

***Idaho State Department of Agriculture
02.04.30 Rules Governing Dairy Byproduct***

May 10, 2023, 1:00 p.m.

Lloyd Knight, Dr. Scott Leibsle, Hosts/Facilitators

Present: Chanel Tewalt, ISDA; Dallas Burkhalter, Office of Attorney General – ISDA; Mitch Vermeer, ISDA; Bob Naerebout, Idaho Dairyman’s Association; Marv Patten, Milk Producers of Idaho, Russ Hendricks, Farm Bureau; Will Tiedemann, Idaho Conservation League; Josh Scholer, DFM; Katie Van Vliet, Idaho Dairyman’s Association; Johnathan Oppenheimer, Idaho Conservation League; Kyle Wilmot, ISDA; Roland Wood, NPK Planning; Scott Campbell, Office of Attorney General. Liz Hatter, Veritas.

AGENDA ITEMS

WELCOME:

Lloyd Knight started the meeting at 1:02 p.m. via teleconference and audio recorded the meeting. Mr. Knight introduced himself and announced that this was negotiated rulemaking for the environmental management rule.

Mr. Knight then offered to let Dr. Leibsle to take the floor to start the discussion of the nutrient management rule.

Dr. Leibsle introduced himself and continued to start the discussion and negotiation of the rules governing environmental and nutrient management. He referenced how some of the changes that he mentioned were also discussed in the Dairy Byproduct meeting held earlier in the day. Dr. Leibsle started going over the proposed changes and indicated the red line changes are strictly for reorganization and clarification and consolidation. No substantive changes to the programs have been made. Dr. Leibsle asked the group if they had any questions.

No one responded.

Dr. Leibsle reviewed the definitions and the simplification of the rules and asked if anyone had questions about definitions.

Mr. Naerebout wanted to go over the red line reduction on the rules shown and wanted to verify the definitions that are shown and started reading the rules.

Dr. Leibsle stated that any changes that have been made were currently being shown in the document presented via teleconference.

Mr. Oppenheimer spoke on how the rules also need to be in statute, so they are easily decipherable. Dr. Leibsle stated that the agency directive was to remove anything duplicative in rule.

Dr. Leibsle asked the group if anyone had a problem, if we were to simplify and remove verbiage.

Mr. Naerebout indicated we should keep it and does not see a downside in having the verbiage in two locations.

Mr. Patten added that he agreed as well.

Jonathan Oppenheimer referenced that DFM has a strict interpretation on rules and statute but he understood the procedural standpoint.

Dr. Leibsle invited Director Tewalt to comment.

Chanel Tewalt stated that DFM has worked hard with ISDA and communicated that this is just a starting point. She indicated an open effort has been made from both sides and we are here to listen to the group's efforts.

Mr. Knight asked Josh Scholer if he had any thoughts to offer for any consistency on the rule.

Mr. Scholer gave his context on the rules and statute and said he appreciates the feedback and thanked the group for letting him add a little more context.

Mr. Tiedemann thanked Mr. Scholer for clarifying and continued by stating there is a tendency to keep things consistent and maybe every rule does not have to be the same and maybe that includes more definitions. He indicated that the argument could go either way.

Mr. Knight asked if it will make sense for the regulatory industry to see the definitions, even if it is a duplication. Mr. Knight also questioned the bigger concern of the agency and the differences in definitions in rules and statute.

Dr. Leibsle stated the rules governing nutrient management are unique because they address regulations from multiple different species that are governed by multiple different statutes. He added that these definitions are close and believed that they are not conflicting. Mr. Leibsle added that this is meant to consolidate and add an easier interpretation for all livestock environmental regulations.

Mr. Scholer agreed that was a compelling argument and understood the comments being made by the group.

Dr. Leibsle discussed the new language being added to commercial truck wash and went over the other new language that had been removed from the other rules and moved to the NMP rules.

No questions from the group.

Dr. Leibsle discussed nutrient management planner certification and the qualifying criteria for it as well as soil sampler certification language was all transplanted from the individual rules into this rule.

No comment from the group.

Dr. Leibsle stated the nutrient soil analysis language was also redundant in the individual rules and had been moved to this rule.

No comment from the group.

Dr. Leibsle started the conversation of CAFO site advisory teams and indicated that nothing had changed and that the language was redundant in the statute and would be removed.

Mr. Naerebout asked how often the siting advisory team has been used?

Mitch stated that it varies, but last year there were roughly a dozen.

Dr. Leibsle confirmed there were no changes to the scope of this subchapter.

No comments from the group.

Dr. Leibsle reiterated the strawman is available on the ISDA website.

Dr. Leibsle started going over the odor management subchapter and clarified no changes have been made, just simplifying language. Dr. Leibsle brought up the issue of excess odors. He commented that this is one of the most controversial sections of rules in Animal Industries due to its subjectivity. Dr. Leibsle asked if there were any changes or clarifications the group would like to make to this language?

Mr. Patten asked what does the rule define as a liquid waste system and if there was a specific percentage of moisture that should be defined as “liquid” waste?

Mr. Scholer indicated that it’s appropriate to define primaries.

Dr. Leibsle asked Mitch Vermeer how often he runs into questions or interpretation problems regarding liquid or solid waste.

Mr. Vermeer confirmed it comes up fairly frequently.

Dr. Leibsle asked if there was ever a debate about the interpretation of solid or liquid.

Mr. Vermeer indicated it has been questioned several times in the last year, but normally we can come up with an answer, but it would be nice if we could define it.

Dr. Leibsle asked if anyone had thoughts on it.

No comment from the group.

Dr. Leibsle concluded the discussion of odor management.

There were no further comments from the group.

Dr. Leibsle began the stock piling of agricultural waste subchapter.

Mr. Patten referenced the Idaho Waste Management Guideline document and mentioned it might be worth mentioning as an incorporation by reference.

Dr. Leibsle mentioned that ISDA had no recommendations...further additions or changes would be at the discretion of stakeholders.

Mr. Oppenheimer asked the group if the measurements could be clarified of exactly where a setback distance to the actual pile agricultural waste would be measured.

Dr. Leibsle asked Mr. Oppenheimer to submit a suggestion for how he felt the language could be improved or clarified.

Mr. Naerebout asked why the title of the subchapter was being changed from agricultural waste to livestock waste.

Dr. Leibsle re-read the definitions and the title of the rule.

Dr. Leibsle ended the presentation and opened the discussion up for anyone in the group to add any comments or questions.

No one from the group responded.

Dr. Leibsle thanked the group for their participation and mentioned the rules, minutes, and comments and how they will be posted on the website and turned the meeting over to Mr. Knight.

Mr. Knight summarized the red tape reduction efforts and stated ISDA will look to provide more clarity at the next group of meetings in 2 weeks. He mentioned that he appreciated everyone's input and will look for comments. Mr. Knight ended the meeting at 2:10pm.