

Dear Senators Nichols, Zito, Semmelroth, and
Representatives Raymond, Shirts, Mathias:

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

IDAPA 02.04.05 - Rules Governing Grade A Milk and Manufacture Grade Milk-Proposed Rule
(Docket No. 02-0405-2601).

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 11/09/2026. 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 12/07/2026.

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 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondeff
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: Legislative Drafting Attorney - Alli Olson
DATE: October 22, 2026
SUBJECT: Department of Agriculture

IDAPA 02.04.05 - Rules Governing Grade A Milk and Manufacture Grade Milk-Proposed Rule (Docket No. 02-0405-2601)

Summary and Stated Reasons for the Rule

The Idaho Department of Agriculture submits notice of proposed rulemaking for the rules governing Grade A Milk and Manufacture Grade Milk, IDAPA 02.04.05. ISDA states that purpose of the rulemaking is to make the rule consistent with changes approved by the Idaho Legislature in the 2026 session pertaining to additional testing of milk by the Department (H 879).

Negotiated Rulemaking / Fiscal Impact

ISDA states that negotiated rulemaking was conducted and notice was published in the July 1, 2026, Idaho Administrative Bulletin, Vol. 26-7, pages 41-42. The Department also states that there will not be a negative fiscal impact greater than \$10,0000 to the general fund.

Statutory Authority

The Department appears to have the authority to promulgate this rule pursuant to sections 37-303, 37-405, 37-516, Idaho Code.

cc: Department of Agriculture
Lloyd Knight

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules may 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.

Paul Headlee, Deputy Director Legislative Services Office	Matt Drake, Manager Research & Legislation	Keith Bybee, Manager Budget & Policy Analysis	April Renfro, Manager Legislative Audits	Norma Clark, Manager Information Technology
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IDAPA 02 – IDAHO DEPARTMENT OF AGRICULTURE

02.04.05 – RULES GOVERNING GRADE A MILK AND MANUFACTURE GRADE MILK

DOCKET NO. 02-0405-2601

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 Sections [37-303](#), [37-402](#), [37-405](#), and [37-516](#) 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 October 21, 2026.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

The scope of this rulemaking was to implement the amendments to the authorizing statute approved by the Legislature in [H.662](#) during the 2026 Session. This amendment provided for additional testing of milk by the department, and the rulemaking further defined the process by which testing will be facilitated for additional quality parameters. The rulemaking also incorporated by reference the 2025 edition of the Grade A Pasteurized Milk Ordinance; 2025 edition of the Evaluation of Milk Laboratories reference document; 2025 Methods of Making Sanitation Ratings of Milk Shippers reference document and 2025 edition of Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration reference document.

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:

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

NEGOTIATED RULEMAKING: Pursuant to Section [67-5220\(1\)](#), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 1, 2026 Idaho Administrative Bulletin, [Vol. 26-7, page 41-42](#).

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:

These documents are recognized nationally as the primary reference and regulatory documents related to Grade A milk and milk products. 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 Dr. Scott Leibsle, Administrator – Division of Animal Industries at (208) 332-8614.

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 October 28, 2026.

DATED this 26th day of August, 2026.

Scott R. Leibsle DVM
State Veterinarian/Administrator
Division of Animal Industries
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8614
Email: scott.leibsle@idsa.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0405-2601
(Only Those Sections With Amendments Are Shown.)

02.04.05 – RULES GOVERNING GRADE A MILK AND MANUFACTURE GRADE MILK

104. INCORPORATION BY REFERENCE.

All Grade A Milk and Milk Products shall comply with the provisions set forth in the following documents incorporated by reference in this Subchapter A only: (3-15-22)

01. Grade “A” Pasteurized Milk Ordinance. The Grade “A” Pasteurized Milk Ordinance, ~~2023~~ 2025 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 ~~<https://www.fda.gov/media/180975/download?attachment>~~ [\(7-1-25\)\(\)](https://ncims.org/wp-content/uploads/2026/06/2025-PMO.pdf?attachment).

02. Evaluation of Milk Laboratories. The Evaluation of Milk Laboratories, ~~2023~~ 2025 revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. Available online at ~~<https://www.fda.gov/media/180977/download?attachment>~~ [\(7-1-25\)\(\)](https://ncims.org/wp-content/uploads/2026/07/2025-EML.pdf).

03. Methods of Making Sanitation Ratings of Milk Shippers, and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufactures. The Methods of Making Sanitation Ratings of Milk Shippers, and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufactures, ~~2023~~ 2025 revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. Available online at ~~<https://www.fda.gov/media/180976/download?attachment>~~ [\(7-1-25\)\(\)](https://ncims.org/wp-content/uploads/2026/07/2025-MMSR.pdf).

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, ~~2023~~ 2025 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 ~~<https://www.fda.gov/media/180974/download?attachment>~~ [\(7-1-25\)\(\)](https://ncims.org/wp-content/uploads/2026/07/2025-Procedures.pdf).

(BREAK IN CONTINUITY OF SECTIONS)

271. AUDITING PAYMENTS FOR MILK OR CREAM.

The Department shall initiate an audit of samples and test results of milk and cream, tested in accordance with the most current edition of the “Standard Methods for the Examination of Dairy Products”, at the request of a buyer or seller. The audit shall be conducted to determine the accuracy of payments for milk and cream by the buyer to the seller where price is based on or determined by the milkfat, protein, lactose, solids nonfat, or somatic cell counts, or by any other quality parameter or other analyte, of the milk or cream. Any such audit shall be according to the following procedures: ()

01. Commencement of Audit. The Department shall commence an audit upon receipt of a written request from a buyer or seller. All audit requests must be submitted to the Department within sixty (60) days of the collection of any sample that is disputed. The scope of any audit is limited to the sixty (60) days preceding the date of the request and the time period during which the audit is conducted. ()

02. Notifications and Responses to an Audit. The Department shall notify all interested parties (buyer/seller) of the audit request within five (5) business days of receipt. The party responding to the audit request is subsequently required to file an answer with the Department within ten (10) business days after receipt of the request. The answer to the audit request shall then be served upon the buyer and seller by the Department within five (5) business days of receipt. ()

03. Split Samples. During the audit process, the buyer and seller have the right to request and receive splits from the same samples for independent testing or provide split sample results that were previously tested. ()

04. Audit Committee. The Department shall refer the request for audit, and the answer, to a three (3) person audit committee. No member of the audit committee may have a financial or pecuniary interest in the outcome of the audit. Any members of the audit committee not employed by the State of Idaho shall be compensated as provided in section 59-509 (b), Idaho Code. The three (3) member committee shall select a chairman from its membership who will conduct deliberations of the audit committee and direct all of its other activities. Upon request, the Department may provide administrative support to the audit committee. The audit committee shall consist of the following individuals: ()

a. A representative selected by the president of the Idaho Dairymen’s Association; ()

b. A representative selected by the president of the Intermountain Milk Processors Association; and ()

c. The director or the director’s designee from within the Department. ()

05. Audit Committee Investigation and Report. The audit committee shall complete a full investigation of the audit request and report its findings to the parties within thirty (30) days of the responding party’s answer, or such later date as agreed by the buyer and seller. The audit committee shall issue a written report of its investigation that includes findings regarding the test sample results and the amount of discrepancy, if any, in payments for milk and cream by the buyer to the seller. The written report shall be served on the buyer and seller upon its issuance. The audit committee’s report shall be deemed the final action of the Department. ()

06. Investigatory Authority. In the course of its investigation, the audit committee may: ()

a. Examine the buyer and the seller on all matters which the audit committee considers relevant. ()

b. Submit milk or cream samples for testing by the state laboratory or state-designated laboratory, with said samples to be collected by a department-licensed bulk milk hauler. ()

c. Hold non-public meetings at such time and place as the chairman may direct upon reasonable notice to all parties. ()

d. Upon the chairman’s request, call any person in for comments knowledgeable on any matter under

investigation. ()

07. Non-Waiver. The rights and procedures provided to the audit process described by this rule may not be altered or varied by agreement, contract or otherwise. ()

27~~4~~². -- 279. (RESERVED)

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:

IDAPA 02 – IDAHO DEPARTMENT OF AGRICULTURE

02.04.05 - RULES GOVERNING GRADE A MILK

DOCKET NO. 02-0405-2601

Incorporation By Reference Summary

02.04.05.104.01 – Pasteurized Milk Ordinance (PMO)

The 2025 PMO revisions focus on four major themes. 1) Updating requirements for direct loading of milk and allowing greater flexibility in the use of milk tank trucks for on-farm cooling and storage. These changes establish clear sanitary design, sampling, and inspection requirements that accommodate modern dairy operations without compromising milk safety. 2) Another significant area of change involved the drug residue testing program. The PMO was updated to remove outdated terminology related to "target testing levels" and better align Appendix N with current FDA policies and enforcement practices, providing greater consistency in how drug residue testing is conducted and interpreted across the industry. 3) The Conference also approved changes that expand the definition of Officially Designated Laboratories to include authorized commercial laboratories, increasing laboratory capacity while maintaining regulatory oversight. 4) Additional revisions updated requirements for farm bulk tank cleaning, modernized standards for magnetic flow meter systems used in higher-temperature processing, and permitted the post-pasteurization addition of cream during yogurt production. New definitions, updated inspection forms, and revised certification procedures further improve clarity and consistency for both regulators and industry.

02.04.05.104.02 – Evaluation of Milk Laboratories (EML)

The 2025 EML clarifies drug-residue testing roles, expands officially designated laboratory requirements, creates a conditional certification pathway for analysts using similar methods, reduces certain automated-method proficiency testing from 14 samples to 6, and provides a defined equipment reference list for Laboratory Evaluation Officers.

02.04.05.104.03 - Methods of Making Sanitation Ratings of Milk Shippers, and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufactures. (MMSR)

The 2025 MMSR generally modernizes and streamlines the program by updating animal-health provisions, providing a less burdensome rating option for qualifying single-service container and closure manufacturers, and formally classifying retort products within the IMS product-code system.

02.04.05.104.04 – Interstate Milk Shipments

The only substantive change is Proposal 306, which establishes a much more detailed and standardized process for certifying and recertifying State Rating Officials.