Idaho State Department of Agriculture
02.04.04 Rules Governing Artificial Dairy Products
March 14, 2022, 9:00 a.m.
Lloyd Knight, Dr. Scott Leibsle, Chanel Tewalt, Hosts/Facilitators

Present: Christie Hammons ISDA, Mitch Vermeer ISDA, Dallas Burkhalter, Office of Attorney General – ISDA, Katy Devries, Office of Attorney General – ISDA, Pamm Juker ISDA, Bob Naerebout: Idaho Dairymen's Association and Marv Patten: Milk Producers of Idaho.

AGENDA ITEMS

WELCOME:

Lloyd Knight started the meeting at 9:02 a.m. via video meeting and teleconference. Mr. Knight introduced the meeting as negotiated rulemaking for IDAPA 02.04.04 Rules Governing Artificial Dairy Products.

Bob Naerebout asked to have everyone else on the call be introduced. Everyone went around and did introductions.

Mr. Knight turned the meeting over to Dr. Scott Leibsle to present the artificial dairy products rule.

Dr. Leibsle stated the authority for the rule is found under Title 37, chapter 3, section 3 in Idaho Code. Dr. Leibsle began discussing the rule language by indicating the red strike marks are elimination of unnecessary or redundant language as red tape reduction pursuant to the Governor's executive order. The changes do not affect the scope or authority of this rule. He continued to ask if anyone had any questions, comments, or proposals regarding the rule.

Mr. Naerebout stated he had a question about the verbiage "will." He noted the possibility of his board members asking about the lack of enforcement when the rules states "will." Dr. Leibsle stated it would be pertinent to review Title 37-315, Idaho Code.

Mr. Naerebout stated this is a big issue nationwide, especially when products are being called milk when they are made from other products. He suggested ISDA should be prepared, when we are asked, why we are not enforcing this in the state of Idaho.

Ms. Tewalt stated that one of the questions they got from the Division of Financial Management (DFM) related to putting this language in Code rather than rule. Ms. Tewalt stated that type of a proposal would have to come from stakeholders.

Mr. Naerebout stated it's such a hot button issue when products started surfacing on our shelves. He asked why ISDA didn't act then.

Ms. Tewalt asked Bob if he knew of any states that were managing a similar rule and were handling it well?

Mr. Naerebout stated he didn't think that any states are enforcing artificial dairy labeling.

Ms. Tewalt stated the question came from DFM about the rule chapter. ISDA typically does not run legislation outside of red tape reduction bills in recent years. Executive branch legislative ideas must be in by June. The agency won't propose any legislation unless asked by industry.

Bob Naerebout stated it should be the industry's responsibility to make that type of a change in statute. He said industry is equipped, but he is not interested in removing the "will" requirement. It may drum up a lawsuit and that may not be in the best interest of Idaho.

Ms. Tewalt said stakeholders moving forward with any potential legislation is more appropriate. She also noted that comments so far did not ask for changes to the rule at this point.

Bob Naerebout stated that he thinks it's more important for the industry to do it and not the regulatory entity to do it.

Dr. Leibsle asked where the FDA is on dairy identity. Mr. Naerebout stated they just need to enforce it and not label as a dairy product. It would be easier to do this on a national basis and not a state basis.

Dr. Leibsle asked if there were any other comments. Marv Patten stated I don't have any problem with it.

Dr. Leibsle asked for a final call for comments. No one had any. He stated the next rulemaking meeting is Tuesday, April 5, 2022, at 9 a.m. He asked if there were any further comments for the rule governing artificial dairy products.

Lloyd Knight thanked everyone for joining the meeting and stated he stopped recording.

The meeting ended at 9:23 a.m.

02.04.04 – RULES FOR ARTIFICIAL DAIRY PRODUCTS

000. LEGAL AUTHORITY.
~~This chapter is adopted under the legal authority of~~ Section 37-303, Idaho Code. ( )

001. ~~TITLE AND~~ SCOPE.

~~**01. Title**. The title of this chapter is IDAPA 02.04.04, "Rules for Artificial Dairy Products." ( )~~

01~~2~~. Scope. These rules govern the process, sale, and distribution of artificial dairy products. ( )

002. – 099. (RESERVED)

100. GENERAL.
The ~~Director of the Idaho~~ Department ~~of Agriculture or the Director's authorized representative~~ will issue and enforce a written stop sale order to the owner or custodian of any quantity of artificial dairy products that has been determined by the Department ~~of Agriculture~~ to be in violation of Sections 37-315 through 37-318, Idaho Code. The order shall prohibit further sale, processing, or movement of such artificial dairy products, until the Department has evidence that the law has been complied with. ( )

101. – 999. (RESERVED)

Idaho State Department of Agriculture
02.04.04 Rules For Artificial Dairy Products
April 5th, 2022, 9 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; Bob Naerebout, Idaho Dairymen's Association; Marv Patten, Milk Producers of Idaho; Emily Courter, ISDA.

AGENDA ITEMS

WELCOME:

Lloyd Knight started the meeting at 9:02 a.m. by teleconference and audio recorded the meeting. Mr. Knight introduced himself and stated the rule they would be going over, 02.04.04 regarding Artificial Dairy Products. He stated that two stakeholders had joined the meeting and introduced the other participants on the call. He stated that comments would be accepted until April 29, 2022. Mr. Knight turned it over to Dr. Scott Leibsle.

Dr. Scott Leibsle stated no comments were submitted from the previous meeting but would open the discussion for any new comments on the rule. He stated the previous meeting ended with leaving the rule unchanged.

Bob Naerebout asked if the ISDA would like a letter stating whether they agree and that no changes are needed or is our physical presence adequate.

Dr. Leibsle stated he didn't think it was necessary for a letter but that they are more than welcome to submit one.

Mr. Naerebout stated he didn't see much need to go through the rule again. He wanted to make sure that nothing had changed since the last meeting in the rule.

Dr. Leibsle stated that he was correct and that nothing had changed, and they had the same edits from last time and asked Marv Patten his thoughts.

Mr. Patten stated he had no problem and agreed with Bob Naerebout.

Mr. Knight stated he would formally adjourn the meeting and that comments would be accepted through April 29. He adjourned the meeting at 9:06 a.m.

02.04.04 – RULES FOR ARTIFICIAL DAIRY PRODUCTS

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Idaho State Department of Agriculture
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BRAD LITTLE, GOVERNOR

CELIA GOULD, DIRECTOR

"(8) The requirements of this section shall apply to the director's promulgation of new rules as well as the amendment, extension, or renewal of rules in effect on the effective date of this act."

1. Is this a ☐ new rule or ☑ amendment to current rule?

2. Is the proposed rule broader in scope or more stringent than federal law or regulations, or does it propose to regulate an activity not regulated by the federal government? ☑ Yes ☐ No
   a. If yes, which portions of the proposed rule?

      IDAPA 02.04.04 "Rules Governing Artificial Dairy Products" is either broader in scope or more stringent than federal laws.

3. Is the proposed rule pursuant to:
   a. Title 22, Chapter 49 (Beef Cattle Environmental Control Act)? ☐ Yes ☑ No
   b. Title 25, Chapter 38 (Ag Odor Management Act)? ☐ Yes ☑ No
   c. Title 37, Chapter 4 (Sanitary Inspection of Dairy Products) ☐ Yes ☑ No
   d. Title 37, Chapter 6 (Dairy Environmental Control Act) ☐ Yes ☑ No
   e. If yes to any of the above:
      i. List the peer-reviewed science and supporting studies (conducted in accordance with sound and objective scientific practices) utilized by the agency.

      ii. List the data that the agency utilized including site-specific, local, statewide, and regional data, including economic information.

iii. Explain how the rules are consistent with applicable legislative findings, policy, and intent; (for example, provide legislative bills or intent language).

iv. Has the agency made available for public review and comment, all scientific studies, (listed in subsection i. above) including underlying methodology, that have been relied upon by the director?

v. Have interested parties submitted economic feasibility data? ☐ Yes ☐ No
(Please attach data when submitting this document.)

4. Does the proposed rule propose a standard necessary to protect human health and the environment?
☐ Yes ☐ No If yes, Please complete subsections a-e. If no, please proceed to question 4.

a. Identify each population or receptor addressed by an estimate of public health effects or environmental effects.

b. Identify the expected risk or central estimate of risk for the specific population or receptor.

c. Identify each appropriate upper bound or lower bound estimate of risk.

d. Identify each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty.

e. Identify studies known to the agency that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.

5. Does the notice for the proposed rule include information that the rule is boarder in scope or more stringent than federal law or regulations, or does it propose to regulate an activity not regulated by the federal government?
   Yes ☑ No ☐

The rule IDAPA 02.04.13 regulates an activity that is not regulated by the federal government.

Information Compiled by: Dr. Scott Leibsle

Title: Administrator - Animal Industries

Date: 7/6/2022

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