

MINUTES  
**SENATE AGRICULTURAL AFFAIRS COMMITTEE**

**DATE:** Tuesday, January 18, 2022

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

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Burtenshaw, Vice Chairman Bayer, Senators Patrick, Den Hartog, Zito, Ricks, Nelson, and Semmelroth

**ABSENT/ EXCUSED:** Senator Blair (Johnson)

**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 Burtenshaw** called the meeting of the Senate Agricultural Affairs Committee (Committee) to order at 8:01 a.m.

**MINUTES APPROVAL:** **Senator Patrick** moved to approve the Minutes of January 11, 2022. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

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

**RULES REVIEW:** **Colby Cameron**, Bureau Chief, Idaho Division of Financial Management (IDFM), introduced himself to the Committee. **Mr. Cameron** provided a brief overview of the Idaho administrative rules process. He explained the history of the current procedure to review all rules every year and the process used by the agencies to develop rules. **Mr. Cameron** noted that the Governor's Executive Order 2020-01, Zero-Based Regulation, requires agencies to review 20 percent of their rules each year. He reported that IDFM asked the agencies to provide meaningful information to the various legislative committees regarding their rule changes. **Mr. Cameron** suggested that the Committee make one motion for each rule docket, rather than separate motions for each section of a docket.

**DISCUSSION:** In response to questions from the Committee, **Mr. Cameron** responded that the rules do not show changes because they are all considered new rules. He said the agencies are encouraged to provide summaries or redline versions of rule changes to the committees. **Mr. Cameron** added that Idaho has a robust rules review process. He remarked that the agencies have conducted negotiated rulemaking and held open public meetings to develop rule changes. **Mr. Cameron** urged the Committee to rely on the agencies' efforts. An agency can adopt a temporary rule change in the interim if necessary to correct an error, he said. **Mr. Cameron** noted that the Committee can approve or reject an entire docket or reject part of a docket at the section level.

**Senator Den Hartog** commented that the current process is frustrating, but it is up to the Legislature to create a solution to the problem.

**Chairman Burtenshaw** reminded the attendees that anyone wishing to testify must now register online through a link on the Committee agenda. He asked attendees to notify the Chair if anyone wants to testify today but was unable to sign up online.

**DOCKET NO.  
02-0000-2100**

**Notice of Omnibus Rulemaking - Proposed Rule**, p. 4. **Lloyd Knight**, Administrator and Rules Coordinator, Idaho State Department of Agriculture (ISDA), introduced himself to the Committee. **Mr. Knight** distributed a chart prepared by the ISDA summarizing the rule changes. He reviewed the process undertaken by the ISDA to develop the new rules (see Attachment A). He explained that some rules contain references to federal regulations or industry standards, and the references must be updated regularly. **Mr. Knight** reported that the ISDA reviewed nine rules in accordance with Executive Order 2020-01. He stated there were three rulemaking meetings via web conference for each rule, with much stakeholder participation.

**Dr. Scott Leibsle**, Administrator, Division of Animal Industries and State Veterinarian, ISDA, introduced himself to the Committee to present **Docket No. 02-0000-2100**, Rule 02.04.13. **Dr. Leibsle** described the raw milk program and the types of permits presently available to raw milk producers. He observed that the raw milk program was created in 2010, and the dairy industry heavily participated in negotiated rulemaking to develop the rule changes in this docket. **Dr. Leibsle** stated the docket will consolidate permit categories and eliminate herd size restrictions and monthly testing requirements (see Attachment B).

**DISCUSSION:** In response to Committee questions, **Dr. Leibsle** advised that Idaho Code does not require monthly quality testing. The requirement was eliminated based on stakeholder input and because the data does not support it, he said. **Dr. Leibsle** explained that the six recent cases of illness attributed to raw milk arose from farms that passed all monthly quality testing and/or were inspected. He observed that brucellosis and tuberculosis (TB) testing requirements are retained in the rule. **Dr. Leibsle** acknowledged that the testing sample size was small. He reported that the ISDA must work with the available data, and there was strong stakeholder support to eliminate the testing requirement. **Dr. Leibsle** indicated that many raw milk producer stakeholders participated in negotiated rulemaking. He is unaware of any consumer participation other than producers who consume their own product.

**TESTIMONY:** **Dr. Leibsle** explained the new raw milk labeling requirements will alert consumers that raw milk is unpasteurized and could be harmful. He stated the rule also adds a nutrient management plan (NMP) requirement for producers with larger herds to identify how animal waste will be managed.

**Bob Naerebout**, Idaho Dairyman's Association, testified in support of the docket. **Mr. Naerebout** said he is not in favor of the raw milk program in general. He noted that the raw milk program is paid for by the commercial dairy industry, and the cost has become significant. **Mr. Naerebout** added that the docket was negotiated and it is the best result for his members.

**DISCUSSION:** **Senator Den Hartog** inquired whether fee assessments for the raw milk program will be reduced as a result of the docket. **Mr. Naerebout** responded that a fee reduction is doubtful. **Senator Nelson** asked Mr. Naerebout to clarify his position on the rule. **Mr. Naerebout** confirmed he supports the rule as presented.

**TESTIMONY:** **Marv Patten**, Milk Producers of Idaho, testified in support of the rule docket. He stated he agreed with prior testimony but he disagreed with eliminating the testing requirement. **Mr. Patten** gave his opinion that the testing program eliminated farms with bad test results and low milk quality. Testing could help identify poor sanitation issues, he said.

**DISCUSSION:** **Senator Patrick** remarked that the current rule was effective in preventing illness from raw milk and expressed concern that there was insufficient public involvement in the rule change. **Dr. Leibsle** replied that milk producers have the ability to submit their own milk to private labs for testing as a best management practice.

- TESTIMONY:** **Dr. Leibsle** explained **Docket No. 02-0000-2100**, Rule 02.04.14 pertaining to dairy byproduct, was the subject of negotiated rulemaking for the past three years. Due to a lack of consensus on proposed changes, negotiated rulemaking was discontinued in 2020, he said. The only major change in this section was the elimination of a reference to a sunset clause (see Attachment C).
- DISCUSSION:** **Vice Chairman Bayer** inquired about the changes to Rule 02.04.21 and asked why cattle brought into the country are exempt from TB testing if they are consigned directly to slaughter. **Dr. Leibsle** explained there are meat inspectors on site who are trained to identify TB lesions in the carcasses, and animals with suspected TB are sent for testing.
- MOTION:** **Senator Patrick** moved to approve **Docket No. 02-0000-2100**. **Chairman Burtenshaw** seconded the motion. The motion carried by **voice vote**.
- DOCKET NO. 02-0107-2101** **Rules Governing Hemp - Temporary and Proposed Rule**, p. 306. **Chanel Tewalt**, Deputy Director, ISDA, introduced herself to the Committee. **Ms. Tewalt** reported that this docket is a new chapter developed after HB 126 was signed into law in April 2021. She described the rulemaking process and observed that it was complicated due to the competing interests of stakeholders, law enforcement, and federal regulations. **Ms. Tewalt** thanked those involved in the rulemaking process for their collaboration and participation.
- Ms. Tewalt** summarized the rule docket, including the license application process and recordkeeping requirements for growers and hemp handlers (see Attachment D). She observed that the ISDA received a few negative comments about the fee schedule from potential applicants who plan very small grow operations. **Ms. Tewalt** reviewed the inspection and testing requirements contained in the docket. She reported that hemp exceeding the acceptable tetrahydrocannabinol (THC) level must be destroyed. **Ms. Tewalt** concluded by reviewing the types of violations and penalties for non-compliance.
- DISCUSSION:** In response to Committee questions, **Ms. Tewalt** responded that all hemp producers must be licensed regardless of size. She remarked that licensing fees are geared toward large producers and not individual growers. **Ms. Tewalt** explained that hemp can be disposed of by plowing it under, spraying it chemically, or possibly burning. She explained that Idaho requires producers to test for total THC, while some states only require testing for delta-9 THC. **Ms. Tewalt** advised that a grower will not incur additional fees for inspections if the grower's hemp tests under the maximum THC level. She remarked that \$35 per hour is a low hourly rate. **Ms. Tewalt** advised that the ISDA provides a list of testing labs on its website as a courtesy to hemp producers. She observed that the ISDA is currently considering licensing applications for Idaho testing labs. She clarified that the ISDA sends the hemp for testing and once approved, licensed hemp can be legally transported by the producer.
- MOTION:** **Senator Den Hartog** moved to approve **Docket No. 02-0107-2101**. **Senator Nelson** seconded the motion. The motion carried by **voice vote**.
- PASSED THE GAVEL:** Vice Chairman Bayer passed the gavel to Chairman Burtenshaw.
- ADJOURNED:** There being no further business at this time, **Chairman Burtenshaw** adjourned the meeting at 9:20 a.m.

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Senator Burtenshaw  
Chair

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Jeanne Jackson-Heim  
Secretary