance and odor? I think the hauler should be aware of those items.

Mike Wiggs said I think you should leave them all in, because by striking it out they are not getting the monthly testing done. This is where the hauler brings in two samples to test the milk.

Marv Patten asked Mike Wiggs if the sediment section should be left in.

Section 330 – Scott Leibsle said the ISDA dairy lab reported which tests they currently use.

Marv Patten asked would there be some of these tests that industry uses, so maybe it needs to be more broad.

Scott Leibsle said we will address the bacteria language and have it for the next meeting.

Marv Patten said it should be left at 200,000.

Section 340 – no changes.

Section 341- Scott Leibsle said coliform was missing which we thought was an oversight so it is now added.

Marv Patten said it's not in the PMO you are talking about raw.

Mike Wiggs stated he agreed with Marv Patten, there is no coliform count requirements on raw milk, only finished products.

Scott Leibsle said SCC is more stringent than the PMO….should be at least equivalent to PMO.

Marv Patten said it should be left in there.

Scott Leibsle suggested we have language to refuse a shipment if there is a positive drug or failed to test for it.

Marv Patten said if it fails a drug test the plant will reject it and notify ISDA, should leave it as is.

Section 350 – no changes.

Marv Patten asked why do we need to wait for 3 days, if they have fixed the problem why not put them back on the market immediately. I don't think you need the 21 days.

Mike Wiggs said this is referring to if you are put on probation not if you are off the market.

Marv Patten said you are correct, I withdraw my previous request.

Section 352 – striking redundant language in .01a & b.

Mike Wiggs said going back to the drugs section, if FDA comes out with a drug of the month for testing, can the department still comply with that by striking a & b.

Scott Leibsle said manufacture rules are not under the PMO.

Mike Wiggs said again when FDA comes out with a drug for all milk, are you able to comply if you strike that language.

Mitch Vermeer said if people want to adopt Federal Rules, Idaho rules will say one thing and the Federal rules will say another.

Scott Leibsle said this is a manufacture rule so wouldn't it apply here.

Mike Wiggs said if FDA says they want to test all milk, then it applies to both Grade A & manufacture grade, they have the authority to do that.

Section 353 – 355 – This is a manufacture process so we are removing it. No comments provided.

Section 360 – General health of herd, we will create our own rather than taking it from the PMO. However, should we site the PMO on the other definitions?

Mitch Vermeer said the idea is to keep it to the unlimited raw and cite to the PMO.

Mike Wiggs said he would say no, the condition of the parlor you need to abide by the PMO because it's different than manufacture grade.

Marv Patten said he agreed with Mike Wiggs, we should go with USDA storage of manufacture since it's not as stringent as Grade A.

Bob Naerebout said he agreed with Scott Leibsle, if raw is stricter, than it makes no sense to have it here. Industry does not want the raw milk rule to be any less stringent than it currently is.

Marv Patten said he didn't think it said that in the raw rule.

Marv Patten said I agree, I was thinking Small Herd.

Mike Wiggs stated regarding raw milk, if they are bottling it, that is different than milking the cows on the farm.

Scott Leibsle asked Mike Wiggs what was he proposing.

Mike Wiggs said there should be different rules for Grade A vs. manufacture grade at the farm.

Mitch Vermeer said if we changed it, at the moment it would not affect anyone.

Bob Naerebout said we don't want to weaken raw milk in any way shape or form, we seem to be discussing something in great detail that doesn't pertain to us because Idaho has not manufacture grade dairies

.09 – strike, this rule doesn't regulate sewage disposal.

Section 370 – Cite the 2019 PMO – strike all remaining language.

Lloyd Knight suggested that when the stakeholders are making their comments regarding variances to the PMO, that they be specific so we can answer questions from DFM and legislators.

Section 380 – This is not permitted for manufacture grade….bulk haulers are cited to the PMO.

Marv Patten said Title 37 Chapter 4 has bulk milk hauler standards, which need to be checked for consistency.

Section 390 –simplifying the language.

Section 391 -Scott Leibsle said the next several pages are standards for butter & whey butter….which hasn't been produced in Idaho for a long time. Proposing to strike all of the whey butter language. We can put a temporary rule in place if need be at a later date.

Marv Patten said he thinks we are fine to do that, because you can always adopt USDA standards.

Section 395 new dairy products, standard language if a new product wants to be created, ISDA will give them a temporary license and then we will address it in the next rule making.

Next section is licensed dairy plants, incorporates by reference. No comments provided.

Bob Naerebout asked if we will have comments posted on the website before the next meeting.

Scott Leibsle replied yes.

Lloyd Knight adjourned the meeting at 10:49 a.m.