

Idaho State Department of Agriculture

02.04.13 Rules Governing Raw Milk

April 20, 2021, 1:30 p.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; Kyle Wilmot, ISDA; Scott Barnes, ISDA; Bob Naerebout, Idaho Dairymen’s Association; Marv Patten, Milk Producers of Idaho; Candy VanNorman; Andrea (Sater)?; Corrina (Arnold)?; Mike Reid; Greg Collett; Shellie Frey; Steve Barnhart; Meadow Thompson; David Spencer; Rebecca Leach; Gail Ansley via telephone.

AGENDA ITEMS

WELCOME:

Lloyd Knight started the meeting at 1:34 p.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 was structured as follows: 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 Raw Milk program, IDAPA 02.04.13 Rules Governing Raw Milk. Scott Leibsle explained that this rule has no fees and the funds are taken out of the dairy dedicated fund. The total personnel costs for the last fiscal year were approximately \$168,767, the operating expenses were \$18,289.00 for a total of \$187,056. The raw program has had a historical total of approximately 169 cow facilities and 193 goat facilities. Currently the program has 69 active cow facilities and 64 active goat facilities.

Bob Naerebout said at the end of the rule we need to talk about the cost of the program and some different funding sources, rather than just the dairy dedicated fund.

Scott Leibsle discussed the strawman by explaining if you are an unlimited raw facility you are required to be inspected and need to abide by the PMO, if you are a Small Herd facility this does not apply. Under the definition section of a herd share, this is mandated by statute 37-1101 so therefore can’t be changed.

Section 010 – clarified permit definitions. Scott Leibsle further described there are three types of permits you can have; a herd share, a small herd exemption, or an unlimited raw permit.

Section 012 – Clarified that raw milk and raw milk products can only be sold in Idaho....they cannot be sold across state lines under any circumstances.

Section 013 – updated PMO version and clarified language. Only unlimited raw facilities must abide by the PMO.

Gail Ansley stated she didn't know about the unlimited raw permit, she said she could not find it anywhere, and asked where exactly it is in the PMO. The only reason she knew about it was a letter that came from the Department.

Mike Reid questioned how going from the 2017 PMO to the 2019 PMO was going to lower his regulation. How is this going to make less regulation for me with regards to the Governors zero base regulation. If we update to the 2019 PMO what would need to be updated.

Scott Leibsle replied it has been a common practice for the department to update our rules to the most current version of the PMO.

Mike Reid responded by asking how is this going to help someone like me in putting forth the Governors' zero base regulation.

Scott Leibsle answered this is not increasing any regulation by changing to the current version of the PMO, but any can submit a written suggestion to the group for a discussion.

Mike Reid asked do you think it is a net zero for someone like me who produces raw milk. For example will I have to update my antibiotic testing equipment?

Mitch Vermeer said on the sanitation side of the PMO nothing new was added. The changes are listed on the FDA's website.

Scott Leibsle said this group may modify the standards for small herd or unlimited raw but not herd share, because the herdshare requirements are set in statute.

Marv Patten stated regarding the brucellosis test, the agency does BRT tests that are done more than once a year so maybe that should be clarified.

Mitch Vermeer said BRTs are what Dr. Lawrence does.

Gregg Collett said should we discuss what I sent in on coliform standards now. The State is not testing for specific pathogens just general coliform.

Scott Leibsle indicated we will post your comment on the website so everyone can review it.

Chanel Tewalt said we will get it posted so stakeholders can see it and comment on it, and have an open discussion.

Scott Leibsle gave a brief description of Gregg Colletts' written comment which stated the State is not testing for specific pathogens when testing for general coliforms.

Gregg Collett replied we need to test for E. Coli at the very least.

Mitch Vermeer said we can't test for all of those pathogens individually.

Scott Leibsle answered we don't test for the specific type of coliform....only general coliforms. He said we will get in contact with the ISDA dairy lab and ask them to do a cost analysis for individual coliform pathogen testing and have it for the next meeting.

Mike Reid asked to define annual. Will there be more regulation? He said he has been governed both ways, it used to be his responsibility to submit a test, and its difficult when you are on a deadline that is based on your last test.

Scott Leibsle responded that we are clarifying it, but we are not changing it.

Gail Ansley asked when did we decide on how many cows and goats were allowed in the program. If I can have 3 cows why not the equivalent of 21 goats?

Scott Leibsle said it's the volume of milk, not the size of the animal. It was a hot topic in the rule making when the rule originally was being established by the stakeholders, and that was the number that was agreed upon.

Gail Ansley said the volume of milk from each animal is not the same.

Steve Barnhart asked if brucellosis testing is done before the animal is a year old, why do we have to do it every year.

Scott Leibsle answered it is for public safety since the raw milk is not going for pasteurization. Also, we border Yellowstone Park which is wildlife reservoir for brucellosis.

Steve Barnhart said the vaccine may not work.

Marv Patten stated the discussion on the coliform limits went back and forth for 3 years, some wanted the limit to be 50 per ml, some wanted it to be 10 per ml, so it was a coin toss to be somewhere between 50 and 10, and finished Grade A products is 10 per ml.

Section 014 labeling clarification. The language was intended to provide for conspicuous labeling standards. A label needs to be very clearly identifiable as a raw unpasteurized product.

Greg Collett asked if we already have labels that are printed do we have to change all of them and get them reprinted. We have different size fonts for the words raw and unpasteurized.

Scott Leibsle responded that our concern is that the label be as conspicuous as possible. People need to clearly know they are consuming a raw and unpasteurized product.

Greg Collett said equal size font is too descriptive.

Mike Reid said not pasteurized or unpasteurized in addition to raw is too much.

Mitch Vermeer acknowledged Greg and Mike's input. He added ISDA reviews very busy labels and the words raw and unpasteurized are in a small font in the corner. The overall font is large and the raw and unpasteurized is in small font...which is misleading.

Scott Leibsle stated - Section 020. Name of the permit was clarified. Dr. Leibsle noted that there currently is not a penalty for sale of raw milk without a permit, even though the rule says it is unlawful. Dr. Leibsle clarified that a producer may only operate one type of raw milk permit. Subsection .03 – Clarified unlimited raw facilities will be inspected every three months, and held to the sanitation requirements in the PMO.

Greg Collett asked if he is changing locations does he have to change his permit number.

Mitch Vermeer said if you are talking about an unlimited raw permit then yes. But we could arrange to keep your same permit number if we knew ahead of time.

Steve Barnhart asked what if you are milking more cows, but only sell the milk from three cows.

Scott Leibsle replied yes that is correct, you can only sell the milk from three cows under the small herd exempt.

Section 030 – same as the previous section. Sale of raw milk is unlawful without a permit, but there is not penalty. The rest of the section is clarification of language.

Marv Patten asked if I have an unlimited raw permit could I sell to a Grade A facility and if I had all of my animals tested for TB etc. could I get a Small Herd permit?

Scott Leibsle replied if you are already Grade A facility and being inspected for sanitation, I'm not sure why you would want to limit yourself to a small herd exempt permit.

Mitch Vermeer said if you are a Grade A facility and you could get your unlimited raw permit, why would you want to limit yourself by getting a small herd.

Scott Leibsle clarified a produce could operate both a Grade A and small herd permit.

Rebecca Leach said in regards to the PMO if that is going to overlap that will confuse people.

Scott Leibsle said there shouldn't be any confusion; the 2019 PMO only applies to the unlimited raw permits. It does not affect the small herd.

Gail Ansley said there is confusion, I haven't heard about the unlimited raw, because if you are unlimited why would you want a small herd. If you have a Grade A then you can do small herd and if you have a Grade A you can go across state lines.

Section 040 – Herd Share, this language is verbatim out of the statute and is redundant...proposing to strike it.

Section 050 - Clarification of language...no substantial changes.

Marv Patten asked regarding herd share is milk quality stated in the rule?

Scott Leibsle confirmed that it was.

Bob Naerebout said the cost of the raw milk program is more than what the industry had anticipated; we need to see if there are alternatives. We will put in writing our suggestions after we meet with our stakeholders.

Dallas stated this would best be addressed in statute.

Bob Naerebout responded we need to look at the statement and purpose back in the original rule to determine if the funds were to come out of dairy funds entirely and to look at the benefits to the State of Idaho and the dairy industry.

Gail Ansley asked where is this document, is it attached in the email that was sent to me.

Scot Leibsle replied it's not in the email, it's on the website on the rule making page.

Lloyd Knight adjourned the meeting at 2:54 p.m.