

Dear Senators RICE, Den Hartog, Jordan, and
Representatives BOYLE, Dayley, Erpelding:

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

IDAPA 02.04.13 - Rules Governing Raw Milk - Proposed Rule (Docket No. 02-0413-1801).

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 09/24/2018. 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 10/23/2018.

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 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
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: Deputy Division Manager - Katharine Gerrity

DATE: September 06, 2018

SUBJECT: Idaho State Department of Agriculture

IDAPA 02.04.13 - Rules Governing Raw Milk - Proposed Rule (Docket No. 02-0413-1801)

Summary and Stated Reasons for the Rule

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.13 - Rules Governing Raw Milk. According to the department, the purpose of the rulemaking is to incorporate by reference the 2017 edition of the Grade A Pasteurized Milk Ordinance, except those provisions establishing raw milk standards for raw milk for pasteurization. An incorporation by reference synopsis is included in the materials. The department states that the Pasteurized Milk Ordinance is a state and federal requirement for all Grade A milk plants that sell for human consumption. The department notes that incorporating the most current version of the documents promotes uniformity throughout the United States dairy industry and the U.S. Food and Drug Administration.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted. The department does not anticipate any fiscal impact as a result of the rulemaking.

Statutory Authority

The rulemaking appears to be authorized pursuant to Section 37-303, Idaho Code.

cc: Department of Agriculture
Brian J. Oakey

*** PLEASE NOTE ***

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
www.legislature.idaho.gov

Per the Idaho Constitution, all administrative rules must be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.13 – RULES GOVERNING RAW MILK

DOCKET NO. 02-0413-1801

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 37-303, 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 September 19, 2018.

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 a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

To incorporate by reference the 2017 edition of the Grade A Pasteurized Milk Ordinance, except those provisions establishing raw milk standards for raw milk for pasteurization.

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 resulting from this rulemaking:

ISDA does not anticipate any fiscal impact as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, page 22](#).

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 Pasteurized Milk Ordinance (PMO) is a State and federal requirement for all Grade A milk plants that sell for human consumption. Incorporating the most current version of the documents promotes uniformity throughout the United States dairy industry and the U.S. Food and Drug Administration.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Vermeer, Section Manager-Division of Animal Industries at (208) 332-8551. 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 September 26, 2018.

Dated this 2nd day of August, 2018.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8550
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0413-1801
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

The following document is incorporated by reference, and copies of the document may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712: The Grade A Pasteurized Milk Ordinance 2009~~17~~ Revision, U.S. Department of Health and Human Services Public Health Service Food and Drug Administration (“2009~~17~~ Pasteurized Milk Ordinance”), except those provisions establishing raw milk standards for raw milk for pasteurization. This document is available online at <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM612027.pdf>. (4-7-11)()

(BREAK IN CONTINUITY OF SECTIONS)

010. STANDARDS FOR RAW MILK AND RAW MILK PRODUCTS.

01. Requirements. All raw milk and raw milk products shall be produced and processed to conform with the standards listed in Subsection 010.02 of this rule. Permitted dairy farms and raw milk plants must meet the sanitation requirements of the 2009~~17~~ Pasteurized Milk Ordinance, unless the dairy farm has a Small Herd Raw Milk Permit or has registered a herd share arrangement with the Department. (4-7-11)()

02. Chemical, Bacteriological, and Temperature Standards.

RAW MILK	
Temperature	Cooled to forty degrees Fahrenheit (40F or 5C) or less within two (2) hour after milking provided that the blend temperature after the first and subsequent milking does not exceed forty-five degrees Fahrenheit (45F or 7C).
Bacterial Limits	Raw milk and raw milk products except cultured raw milk products shall not exceed fifteen thousand (15,000) per ml.
Coliform Limits	Raw milk and raw milk products may not exceed twenty-five (25) per ml.
Drugs	Raw milk must test negative by a test method approved by the Department.
Somatic Cell Counts	Raw milk must not exceed five hundred thousand (500,000) per ml. Goat or sheep raw milk must not exceed seven hundred and fifty thousand (750,000) per ml.
Brucellosis Test	Raw milk obtained from sheep or goats must be from animals that have tested negative on an annual brucellosis test performed by an official laboratory. Raw milk obtained from bovines must be from animals that have tested negative on the Brucellosis Ring Test performed by an official laboratory.
Tuberculosis Test	All raw milk must be from animals that have been accredited as tuberculosis free or must have passed an annual tuberculosis test.

(4-7-11)

03. Commingled Milk. Milk from commingled species must meet the somatic cell count of the most restrictive species. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

020. RAW MILK PERMITS.

01. Requirements. It is unlawful for any person who does not possess a Raw Milk Permit from the Department to produce, process, sell or offer for sale raw milk or raw milk products for human consumption to persons other than members of the dairy farm's immediate household. (4-7-11)

02. Obtaining a Raw Milk Permit. Only a person who complies with these rules may receive and retain a Raw Milk Permit. Raw Milk Permits are not transferable with respect to persons or locations. Prior to the issuance of a permit each dairy farm whose raw milk or raw milk products are intended for human consumption within the state of Idaho must comply with the following requirements: (4-7-11)

- a. Submit to and pass a qualifying inspection conducted by the Department; (4-7-11)
- b. Meet the applicable sanitation, construction, and procedural requirements of the 2009¹⁷ Pasteurized Milk Ordinance; ~~(4-7-11)~~ ()
- c. Meet the raw milk and raw milk products quality standards in Section 010 of these rules; (4-7-11)
- d. Meet the tuberculosis and brucellosis standards in Section 010 of these rules; and (4-7-11)
- e. Produce and process all raw milk and raw milk products on the same premises. (4-7-11)

03. Inspection Frequency. Following the issuance of a permit, the Department will inspect each Raw Milk Permit holder operation at least once every three (3) months. (4-7-11)

04. Sanitation Requirements. All raw milk dairy farms and raw milk plants that process raw milk or raw milk products into final containers for human consumption must meet the requirements of the 2009¹⁷ Pasteurized Milk Ordinance and Section 010 of these rules if the raw milk or raw milk products are for use by persons other than the dairy farm's immediate household. ~~(4-7-11)~~ ()

021. -- 029. (RESERVED)

030. SMALL HERD RAW MILK PERMITS.

It is unlawful for any person with a small herd to sell raw milk and raw milk products for human consumption without a Small Herd Raw Milk Permit issued by the Department. The Small Herd Raw Milk Permit applies to raw milk and raw milk products intended for human consumption for persons other than members of the dairy farm's immediate household. (4-7-11)

01. Obtaining a Small Herd Raw Milk Permit. Only a person who complies with these rules may receive and retain a Small Herd Raw Milk Permit. The Small Herd Raw Milk Permit will indicate the physical location of the small herd and the mailing address of the owner or operator in charge of the herd's care and milk quality. Small Herd Raw Milk Permits are not transferable to another person or location. Applications for a Small Herd Raw Milk Permit may be upon a form provided by the Department. All holders of Small Herd Raw Milk Permits issued by the Department must meet the following conditions: (4-7-11)

- a. Meet the raw milk and raw milk products quality standards as set forth in Section 010 of these rules; (4-7-11)
- b. Meet the tuberculosis and brucellosis standards as set forth in Section 010 of these rules; (4-7-11)
- c. Meet the applicable drug testing requirements as determined by the Department based on dairy farm drug therapy and milk quality history; and (4-7-11)

- d.** All raw milk and raw milk products must be produced and processed on the same premises. (4-7-11)
- 02. Testing Frequency.** Raw milk or raw milk products must be tested at a frequency of at least four (4) times in separate months during any consecutive six-month period. (4-7-11)
- 03. Product Quality.** Whenever three (3) out of five (5) consecutive bacteria, coliform, or somatic cell counts exceed milk quality standards, the milk may not be offered for human consumption until subsequent product testing shows that the raw milk or raw milk products comply with Section 010 of these rules. (4-7-11)
- 04. Test Results Made Available.** A Small Herd Raw Milk Permit holder must provide raw milk and raw milk product quality tests results if requested by individuals who purchase raw milk and raw milk products. (4-7-11)
- 05. Exemption from Pasteurized Milk Ordinance.** A small herd operation that is in compliance with a Small Herd Raw Milk Permit requirements is exempt from the sanitary, construction, inspection, and operation requirements of the 20~~09~~¹⁷ Pasteurized Milk Ordinance. (~~4-7-11~~)()

INCORPORATION BY REFERENCE SYNOPSIS

In compliance with Section 67-5223(4), Idaho Code, the following is a synopsis of the differences between the materials previously incorporated by reference in this rule that are currently of full force and effect and newly revised or amended versions of these same materials that are being proposed for incorporation by reference under this rulemaking.

The following agency of the state of Idaho has prepared this synopsis as part of the proposed rulemaking for the chapter cited here under the docket number specified:

IDAHO STATE DEPARTMENT OF AGRICULTURE
IDAPA 02.04.13 - Rules Governing Raw Milk
Proposed Rulemaking - Docket No. 02-0413-1801

Amendments to the 2017 Grade A Pasteurized Milk Ordinance (PMO)

The PMO was modified to bring requirements in line with the Preventative Controls Rule of the Food Safety Modernization Act (FSMA) that will allow FDA to accept the PMO, the written Food Safety Plan and written recall plan for all regulated facilities. The 2015 NCIMS conference identified areas the PMO were deficient in the meeting the requirements of the new FSMA rules. These deficiencies were addressed and a new Appendix T was written that now includes all standards relating to Grade A FSMA requirements. These changes are only applicable to those producers that participate in the Grade A raw milk program. Most raw milk dairy producers in Idaho fall under the small herd exemption, in which case this incorporation by reference document does not apply.