

Dear Senators SIDDOWAY, Smyser, Bock, and
Representatives ANDRUS, Boyle, Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Department of Agriculture:
IDAPA 02.04.08 - Rules Governing Grade A Milk and Milk Products (Docket No. 02-0408-1201).

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 05/30/2012. 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 06/27/2012.

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 on the memorandum attached below.



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Agricultural Affairs Committee and the House Agricultural Affairs Committee
FROM: Principal Legislative Research Analyst - Katharine Gerrity
DATE: May 10, 2012
SUBJECT: Department of Agriculture

IDAPA 02.04.08 - Rules Governing Grade A Milk and Milk Products (Docket No. 02-0408-1201)

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, effective January 1, 2012, the new international somatic cell count standard is 400,000 per mL. The Department states that to ensure marketability of Idaho dairy products internationally, the Idaho Dairymen's Association and the Idaho Milk Processors Association requested the Department to amend the existing somatic cell count standard from 500,000 mL to 400,000 mL. In addition, the Department notes that four documents incorporated by reference are being updated to include the most recent publication dates. The Department also states that the program is funded by a mill levy assessment paid by the dairy industry.

Negotiated rulemaking was not conducted based on the fact that the affected parties requested the change to ensure their products can be sold internationally. The action appears to be authorized pursuant to Sections 37-708 and 37-803, Idaho Code.

cc: Department of Agriculture
Brian Oakey
Marv Patten

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.08 - RULES GOVERNING GRADE A MILK AND MILK PRODUCTS

DOCKET NO. 02-0408-1201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 1, 2012.

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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 37-308, -314, -101, -403, -708, and -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 May 16, 2012.

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:

Effective January 1, 2012, the new international somatic cell count standard is 400,000 per mL. To ensure marketability of Idaho dairy products internationally, the Idaho Dairymen's Association (IDA) and the Idaho Milk Processors Association (IMP) requested the Idaho State Department of Agriculture to amend the existing somatic cell count standard from 500,000 mL to 400,000 mL.

Four (4) documents incorporated by reference are being updated to include the most recent publications dates. These documents are: 1) 2011 Pasteurized Milk Ordinance, 2) 2011 Methods of Making Sanitation ratings of Milk Shippers, 3) 2011 Evaluation of Milk Laboratories, and 4) 2011 Procedures Governing the Cooperative State Public Health Service/ Food and Drug Administration Program of the National Conference on Interstate Milk Shipments.

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 rulemaking with an effective date of June 1, 2012, because new milk quality standards for individual dairy farm milk supplies became effective January 1, 2012. The IDA and the IMP requested that the amendments to the state's Grade A milk rule be in effect on June 1, 2012. These changes will benefit the dairy industry and consumers of milk and milk products.

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

This is not a fee rule.

FISCAL IMPACT: There is no fiscal impact to the general fund. The program is funded by a mill levy assessment paid by the dairy industry, pursuant to 37-407, Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the affected parties, specifically the Idaho dairy industry, has requested this change to ensure their products can be sold to international markets and the incorporated reference documents are being updated to the most recent publication dates.

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:

This temporary and proposed rule is incorporating the latest editions which are the 2011 publication dates of the aforementioned documents. There are no new documents being incorporated into the temporary and proposed rule.

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.

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 May 23, 2012.

DATED this 3rd day of April, 2012.

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
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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY AND PROPOSED RULE
FOR DOCKET NO. 02-0408-1201**

004. INCORPORATION BY REFERENCE.

The Idaho State Department of Agriculture incorporates by reference the following documents in this chapter. Copies of these documents may be obtained at the Idaho State Department of Agriculture central office. (4-7-11)

01. Grade "A" Pasteurized Milk Ordinance. The Grade "A" Pasteurized Milk Ordinance, ~~2009~~ 2011 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/UCM291757.pdf>. (~~4-7-11~~)(6-1-12)T

02. Evaluation of Milk Laboratories. The Evaluation of Milk Laboratories, ~~2007~~ 2011 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/UCM293265.pdf>. (~~4-7-11~~)(6-1-12)T

03. Methods of Making Sanitation Ratings of Milk Shippers. The Methods of Making Sanitation Ratings of Milk Shippers, ~~2009~~ 2011 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/UCM290758.pdf>. (~~4-7-11~~)(6-1-12)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~~ 2011 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/UCM283586.pdf>. (~~4-7-11~~)(6-1-12)T

(BREAK IN CONTINUITY OF SECTIONS)

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. (4-7-11)

01. Bacterial Limit Standard. The bacterial limit standard is eighty thousand (80,000) per mL. (4-7-11)

02. Somatic Cell Count Standard. The somatic cell count standard is ~~five~~ **four** hundred thousand (~~5~~400,000) per mL. ~~(4-7-11)~~**(6-1-12)T**

03. Out of State Milk. Milk from other states, if processed in Idaho, shall comply with the Idaho somatic cell count standard. **(6-1-12)T**