

Dear Senators CORDER, Winder & Malepeai, and  
Representatives TRAIL, Andrus & Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho State Dept. of Agriculture:

IDAPA 02.04.08 - Rules Governing Grade A Milk & Milk Products

(Docket #02-0408-1001);

02.04.09 - Rules Governing Methods of Making Sanitation Ratings of Milk

Shippers (Docket #02-0409-1001);

02.04.10 - Procedures Governing the Cooperative State-Public Health

Services, Food & Drug Administration Program for

Certification of Interstate Milk Shippers (Docket #02-0410-1001);

02.04.11 - Rules Governing Evaluation of Milk Laboratories

(Docket #02-0411-1001).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 8-19-10. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 9-17-10.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address or FAX number indicated on the memorandum attached.



# Legislative Services Office Idaho State Legislature

*Serving Idaho's Citizen Legislature*

Jeff Youtz  
Director

## MEMORANDUM

TO: Rules Review Subcommittee of the Senate Agricultural Affairs Committee and the House Agricultural Affairs Committee

FROM: Principal Legislative Research Analyst - Katharine Gerrity *KAG*

DATE: August 2, 2010

SUBJECT: Idaho State Department of Agriculture

IDAPA 02.04.08 – Rules Governing Grade A Milk And Milk Products – Docket No. 02-0408-1001

IDAPA 02.04.09 – Rules Governing Methods Of Making Sanitation Ratings Of Milk Shippers – Docket No. 02-0409-1001

IDAPA 02.04.10 – Procedures Governing The Cooperative State-Public Health Services, Food And Drug Administration Program For Certification Of Interstate Milk Shippers – Docket No. 02-0410-1001

IDAPA 02.04.11 – Rules Governing Evaluation Of Milk Laboratories – Docket No. 02-0411-1001

### **1. IDAPA 02.04.08 – Rules Governing Grade A Milk And Milk Products**

The Idaho State Department of Agriculture submits notice of a temporary and proposed rule at IDAPA 02.04.08 – Rules Governing Grade A Milk And Milk Products. According to the Department, the rule will consolidate four rules that each relate to Grade A milk. The three additional rules reflected in this memo as being repealed are the subject of the consolidation. The Department notes that current versions of the various U.S. Department of Health and Human Services documents reflecting standards, presently incorporated by reference in the chapters that are herein being repealed and which comprise the entire chapter in each instance, are incorporated by reference in this rule. Those documents are set forth within Section 004 of this rule.

The Department also notes that the bacteria plate count and the somatic cell count standards of raw milk for pasteurization set forth in the Pasteurized Milk Ordinance will not be incorporated by reference in the proposed rule because Section 37-314, Idaho Code, requires that the plate count be set at 80,000 per mL and that is the standard that will be used in the rule. The

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

Don H. Berg, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

Department also indicates that the Idaho Dairymen's Association requested that the existing somatic cell count standard be amended in an effort to meet standards for international trade, to reduce risk of residues and potential pathogens and to enhance quality standards of milk and dairy products. The Department states that the request was for the standards to be set at 500,000 per mL, which is closer to the international standard of 400,000 per mL, rather than the current standard of 750,000 per mL.

The Department indicates that the temporary rule will go into effect on October 1, 2010 based on the fact that new milk quality standards for international trade standards will be in effect on that date. Although negotiated rulemaking was not conducted, the Department indicates that it did meet on numerous occasions with stakeholders within Idaho's dairy industry who agree upon the proposed changes.

The action appears to be authorized pursuant to Sections 37-332f, 37-405, 37-516, 37-708 and 37-803, Idaho Code.

**2. IDAPA 02.04.09 – Rules Governing Methods Of Making Sanitation Ratings Of Milk Shippers**

This is a chapter repeal. See Section 1 above.

**3. IDAPA 02.04.10 – Procedures Governing The Cooperative State-Public Health Services, Food And Drug Administration Program For Certification Of Interstate Milk Shippers**

This is a chapter repeal. See Section 1 above.

**4. IDAPA 02.04.11 – Rules Governing Evaluation Of Milk Laboratories**

This is a chapter repeal. See Section 1 above.

cc: Idaho State Department of Agriculture  
Brian J. Oakey  
Marv Patten

**IDAPA 02 - DEPARTMENT OF AGRICULTURE RULES**  
**02.04.08 - RULES GOVERNING GRADE A MILK AND MILK PRODUCTS**  
**DOCKET NO. 02-0408-1001**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2010.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 37-332f, -37405, 37-516, 37-708, and 37-803, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 18, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking will consolidate four rules that each address an aspect of Grade A milk into one rule. IDAPA 02.04.09, Rules Governing Methods of Making Sanitation Ratings of Milk Shippers; IDAPA 02.04.10, Rules Governing Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers; and IDAPA 02.04.11, Rules Governing the Evaluation of Milk Laboratories, will be consolidated into IDAPA 02.04.08, Rules Governing Grade A Milk and Milk Products. IDAPA 02.04.09, IDAPA 02.04.10, and IDAPA 02.04.11 each incorporate by reference a different document, and the incorporated document is the entire substance of each rule. The rules will be consolidated by incorporating by reference all the documents into IDAPA 02.04.08.

To adopt the most current requirements of the U.S. Department of Health and Human Services, Public Health Service, and Food and Drug Administration for interstate shipments of Grade A milk and milk products, this rulemaking will also incorporate the most current version of the documents currently incorporated by reference in IDAPA 02.04.08, IDAPA 02.04.09, IDAPA 02.04.10, and IDAPA 02.04.11. The latest version of the following documents will be incorporated by reference into IDAPA 02.04.08: 1) Grade "A" Pasteurized Milk Ordinance, 2) Methods of Making Sanitation Ratings of Milk Shippers, 3) Evaluation of Milk Laboratories, and 4) Procedures Governing the Cooperative State Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments.

The bacteria plate count and the somatic cell count standards of raw milk for pasteurization set forth in the Pasteurized Milk Ordinance will not be incorporated by reference in the proposed rule. Section 37-314, Idaho Code, requires that the bacteria plate count standard will be set at 80,000 per mL, and this will be the standard set forth in IDAPA 02.04.08. As for the somatic cell count standard, the Idaho Dairymen's Association ("IDA") requested that the Idaho State Department of Agriculture amend the existing somatic cell count standard in an effort to meet standards for international trade, as well as reduce risk of residues and potential pathogens, and enhance quality standards of milk and dairy products. The IDA requested that the somatic cell count standard be set at 500,000 per mL, which is closer to the international standard of 400,000 per mL. The new somatic cell count standard will be more stringent than the current standard of 750,000 per mL.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This is a temporary and proposed rulemaking with an effective date of October 1, 2010, because new milk quality standards for international trade standards will be in effect on October 1, 2010. The IDA requested that the amendments to the state's Grade A milk rule be in effect on October 1, 2010. These changes will benefit the dairy industry and consumers of milk and milk products. The changes to the milk quality standards will prepare the dairy industry to meet the more stringent milk quality requirements in the international market.



**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, a Notice of Intent to Promulgate Rules was not published, however the Department met on numerous occasions with stakeholders within Idaho's dairy industry who agree upon and advocate for the proposed changes.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The four documents incorporated by reference in this chapter set forth the requirements for interstate shipment of Grade A milk and Grade A milk products.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Marv Patten, Bureau Chief Dairy and CAFO Programs, 208-332-8550 or [marv.patten@agri.idaho.gov](mailto:marv.patten@agri.idaho.gov).

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

DATED this 28th day of June, 2010.

Brian J. Oakey  
Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road, Boise, ID 83712  
P.O. Box 790, Boise, ID 83701-0790  
Phone: (208) 332-8500 / Fax: (208) 332-4062

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 02-0408-1001**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 37, Chapters 3, 4, 5, 7, and 8, Idaho Code.

(~~4-8-94~~)(10-1-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

The Idaho State Department of Agriculture incorporates by reference the *U.S. Department of Health and Human Services Public Health Service Food and Drug Administration "Grade 'A' Pasteurized Milk Ordinance," 2003 Revision* following documents in this chapter. Copies of ~~this~~ these documents may be obtained at the Idaho State Department of Agriculture central office.

(~~4-6-05~~)(10-1-10)T

**01. Grade “A” Pasteurized Milk Ordinance.** The Grade “A” Pasteurized Milk Ordinance, 2009 revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, except the bacterial limit standard and the somatic cell count standard in Section 7 of the document. Available online at <http://www.fda.gov/downloads/Food/FoodSafety/Product-SpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSMModelDocuments/UCM209789.pdf>. (10-1-10)T

**02. Evaluation of Milk Laboratories.** The Evaluation of Milk Laboratories, 2007 revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. Available online at <http://www.fda.gov/downloads/Food/FoodSafety/Product-SpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSMModelDocuments/UCM197074.pdf>. (10-1-10)T

**03. Methods of Making Sanitation Ratings of Milk Shippers.** The Methods of Making Sanitation Ratings of Milk Shippers, 2009 revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. Available online at <http://www.fda.gov/downloads/Food/FoodSafety/ProductSpecificInformationMilkSafetyNationalConferenceonInterstateMilkShipmentsNCIMSMModelDocumentsUCM199077.pdf>. (10-1-10)T

**04. Interstate Milk Shipments.** The Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2009 revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, and the National Conference on Interstate Milk Shipments. Available online at <http://www.fda.gov/downloads/Food/FoodSafety/Product-SpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSMModelDocuments/UCM198446.pdf>. (10-1-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**007. REGULATORY FRAMEWORK.**

All Grade A Milk and Grade A Milk Products shall comply with the provisions set forth in the documents incorporated by reference in this chapter. (10-1-10)T

**008. MILK QUALITY STANDARDS.**

The following standards shall be substituted for the bacterial limit standard and the somatic cell count standard for Grade A raw milk and milk products for pasteurized, ultra-pasteurization or aseptic processing in Section 7 of the Grade “A” Pasteurized Milk Ordinance. (10-1-10)T

**01. Bacterial Limit Standard.** The bacterial limit standard is eighty thousand (80,000) per mL. (10-1-10)T

**02. Somatic Cell Count Standard.** The somatic cell count standard is five hundred thousand (500,000) per mL. (10-1-10)T

**0079. -- 999. (RESERVED).**

## IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

### 02.04.09 - RULES GOVERNING METHODS OF MAKING SANITATION RATINGS OF MILK SHIPPERS

#### DOCKET NO. 02-0409-1001 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2010.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 37-332f, 37-405, 37-516, 37-708, and 37-803, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 18, 2010. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: This rulemaking will consolidate four rules that each address an aspect of Grade A milk into one rule. IDAPA 02.04.09, "Rules Governing Methods of Making Sanitation Ratings of Milk Shippers"; IDAPA 02.04.10, "Rules Governing Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers"; and IDAPA 02.04.11, "Rules Governing the Evaluation of Milk Laboratories", will be consolidated into IDAPA 02.04.08, "Rules Governing Grade A Milk and Milk Products". IDAPA 02.04.09, IDAPA 02.04.10, and IDAPA 02.04.11 each incorporate by reference a different document, and the incorporated document is the entire substance of each rule. The rules will be consolidated by incorporating by reference all the documents into IDAPA 02.04.08. Consequently, IDAPA 02.04.09 will be repealed.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This is a temporary and proposed rulemaking with an effective date of October 1, 2010, because new milk quality standards for international trade standards will be in effect on October 1, 2010. The IDA requested that the amendments to the state's Grade A milk rule be in effect on October 1, 2010. These changes will benefit the dairy industry and consumers of milk and milk products. The changes to the milk quality standards will prepare the dairy industry to meet the more stringent milk quality requirements in the international market.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, a Notice of Intent to Promulgate Rules was not published, however the Department met on numerous occasions with stakeholders within Idaho's dairy industry who agree upon and advocate for the proposed changes.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Marv Patten, Chief Dairy and CAFO Programs, 208-332-8550 or [marv.patten@agri.idaho.gov](mailto:marv.patten@agri.idaho.gov). Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

Signed this 28th day of June, 2010.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road, Boise, ID 83712

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## IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

### 02.04.10 - PROCEDURES GOVERNING THE COOPERATIVE STATE-PUBLIC HEALTH SERVICES, FOOD AND DRUG ADMINISTRATION PROGRAM FOR CERTIFICATION OF INTERSTATE MILK SHIPPERS

DOCKET NO. 02-0410-1001 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2010.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 37-332f, 37-405, 37-516, 37-708, and 37-803, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 18, 2010.

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**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking will consolidate four rules that each address an aspect of Grade A milk into one rule. IDAPA 02.04.09, "Rules Governing Methods of Making Sanitation Ratings of Milk Shippers"; IDAPA 02.04.10, "Rules Governing Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers"; and IDAPA 02.04.11, "Rules Governing the Evaluation of Milk Laboratories", will be consolidated into IDAPA 02.04.08, "Rules Governing Grade A Milk and Milk Products". IDAPA 02.04.09, IDAPA 02.04.10, and IDAPA 02.04.11 each incorporate by reference a different document, and the incorporated document is the entire substance of each rule. The rules will be consolidated by incorporating by reference all the documents into IDAPA 02.04.08. Consequently, IDAPA 02.04.10 will be repealed.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This is a temporary and proposed rulemaking with an effective date of October 1, 2010, because new milk quality standards for international trade standards will be in effect on October 1, 2010. The IDA requested that the amendments to the state's Grade A milk rule be in effect on October 1, 2010. These changes will benefit the dairy industry and consumers of milk and milk products. The changes to the milk quality standards will prepare the dairy industry to meet the more stringent milk quality requirements in the international market.

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**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Marv Patten, Chief Dairy and CAFO Programs, 208-332-8550 or [marv.patten@agri.idaho.gov](mailto:marv.patten@agri.idaho.gov).



Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

Signed this 28th day of June, 2010.

Brian J. Oakey  
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Idaho State Department of Agriculture  
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**IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE**  
**02.04.11 - RULES GOVERNING EVALUATION OF MILK LABORATORIES**  
**DOCKET NO. 02-0411-1001 (CHAPTER REPEAL)**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2010.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 37-332f, 37-405, 37-516, 37-708, and 37-803, Idaho Code.

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**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This is a temporary and proposed rulemaking with an effective date of October 1, 2010, because new milk quality standards for international trade standards will be in effect on October 1, 2010. The IDA requested that the amendments to the state's Grade A milk rule be in effect on October 1, 2010. These changes will benefit the dairy industry and consumers of milk and milk products. The changes to the milk quality standards will prepare the dairy industry to meet the more stringent milk quality requirements in the international market.

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**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Marv Patten, Chief Dairy and CAFO Programs, 208-332-8550 or [marv.patten@agri.idaho.gov](mailto:marv.patten@agri.idaho.gov). Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

Signed this 28th day of June, 2010.

Brian J. Oakey, Deputy Director  
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