

MINUTES  
**SENATE AGRICULTURAL AFFAIRS COMMITTEE**

**DATE:** Thursday, January 22, 2015

**TIME:** 8:00 A.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Rice, Vice Chairman Bayer, Senators Brackett, Patrick, Souza, Lee, Den Hartog, Ward-Engelking, and Burgoyne

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Rice** called the meeting to order at 8:00 a.m.

**PASSED THE GAVEL:** Chairman Rice passed the gavel to Vice Chairman Bayer.

**DOCKET NO** **Rules Review Department of Agriculture**

**02-0405-1401:** **Governing Manufacture Grade Milk, John Bilderback**, Bureau Chief, explained this rule covers sanitary milk quality standards for milk produced on a manufactured grade dairy farm and the end products such as butter, whey butter, cheese and ice cream. The 2014 Legislature passed S 1338 changing the legal authority. The rule had not been updated since 1994 so much of the content of the rule was outdated and needed to be changed.

There are six changes in the rule:

- A change to be consistent with OAR requirements. Documents incorporated by reference are now formalized in a specified section, for example, Section 004., Incorporation by Reference.
- The Methods of Analysis section was removed because IDAPA 02-0409, Rules Governing Milk and Cream Procurement and Testing, now cover these requirements. This rule now classifies all methods of analysis.
- Section 400, Standards of Identity for Ice Cream Products, has been removed and referenced to the National Standards of Identity. Aligning with the national standards is important to ensure Idaho products are allowed to move freely in interstate commerce.
- Currently, the Idaho Code and rules do not specify quality standards for butter or whey butter. This rule establishes quality standards to ensure that butter and whey butter, made in Idaho, are of high quality. These standards are outlined in Sections 500 and 501.
- Update to technology methods of testing have been changed to coincide with the national standards of milk quality and component testing.
- Changes in terminology to ensure consistency.

In summary, these changes do not alter how the Idaho State Department of Agriculture (ISDA) regulates manufactured grade dairy farms in Idaho, the farms sanitary criteria or milk quality standards.

**Senator Souza** asked for clarification on manufactured grade producers. Is there a different standard for a large dairy producer versus a smaller producer who milks a few dairy cows? **Mr. Bilderback** answered there are three classifications of milk produced in Idaho: 1) grade A product; 2) manufactured grade products; and 3) raw milk (smaller farms). If the farm is not producing raw milk they would fall under the manufactured grade milk or grade A rules.

**Chairman Rice** asked Mr. Bilderback to clarify the definition of poor animal housing conditions under the Section on unsanitary conditions. **Mr. Bilderback** answered the dairy plant has an obligation to exclude milk if the animals or their udders are in standing water. The dairy plant would have an obligation to work with that producer to clean up the dairy farm.

**Chairman Rice** questioned the language on page 28, under 03. b. "shall" is being changed to a "may" in referring to when a producer ships milk testing positive for drug residue 3 times in a 12 month period. **Mr. Bilderback** explained depending on the findings of the residue investigation by ISDA this language change will allow the department the flexibility to use "may revoke their license instead of shall".

**Senator Burgoyne** wondered about the word "poor" on page 24. Is this solely a burden on the dairy plant or does it trigger wider ramifications with respect to ISDA? Would it entail an investigation plus action in poor milking procedures or animal housing conditions? **Mr. Bilderback** stated that the term poor is not defined, and it would be the responsibility of the dairy plant to reject the milk from a producer. For example: The plant's fieldman goes out to a milk producer and finds the facility in disarray they have an obligation to work with that producer on clean-up procedures. Bringing them back into compliance to ensure a milk supply that is wholesome for the residents of Idaho, as well as nationally and internationally.

**Senator Bracket** asked if the dairy industry supports the rule changes. **Bob Naerebout**, Executive Director of the Idaho Dairyman Association (Association), stated that the dairy industry was involved in the rulemaking process and is supportive of the changes. He also stated that the Association is very satisfied with the language for sanitary conditions. **Brent Almstead**, lobbyist for Milk Producers, stated that they participated in the negotiated rulemaking process, and the Milk Producers fully support the rule.

**Mr. Almstead** clarified the question of unsanitary conditions stating that dairies are inspected on a regular basis by ISDA. Fieldmen from the processing industry are in those dairies frequently. Any fieldmen who came onto a dairy that was unsanitary would help the dairy correct those conditions and bring the dairy back into compliance. These unsanitary conditions would be very rare. **Senator Patrick** stated the dairy industry is outcome based, and there is no way that contaminated milk would get into the food supply. If a dairy is operating in an unsanitary manner, that will put them out of business.

**MOTION:**

**Senator Patrick** moved to approve **Docket No. 02-0405-1401**. **Senator Brackett** seconded the motion. The motion carried by **voice vote**.

**Senator Burgoyne** commented that he would vote in favor of the motion, but he is troubled by the language change of shall to may under, 03. b. on page 28.

**DOCKET NO. 02-0406- 1401:** **Governing Licensed Dairy Plants, John Bilderback**, Bureau Chief, said this rule governs the departments for the design, construction and operations of dairy plants which process milk for manufacturing purposes. Last year the 2014 Legislature passed S 1338, and as a result, the ISDA made the necessary change in the legal authority from Chapter 4 to Chapter 5 to align this rule with the statute change. The document incorporated by reference was also updated to the newest version, July 2011. There were three changes in the incorporated document and none affect how dairy plants are licensed or regulated in Idaho. This document outlines standards for the clean room environment in a dairy plant including: cleaning, sanitation, lighting, and ventilation and inspection requirements for the water supply.

**MOTION:** **Senator Souza** moved to approve **Docket No. 02-0406-1401**. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 02-0414-1401:** **Governing Dairy Waste, John Bilderback**, Bureau Chief, said the Dairy Waste Rule covers the requirements of the waste system construction and discharges from dairy farms. The 2014 Legislature passed S 1378, the Dairy Environmental Act (DEA). This rule incorporates the necessary changes to ensure it is consistent with the DEA. Specific items that were required in the update: 1) definitions; 2) compliance schedule for unauthorized discharges; 3) compliance schedules; and 4) penalties for violations.

**Senator Den Hartog** asked about Definition 15, National Pollutant Discharge Elimination System (NPDES). Are dairies required to have a NPDES permit? **Mr. Bilderback** explained the NPDES was a definition that was in the DEA and was added to this rule.

**Senator Brackett** stated on page 49, Definition 06, "where dairy waste is stored, collected or treated" stockpiled is not listed; is that an omission or covered elsewhere in the rule? **Mr. Bilderback** replied rules governing stockpiling of agricultural waste are defined in Rule 02-0431. **Senator Brackett** asked if in his opinion it would be appropriate to include stockpiling in this section of the rule. **Mr. Bilderback** responded during the negotiation process of S 1376, stockpiling was not an important definition in the DEA. **Chairman Rice** commented that it was his opinion that stockpiles would be included in the term stored, collected or treated.

**Sara Arkle**, Community Conservation Associate with the Idaho Conservation League (ICL), stated since 1973 the Association has been Idaho's voice for clean water, air and wilderness. ICL works to support those values through public education advocacy and policy development. The ICL does not support this rule because it did not go through the negotiated rulemaking process. The negotiated rulemaking process is an important procedure in the creation of rules for the State, and ICL was not included as a stakeholder in the negotiation of this rule.

**Senator Patrick** asked **Ms. Arkle** if the ICL has any objections to the rule. **Ms. Arkle** responded that ICL objected to Definition 22, Unauthorized Discharge. The definition appears to be missing a sentence that designated the hauler is responsible for the waste during transit which was part of the wording in the previous rule definition of a discharge violation.

**Senator Ward-Engelking** advised that she would oppose the rule because of the contamination risk of the State's ground water and she voted against S 1378.

**MOTION:** **Senator Brackett** moved that **Docket No. 02-0414-1401** be held at the discretion of the chair. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
02-0419-1401:**

**Governing Domestic Cervidae, Dr. Leiblsle**, Deputy Administrator, stated this proposed fee rule will allow the Domestic Cervidae Program to be fiscally solvent. The rule implements an increased fee schedule and a reduction in facility inspection frequency which will increase program revenues and decrease program management expenses.

The rule change specifies:

1. Disease criteria for Chronic Wasting Disease (CWD) surveillance to no less than 10 percent. This change narrows that reduction in CWD surveillance to no less than 10 percent of harvested animals. Any animal that is intentionally removed for shooting purposes or meat production will be subject to CWD surveillance. Any domestic cervidae that dies for any other reason must still be sampled at the 100 percent level.
2. The criteria for facility inspection frequency was annually under the change it will be every five years.
3. The rule change specifies the annual assessment fee of \$5 per head per year will now be \$10 per head per year.

**Senator Ward-Engelking** asked if the Department of Idaho Fish and Game participated in the negotiated rulemaking process. **Dr. Leiblsle** answered that the Department of Idaho Fish and Game was present at negotiated rulemaking and commented on the final language of the rule.

**Senator Den Hartog** questioned the income and expenses generated from the current and new fee schedule. **Dr. Leiblsle** stated that the fiscal year (FY) 2014 (\$5 per head per year) generated revenue was \$23,500. The estimated total revenue for FY 2015 will be \$65,000. Expenses in FY 2014 were \$48,000, so the Cervidae Program ran out of money in May of 2014. **Senator Dan Hartog** asked if the program fee increase will generate a surplus. **Dr. Leiblsle** answered under Section 090, Fees, it states that it is the intention of the ISDA to meet annual expenses and establish a reserve fund to account for any unforeseen expenses. The annual assessment fee may be reduced if program revenue accumulates to a balance of at least \$100,000 in excess of the projected annual cost.

**Senator Patrick** asked how many domesticated cervidae have been found with CWD. **Dr. Leiblsle** responded Idaho has never had a domestic or wild cervidae test positive for CWD.

**Stan Boyd**, representing the Elk Breeders Association, said the industry supports the rule. The industry knew that the program was not adequately funded. In the negotiated rulemaking process they found a way to raise revenues and lower regulations. ISDA has performed 100 percent testing on the herds for the last 20 years and found no positive testing for CWD. The rule reduces testing on cervidae taken for hunting or meat.

**Senator Patrick** asked if CWD had been found in the wild herds. **Dr. Leiblsle** stated CWD has not been found in the wild herds of Idaho.

**Senator Lee** asked how did ISDA testing for CWD go from 100 percent to 10 percent. **Dr. Leiblsle** answered the 10 percent was a product of the negotiation during the 2014 statutory amendment which was deemed the level of surveillance the Legislature chose and passed into law.

**Forrest Goodrum**, Ada County Fish and Game League, a local conservation group, spoke in opposition to the reduction to 10 percent testing, explaining that it will be inadequate protection for the herds. For example: There is an elk farmer who has two elk farms in Utah and an elk farm in Idaho. In October 2014 the farmer shipped a bull from his south Utah farm to the north Utah farm, and the bull was subsequently shot. In December 2014 the bull tested positive for CWD. This elk tested positive under Utah's 100 percent testing program. If the bull had been shot in Idaho, there would have been a 90 percent chance that the bull would have gone undetected for CWD under this testing reduction.

**MOTION:** **Senator Brackett** moved to approve **Docket No. 02-0419-1401**. **Senator Patrick** seconded the motion. The motion carried by **voice vote**. **Senator Ward-Engelking** requested that she be recorded as voting **nay**.

**DOCKET NO. 02-0421-1401:** **Importation of Animals - Meningeal Worm Parasite, Dr. Leibsle**, Deputy Administrator, said this proposed rule is the result of a petition from the Idaho Elk Breeders Association. The changes to the rule include: 1) The removal of an import restriction on domestic cervidae from regions endemic with *P. tenuis*. *P. tenuis* is a parasite known as meningeal worm and known to exist in domestic cervidae. The removal of the import restriction will allow domestic cervidae to be imported from regions endemic for meningeal worm, but not before they receive a deworming treatment prior to import, on the recommendation of a veterinarian. 2) Prohibit importation of domestic cervidae that are known to be infected with meningeal worm or exposed to an animal that has them. 3) A requirement of a health certificate that accompanies all domestic cervidae imports. The certificate verifies that none of the animals in the shipment have been exposed to or display symptoms of meningeal worm.

**Senator Ward-Engelking** asked if the meningeal worm can be detected in a live animal. **Dr. Leibsle** answered that the worm is very difficult to detect in live animals, and currently there is no test available to detect the worm's presence. **Senator Ward-Engelking** asked how do veterinarians know when to treat the infected animals. **Dr. Leibsle** clarified that the rule change requires that all elk being shipped into the State receive the deworming treatment.

**Chairman Rice** asked if there are other livestock known to have the meningeal worm, and how effective is the treatment. **Dr. Leibsle** answered that as pertains to this rule meningeal worm has been documented in several species of domestic cervidae stock. The worms are predominantly found and known to exist in white tailed deer even though they show no symptoms and shed the organism. Elk intermittently shed and show symptoms of infection of meningeal worm. There is a very high rate of fatality in moose associated with this worm. The recommended deworming treatments are prescribed for use in cattle. There is not a specific drug, and there is very little research available concerning deworming medications as they apply to cervidae.

**Forrest Goodrum**, Ada County Fish and Game League, spoke in opposition to the proposed rule change. This change is not a technical adjustment but a big game changer. The existing rule imposes a geographic quarantine against importation of a deadly livestock parasite. This quarantine method has worked in Idaho's wild and domestic livestock which have not been infected with the meningeal worm. He believes this proposed rule change will create a risk to wild and domestic livestock. This is the conclusion that can be drawn from the scientific information about the worm (see attachment 1). Meningeal worm in elk can cause debilitating neurological disease and death. Scientists believe the reason that elk reintroduction in the east has failed is due to meningeal worm. Control: Every effort should be made by government regulation and the game ranching industry to prevent the introduction of meningeal worm in western North America. There is no reason to believe that conditions in western North America are unsuitable for transmission if the worms

were to arrive by infested cervidae. A non-symptomatic infected elk shipped into Idaho could decimate the herds. The certificate of veterinarian inspection required in Section 600.04 specifies treatment by dewormer before import into Idaho. None of the deworming medications have been tested in controlled studies on cervidae. Section 600.05 requires the veterinarian to give a written statement that no cervids had displayed symptoms or exposure from a premises. There is no test available to detect the worms presence in cervidae.

**Senator Souza** asked Dr. Leibsle if there had been controlled testing of the deworming medication treatment. **Dr. Leibsle** answered that there have been controlled studies conducted on the medication as it pertains to specific species of cattle. **Senator Souza** asked if medication that is used in cattle could be effective in the elk population. **Dr. Leibsle** stated this is a complicated question that should be answered by the research laboratories that developed the dewormer.

**John Caywood**, Ada County Fish and Game League, spoke in opposition to the proposed rule change, saying this industry proposal will dismantle Idaho's animal health regulations for cervidae. This rule has a very narrow economic base which benefits shooter bull operators placing the cervidae herds at risk. This rule change reduces animal health protection and endangers Idaho's economy and resources (see attachment 2).

**Stan Boyd**, representing the Idaho Elk Breeders Association, explained the reason the industry proposed these rule changes were genetics. The breeders would like to bring stock in from other states to improve their herds. The elk that would be shipped into the State would be treated with the dewormer and have a certificate of veterinary inspection. The producers use the best medicine available to treat the cervidae. These breeders have an economic incentive to protect their herds from disease.

**MOTION:** **Senator Souza** moved that **Docket No. 02-0421-1401** be held at the discretion of the chair. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Vice Chairman Bayer** adjourned the meeting at 10:08 a.m.

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Senator Rice  
Chair

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Carol Deis  
Secretary