

**IDAHO DEPARTMENT OF AGRICULTURE
2270 Old Penitentiary Road
PO Box 7249
Boise, Id 83707**

**02.04.13 RULES GOVERNING RAW MILK
Minutes of June 15, 2021 Meeting**

HOSTS/FACILITATORS: Lloyd Knight, ISDA
Dr. Scott Leibsle, ISDA
Chanel Tewalt, ISDA

STAKEHOLDERS PRESENT: Bob Naerebout, Idaho Dairymen's Association
Marv Patten, Milk Producers of Idaho
Shellie Frey
Gail Ansley
Paul Herndon, Producer Unlimited Raw Milk
Sara Sweet, Producer Small Herd
Greg Collett, Producer Unlimited Raw Milk
Leslie Tengelsen, Health & Welfare
Kami Jenkins, Producer Small Herd
Matt Walker
Sydney Plum
Jarryd Samples
Robert Dugenske

DEPARTMENT STAFF: Dallas Burkhalter, Office of Attorney General – ISDA
Katy Devries, Office of Attorney General – ISDA
Celia Gould, ISDA
Pamm Juker, ISDA
Dr. Scott Barnes, ISDA
Mitch Vermeer, ISDA
Andrea Thompson, ISDA
Dicsie Gullick, ISDA

Lloyd Knight called the meeting to order at 1:33 PM MDT. He explained that the comment period was open until June 20th and then turned the meeting over to Dr. Scott Leibsle to present the strawman. He also stated he had muted everyone and explained the process for unmuting and participating. He then turned the meeting over to Dr. Leibsle.

Dr. Leibsle explained where to find rulemaking information on the department's website. He then presented the strawman draft with a brief overview and stated that he would return to areas of discussion afterwards.

The main changes in the rules were:

- The document incorporated by reference was removed because the rules proposed would no longer differentiate between small herd and unlimited raw milk production.
- Definitions were removed that no longer appeared in rule or were listed in statute.
- Raw milk must remain in Idaho and cannot be transported across state lines.
- Section 013.02 would only include testing for Brucellosis and Tuberculosis.
- Labeling would now require a product warning to be placed on all products at point of production.
- Small herd and unlimited raw milk permits were combined

The discussion began with changes to section 013.02, monthly product testing.

Matt Walker began by opposing the elimination of testing standards. He felt having testing of product is important to guarantee freshness. Also, consumers assume there is some sort of oversight and removing the testing requirement does not serve consumers. He was also concerned that insurance carriers may not cover producers if there is no testing. He pointed out that the chance of having a positive test for Brucellosis is very low and there was a better chance for finding E.coli.

Gail Ansley asked for clarification on which tests were required. Dr. Leibsle stated that only tests for Brucellosis and Tuberculosis would be required.

Mike Reid stated that the Idaho Dairyman Association volunteered to fund the cost of testing as goodwill toward consumers. Even though the pathogens tested for do not make people sick, testing is important to provide guidelines and should be adhered to. Producers should have to prove that they can have clean samples.

Dr. Leibsle stated that the proposed change does not have to do with funding. It is more closely related to Mr. Reid's second point. The pathogens that are making people sick are not being tested for. Also, because milk is being produced daily, the monthly test is only 12 days out of 365. This small sample creates a false sense of security. The reason for the change in the rules is because there is little value in such large gaps in testing.

Mike Reid disagreed with taking limits off of the number of cows that can be milked. It is easy to keep small operations clean. Removing the limits could spell disaster and could lead some producers to take on more than they can handle. To not require testing on top of it could be a collision waiting to happen. When the program first started half of the producers could not produce clean samples. He stated that it is an easy test to pass and not passing it should tell someone they shouldn't be doing this. He felt that it is a free for all and with insurance carriers possibly not covering producers there needed to be a balance.

Dr. Leibsle stated that there are a number of private labs that can do testing and producers can submit samples directly to the lab for insurance reasons.

Sara Sweet asked if the tests and inspections are not catching things, are there other options that can catch it?

Dr. Leibsle answered that what is being tested for is not what is making people sick. What is making people sick are things like Listeria, E. coli and Salmonella. Most of the outbreaks of those illnesses were from unlimited raw milk farms that had passed their monthly testing. It would be cost prohibitive to test for specific bacteria.

Sara Sweet asked if a producer is having trouble, how does it just keep going on? What happens to the producer?

Dr. Leibsle answered that the Department of Health & Welfare investigates. The Department of Agriculture would reach out to the dairy and try to come to a solution. We try to get to the bottom of it, but passing the monthly tests will not prevent ongoing illness.

Dr. Leslie Tengelsen from the Department of Health & Welfare added that Health & Welfare collaborates very closely with ISDA. If we see a trend with a particular dairy, we work with ISDA to help protect the public.

Paul Herndon stated that there is value to the monthly testing, even with the large gaps. If a producer fails once in a month, they would more than likely fail a second month and continue to fail until changes are made. This is not just a public health matter; those tests are also a predictor of shelf life. On the subject of liability insurance, he added that he did not think his insurance carrier wanted him to do his own testing, they would want independent testing done. He was concerned that if there are not any standards that certain producers would let their standards slip.

Greg Collett, an unlimited permit producer sent in a written comment that was posted just a few minutes before the meeting. He did want to respond to a few of the previous comments. First, he felt there was no value in bacterial tests because the product being produced has bacteria in it. He also felt that the state should not be the one to set sanitation standards. He also felt that there was a difference in tests between in house, private labs and state tests. He had never failed an in house or independent lab test, but he had failed state tests. He also never had an insurance carrier ask if there were any state testing or inspections. His other comments can be found on the website.

Kami Jenkins stated that she had been helped immensely by ISDA staff and wondered how many people would lose their jobs.

Dr. Leibsle assured her that raw milk is a small portion of the full-time staff's responsibilities so there would be no staffing changes due to these rules.

Gail Ansley asked how often a Grade A dairy was tested and when, before or after pasteurization.

Mitch Vermeer stated that Grade A milk was tested before and after pasteurization. Every load is tested and even after testing plants have their own standard and can decline loads based on temperature and other reasons. After pasteurization ISDA does product sampling.

Mike Reid stated that not having testing is a reason to have small herds have their own permit.

Dr. Leibsle stated that the line drawn for small herds, 7 sheep/goat or 3 cows was arbitrary. They could not justify the line since it was just “pulled out of thin air” according to one comment. The sanitation inspections that were required for larger lots were not guaranteeing food safety or preventing food borne illnesses.

Mike Reid said that the number was not pulled out of thin air. At the time the rules were written he had three cows and it was a hotly debated issue. It was decided that if he could have a grade A facility with 3 cows, so could anybody.

Dr. Leibsle reiterated that the sanitation inspection did not prevent food borne illness. The last 6 instances happened at unlimited raw dairies that had passed inspections.

Mike Reid stated that he thought there should be a line drawn in regards to equipment used.

Marv Patten stated that in state law every load of Grade A milk is tested for drugs, not coliform. Processors do more tests for Grade A milk coming from the farm. He stated that there are standards, which is a fairly reasonable conceptual idea that we have safety. He is concerned that doing away with testing goes against good common sense to have some sort of comfort that milk is produced and kept cool and sanitary. He believes that if you take away the testing, prices will go down because there are no standards. He also asked a question regarding the Brucellosis test, if it can be the BRT test.

Dr. Leibsle said yes and Marv asked if clarification could be added to the rule.

Greg Collett had a follow-up question/comment to herd size and wanting a distinction based on equipment used. He thought people understand that if you are upscaling your operation, you need more equipment. It sounded to him that other producers were wanting everyone to buy the same equipment as they have, which he did not like. He thought that businesses that need the state to hold their hand, should not be in business.

Paul Herndon brought up testing standards, herd side standards and Nutrient Management Programs (NMP). He also stated that if you leave things completely to the free market the environment suffers because it ultimately leads to self-interest. He thought that the state needed to have the testing system because the results were indicative of overall cleanliness. For some things in life there is a state interest and the state should be very interested in preserving raw milk and the dairy industry as a whole. He felt the rules as they have existed served the purpose of preserving the industry. Paul also voiced concern that if there was a failure at a dairy and the dairy was sued, having no testing would leave the dairy more vulnerable to law suits.

Dr. Leibsle did clarify that the Nutrient Management Plan is not required for raw milk. It is required for Grade A milk, under a separate set of rules. Small herd exempt and unlimited raw dairies that do not hold a Grade A milk permit are not required to have an NMP. Regarding herd size, you are allowed to milk as many animals as you would like, but with the current language you are only allowed to sell the milk from 3 cows or 7 goats or sheep. There is no way for ISDA to enforce that rule. There is no reporting requirement for the amount of product a producer sells

or where. There is no real way for ISDA to verify the arbitrary line that has been drawn between small herd exempt and unlimited raw. If you only have three animals on your farm, then it's pretty easy, but if you have 20 goats, but you say only the milk from 7 are going into the sale of raw milk products and the other 13 are being used elsewhere, there is no way for ISDA to investigate or verify. Having two different herd sizes is problematic.

Paul Herndon stated that NMPs only being required for Grade A dairies supports his point. His example is that as an unlimited raw milk dairy, he could be milking as many cows as the Grade A dairy next door, but he does not need to meet the same standards because he bottles his own milk and distributes it himself. It did not make sense to him that there is a standard that Grade A producer needs to meet, that the raw milk producer does not. He thinks that if there is going to be a standard in the industry, it should be applied across the board to all dairies in Idaho.

Dr. Leibsle stated that nutrient management had not been discussed until now and that written comments could be submitted if someone thinks that nutrient management should be part of these rules.

Marv Patten stated that unlimited raw milk producers' permits are Grade A permits because they have to meet the sanitation requirements. Therefore, Mr. Herndon would need an NMP because his permit allows his milk to go for pasteurization or raw. The requirements for the finished product are different, but he would need an NMP.

Dr. Leibsle stated that the words "Grade A" were taken off of the unlimited raw permit a while ago to eliminate confusion. There are 6 dairies in the state that sometimes milk Grade A and sometimes milk raw and an improved NMP would be necessary for them. However, for an unlimited dairy that only deals with raw milk, an NMP would not be necessary. There are two separate permits.

Paul stated that his unlimited raw permit was issued at least a year ago, maybe as much as two years ago and he was held to the Grade A standard with having an NMP. He went through the class to be able to write his NMP and believes in the process and thinks it is a good standard to have. He believes that as an unlimited raw producer he should be able to switch any day to selling to a Grade A processor if he chooses. However, his permit only says unlimited raw, it does not say Grade A.

Dr. Leibsle pointed out that if you choose to sell to a Grade A processor it would be a separate permit.

Greg Collett asked for clarification because raw milk permits do not require an NMP, but he was required to have an NMP.

Mitch Vermeer clarified that unlimited raw dairies are required to have an NMP because of how they are defined under the NMP rule. He added that small herd exempt is exempt from that portion of the NMP rule.

Greg asked for clarification about the new proposal and asked if an NMP would still be required.

Dr. Leibsle stated that it had not come up before but it was something that needed consideration.

Paul Herndon stated that it did not matter if an NMP was required or not that it would not change how he handles manure. He stated he was not against standards, just against enforcement.

Gail Ansley asked if most counties have regulation regarding NMPs after you have a certain number of animals that are in a confined area.

Dr. Leibsle stated that some counties do and some counties do not. Mitch Vermeer stated that ISDA considers large cap at 1000, where Owyhee county considers 750 as a large cap.

Gail Ansley commented that in the counties where she had dealings, if you have more than 99 animal units in a confined area for more than a certain time it is an automatic (to require an NMP) whether you are milking or feeding.

Marv Patten wanted to point out that Gail is in Lincoln county and some counties are more restrictive than the 1000 animal unit federal cap. For instance, in Jerome county, the cap is 75 animal units and Gooding county had a cap of 70 animal units.

Andrea Sayer, a producer asked if the permits are merging between small herd and unlimited, would small herds now be required to get an NMP?

Dr. Leibsle stated that there is not a requirement in this rule, it is in the rules regarding nutrient management and how a dairy farm is defined. ISDA will need to look at that.

Marv stated that the NMP rule states that Manufacture grade or Grade A dairies are required to have them.

Dr. Leibsle stated that according the NMP rule you would be exempt, but he would have to look into the definition of a dairy and get back to her.

Gail Ansley asked what was considered a manufacturing dairy.

Dr. Leibsle answered that there used to be two grades of milk, Grade A and Grade B, and Grade B was renamed Manufacture Grade. It has to do with the quality standards of milk. Liquid milk and yogurt are considered Grade A and ice cream and cheese are considered manufacture grade.

Gail asked how that would affect a person who is making cheese out of their small herd exempt milk.

Dr. Leibsle mentioned that this is addressed in another rule, but if you are making the cheese from raw milk, it would not affect you. But there is a process, and if you are aging the cheese for a certain time it is considered pasteurized, but that is not addressed in this rule.

Dr. Leibsle continued reviewing the rule beginning with product warning. The intent is to let the public know that they are buying a product that is non-pasteurized and not inspected.

Paul Herndon opposes the warning label. He had used a similar label in the past and found through consumer feedback that the label was of no value. People know what the difference is between raw and pasteurized. The label that is required offers the consumer know value, but the producer incurs a cost. For dairies using glass bottles, it is at least 8 cents a label. It is a waste product when the bottles are returned.

Dr. Leibsle stated that for the customers that regularly buy raw milk, there would be little value in the label, but the casual customer may find value because it serves as notice to what they are buying. We want to make sure that each consumer has the opportunity to be informed about what they are buying.

Paul Herndon stated that in Washington there is a warning requirement, but the warning is on the store shelf. If there is a warning label, he would prefer it be on the shelf, even though it makes the shelf look silly. At least it can be seen and stands out to the casual. With the font size requirement and being placed on the bottom of the bottle, he believes most people will not see it.

Sarah Sweet stated that labeling the shelf makes more sense. People go to her house to pick up milk and bring their own bottles. In order to comply with the changes, she would have to put a label on some one else's bottle. Putting the label on her refrigerator, or the display would make more sense to her than putting a label on every bottle handled.

Andrea Sayer stated that she agreed with the previous two comments. She is also small herd exempt and people come to her house and they put milk in other people's jars. How would labeling someone else's container work?

Marv Patten asked who thought it was a good idea to label product at the point of production? He also wondered if the product label did any good. He thinks that everyone knows what they are buying. He asked if the warning label reduced product liability. He thinks that it should be a decision made by the producer.

Dr. Leibsle asked what his solution would be and Marv answered that it should be a producer option.

Mike Reid stated that there is already a label on the milk. It started out as saying "Raw" and now it says "Raw Unpasteurized." He does not think it can get any clearer with another warning label. He pointed out that everybody has an opinion on raw milk, whether you like it, dislike it or are afraid of it, but they know what it is. We are giving the program less regulation on other things and he believes there should be less regulation for labeling. He suggested making it a producer option.

Greg Collett was also against product warning labels, but for a different reason than the previous commenters. He does not see why raw milk is being treated any differently than other fresh foods. He believes that many have bought into the "danger of raw milk" and contends that raw

milk is not any more dangerous than many other foods out there. In fact, it is less dangerous than a lot of foods. We do not see warning labels like this on fresh produce and he wanted to know why it needed to go on raw milk.

Dr. Leibsle answered that consumers want a delineation between raw and pasteurized milk and the safety factor with the raw milk is just not the same as pasteurized.

Greg pointed out that pasteurized milk is a dead food and raw milk is a living food so to treat them the same does not make any sense.

Dr. Leibsle finished reviewing the changes to the rule and called for final comments and reminded everyone that comments can be emailed in as well. All comments received will be considered and a proposed rule will be published and sent to the Division of Financial Management. That is the document that will be considered by the Legislature next January.

Bob Naerebout asked about the cost of the program and how ISDA anticipates it being addressed.

Dr. Leibsle answered that the product testing was the largest amount of the program. There is no current estimate for the program costs after the change, but he would guess it would be a fraction of what it is currently. The current program was roughly \$180,000 and the majority of the cost was the time for collecting samples, testing supplies and lab testing. A significant portion of program costs will go away if these rules go into effect.

Bob Naerebout thinks there is merit in user fees to cover whatever remaining costs there are.

Marv Patten disagrees with a certain portion of this. He believes sanitary requirements for large facilities is important. Having standards is important and sanitary procedures are for food safety.

Mike Reid asked if we are reducing testing to just Brucellosis and TB testing, what the estimate is on the number of positive tests we have had in the last few years.

Dr. Leibsle stated that there has not been a positive Brucellosis test in many years. There have been many suspected cases, and those are sent to the federal laboratory in Ames, IA. The same is true for TB, there are many suspected cases and those are sent on. The pasteurization process is largely intended to destroy organisms like Brucellosis and TB, so this is a public health issue. The state of Idaho is adjacent to Yellowstone Park, which is the last reservoir of Brucellosis in the United States. Because Idaho is part of the Greater Yellowstone Area we have additional surveillance and testing programs in place for everything, including beef cattle and Cervidae. Idaho does not currently have a cattle herd in quarantine, there is an elk herd in Idaho that is currently under quarantine for Brucellosis.

Mike Reid asked if we are not testing for any other pathogens and there have been no positive test results for Brucellosis and TB, why do we still need to test for Brucellosis and TB?

Dr. Leibsle stated that there is an increased risk because of our proximity to Yellowstone. The state of Idaho needs to keep testing. In regards to TB, there are still reservoirs of TB around the country. We are managing Brucellosis and TB, but the ongoing surveillance is a big part of it.

Chanel Tewalt asked what Brucellosis means on a state-wide basis if there is a confirmed case.

Dr. Leibsle explained that Brucellosis is a bacteria and each state is granted a status by the USDA of either Brucellosis free or Tuberculosis free and there is an expectation of ongoing surveillance and testing. This is Idaho's year to be audited by USDA, and they will look at our testing, our surveillance program, how it's administered and how we monitor movement of the animals coming in and out of high-risk areas. As an example, if an animal is identified as positive for Brucellosis, the USDA will investigate if we have been compliant with our surveillance program. If it is found that Idaho has not followed the surveillance program then they would downgrade the state's status. The downgraded status would be a tremendous blow to our livestock industry as a whole. There would be immediate sanctions on cattle and cattle could not be moved without testing being sent a different state. Testing must be done by not just for the raw milk program, but for everyone who owns livestock in Idaho.

Dr. Leibsle asked for final comments and thanks everyone for having the most interaction with stake holders he has had. He reminded everyone that comments are due by June 20th. Afterwards we will post the final version of the strawmen and showed where to find it. The final version will be sent to DFM and will be the version that Legislature will review next year.

Lloyd Knight gave the email addresses where comments could be sent and adjourned the meeting at 3:13 PM MDT.

Chat Comment from meeting:

Mitch Vermeer - Just wanted to clarify the comment I made earlier. Grade A product testing. SPC, SCC is reported once a month to ISDA for regulatory purposes. Antibiotics is tested every load. However, some of the larger processors test daily for all of the above. Additionally, product samples and bulk tank samples are also reported to ISDA monthly. I just wanted to clarify to Gails Ansley's question earlier.