

March 28, 2015

Linda Leehman  
Committee Assistant  
Vermont Senate Committee on Agriculture

RE: Tier II Raw Milk Sample Submission Requirements

Dear Linda,

To comply with the current Tier II Raw Milk Testing Requirements, farmers must submit samples of their milk to an FDA-Certified lab twice per month. This letter details the current policies of the Vermont Agency of Agriculture Farm and Markets (VAAFAM), the conflict therein and solutions that will make testing easier, less expensive and more attractive to Vermont's farmers while complying with FDA regulations and industry best practices.

Background: There are two FDA certified labs in Vermont that can perform Tier II raw milk testing; Bob-White Systems Dairy Testing Lab in South Royalton and the Vermont Agency of Agriculture Dairy Laboratory in Burlington. Both labs are regulated by policies developed by the VAAFAM in regards to Tier II testing, however the testing itself is regulated by the FDA.

FDA regulations require milk samples arriving at the lab for testing be less than 4.5 degrees Celsius. If samples are warmer than that, we must exclude them from testing.

Currently VAAFAM creates 'policies' guiding the testing but these policies are not in writing and have no comment period or process of public development. These policies are disseminated verbally. The current 'policy' requires farmers to deliver samples to the lab "in the vessel in which they are sold." That means most folks bring half-gallon mason jars to the lab. The Agency Lab requires those mason jars to be delivered in a cooler filled with an ice-water slurry to meet the 4.5C requirement. In addition, two jars are necessary so that one can be used as a temperature control (checking the temperature of the milk contaminates the sample).

Most other milk testing throughout the industry is performed with 2-ounce sample vials. These vials are disposable and sterile. At Bob-White Systems we have insulated shipping containers and ice-packs that can keep these vials below 4.5C for 24 hours. On the hottest summer months, however, it's possible that samples warm above that threshold. In those instances we can ask farmers to send pint jars in the same containers (the greater volume of milk stays cold longer). We have performed in-house experimentation to demonstrate this fact.

Conflict: Clearly, there is a lot of waste in the current policy. A gallon of milk, the time spent on hand-delivering and the time spent on handling glass jars is a burden for the farmers and the laboratories. The VAAFAM 'policy' should be changed, but after numerous letters and

meetings, they are unwilling to do so. VAAFM believes they have the authority to require mason jar samples because of the language in Section 2777 (f) (2) : "Producers shall ensure that only clean bottles are filled and distributed." VAAFM believes the only way to ensure the bottles are clean is to have them delivered to the lab. Alternatively, the agency could simply require farmers take samples *from* the jars they use for distribution. The agency believes farmers will cheat and we won't get a good, representative sample if we don't get an actual jar.

Solution: In order to reverse VAAFM's 'policy' we must edit the sentence above to read: "Producers shall ~~ensure that~~ use only clean bottles ~~are filled and distributed for distribution.~~" In addition, and for clarity's sake, it might be wise to edit the first sentence in Section 2777 (f) (3) to read: "A producer shall have unpasteurized milk tested twice per month by a U.S. Food and Drug Administration accredited laboratory by furnishing such lab with a reasonably small sample of milk taken from clean, filled bottles typically used for distribution."

There are other solutions to this problem that you may find are more appropriate in this legislation. VAAFM, however, has made it clear that they will only respect a legislative mandate to change this policy.

Sincerely,

Nick Zigelbaum  
Laboratory Director  
Bob-White Systems