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02.04.09 – Rules Governing Milk and Cream Procurement and Testing

IDAPA 02
TITLE 04
CHAPTER 09

02.04.09 – RULES GOVERNING MILK AND CREAM PROCUREMENT AND TESTING

000. LEGAL AUTHORITY.
This chapter is adopted under the legal authority of Sections 37-303 and 37-516, Idaho Code. (3-21-12)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.09, "Rules Governing Milk and Cream Procurement and Testing." (3-21-12)

02. Scope. These rules govern the standards, procedures, and equipment for the analysis of milk components when analysis of milk components and quality parameters is used as a basis of payment. (3-21-12)

002. WRITTEN INTERPRETATIONS.
There are no written interpretations of this rule. (3-21-12)

003. ADMINISTRATIVE APPEALS.
Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. There is no provision for administrative appeal before the Department of Agriculture under these rules. (3-21-12)

004. INCORPORATION BY REFERENCE.
These rules do not incorporate any material by reference. (3-21-12)

005. ADDRESS, OFFICE HOURS, TELEPHONE, FAX NUMBERS, WEB ADDRESS.
The Idaho State Department of Agriculture central office is located at 2270 Old Penitentiary Road, Boise, ID 83712-8298. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is PO Box 7249, Boise, Idaho 83707. The phone number is (208) 332-8500 and the fax number is (208) 334-2170. The Department web address is https://agri.idaho.gov/. (3-21-12)

006. IDAHO PUBLIC RECORDS ACT.
These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture central office. (3-21-12)

007. ABBREVIATIONS.
There are no abbreviations in this chapter. (3-21-12)

008. DEFINITIONS.
The following definitions apply in the interpretation and the enforcement of this chapter: (3-21-12)

01. Abnormal Test. A test result from a producer sample that is dissimilar from recent producer milk component or quality parameter testing results; an anomaly. (3-21-12)

02. Accuracy Check. A test made at the beginning of each testing session and once per hour thereafter to determine the continued accuracy of the testing device. (3-21-12)

03. Approved Testing Methods. Methods approved by the director for testing milk or cream components and quality parameters when those components and parameters are used as a basis of payment. (3-21-12)

04. Calibration. The settings established on a testing device that will result in an average number of results that are within tolerance. (3-21-12)

05. Clearance Test. A sample set issued to an official laboratory, by the Department, to maintain a probationary testing license or reinstate a suspended testing license. (4-11-19)

06. Control Samples. Milk samples used to determine or set the calibration of the testing device. (3-21-12)

07. Component Testing. An analysis of milk or cream constituents including milkfat, protein, lactose or solids-nonfat, which is used as a basis of payment. (3-21-12)

08. Detailed Pricing Description. The method used by the purchaser of milk or cream as the criteria for determining the price paid. (3-21-12)

09. Milk Component or Component. A unique compound within milk whose relative mass within the milk may be used to determine the payment to producers. Component parts of milk include milkfat, protein, lactose, solids-nonfat, other solids, and total solids. (3-21-12)

10. Official Laboratory. A facility, licensed by the department, that tests milk or cream components or quality parameters for the purpose of determining the value of the product when sold or purchased by producers or processors. (3-21-12)

11. Outlier. A regulatory sample result that appears to deviate markedly from other members of the sample set in which it occurs. (3-21-12)

12. Pay Records. Signed written or printed records, which itemize milk volume, milk component and quality parameters used as payment to a producer or other processor. (3-21-12)

13. Performance Error. The difference between the known percentage content of each milk component in the control sample, as determined by the sample provider, and the percentage content as measured by the testing device. (3-21-12)

14. Producer. A dairy farm permitted by the department to sell milk for human consumption. (3-21-12)

15. Processor. A creamery, milk plant, shipping or cream buying station, milk condensing plant, cheese factory, mix making plant, ice cream factory, reprocessing plant, casein plant, powdered milk plant, or factory of milk products, or other person receiving or purchasing milk or cream in bulk other than a retail vendor of milk on the basis of volume, milk components, or milk quality. (3-21-12)

16. Quality Parameter. The quality of milk or cream as determined by the bacteria/plate count method, somatic cell count, temperature, drug residues or other parameters as approved by the department. (3-21-12)

17. Rolling Group of Thirteen (13). A series of thirteen (13) consecutive sample testing dates where the lab performance error of each biweekly component test is averaged together to represent the long term accuracy of the lab. To be considered a valid testing date, a lab must evaluate and provide results on no less than nine (9) component samples from each round of testing. (4-11-19)

18. Testing Device. The equipment used to determine the percentage of milk or cream components. (3-21-12)

19. Sample Set. A group of not less than nine (9) milk samples issued by the Department to each official laboratory to evaluate component testing accuracy. (4-11-19)

20. Tolerance. The acceptable performance error from the control values of each sample set as determined by the sample provider. (4-11-19)

009. -- 049. (RESERVED)

050. REGULATORY COMPLIANCE.
All milk and cream produced, purchased or sold in the state of Idaho at a price based upon or determined by the

milkfat, protein, lactose, solids-nonfat, somatic cell counts, or other quality parameters, shall comply with the requirements in these rules. (3-21-12)

051. LABORATORY LICENSING REQUIREMENTS.

01. License Required. All laboratories that test milk or cream components and quality parameters for a basis of payment must be licensed by the department as an official laboratory. (3-21-12)

02. License Application. A laboratory must apply for a license on a form prescribed by the department. The laboratory must identify (on the application form) the names of all persons who will test milk or cream components and quality parameters. (3-21-12)

03. License Fee. The license fee is twenty-five dollars ($25). (3-21-12)

04. License Term. The official laboratory license is valid for three (3) calendar years after issuance by the department, unless otherwise suspended or revoked in accordance with these rules. The license expires on December 31 of the third year. (3-21-12)

052. -- 099. (RESERVED)

100. OFFICIAL LABORATORIES - RESPONSIBILITIES AND OPERATING PROCEDURES.

01. Competency in Testing. Official laboratories are responsible for ensuring that employees who operate testing devices are competent to operate the devices, and for conducting testing according to these rules. (3-21-12)

02. Facility Requirements. The areas in official laboratories where component or quality parameter testing is conducted shall be well lighted, kept clean, appropriately ventilated and sufficient in size to provide for accurate testing. Laboratories that are certified under the Grade A program set forth in IDAPA 02.04.08.000 et seq., "Rules Governing Grade A Milk and Milk Products," are deemed to satisfy the facility requirements for an official laboratory. (3-21-12)

03. Operating Procedures. An official laboratory shall establish and follow written standard operating procedures consistent with the recommended procedures for operation and maintenance set forth by the manufacturer of the testing device. (3-21-12)

101. THIRD PARTY LABORATORIES.
Procurers of milk who use official laboratories other than one owned or operated by the procurer are not responsible for that laboratory's failure to comply with these rules. (3-21-12)

102. - 109. (RESERVED)

110. MILK COMPONENT TESTING DEVICES.
If an automated testing device is used to perform a milk component test for any milk component, that device must be calibrated and regularly checked to ensure that it accurately tests for that milk component. (3-21-12)

01. Calibration and Checks. Calibration and checks must include the utilization of calibration samples, performance checks and accuracy checks. (3-21-12)

02. Calibration Standards. Calibration may be done either in accordance with the standards set forth by the manufacturer of the testing device, or as set forth in Sections 110, 111 and 130 of this rule. (3-21-12)

03. Calibration Record Keeping. In either case, the official laboratory must be able to demonstrate, through records kept in accordance with Section 350, that calibration and checks have been performed in accordance with these rules, and that the testing device produces test results within the tolerances established in these rules. (3-21-12)

111. CALIBRATION OF MILK COMPONENT TESTING DEVICES.
All testing devices shall be calibrated according to the protocols set by the testing device manufacturer, or as set forth in this Section. (3-21-12)

01. Calibration Frequency. A milk component testing device shall be calibrated whenever the mean difference on a daily performance check under Section 121 herein exceeds plus or minus forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat. (3-21-12)

02. Calibration Samples. A set of calibration samples may consist of commercially available samples or samples made by the official laboratory. A set of calibration samples must consist of at least nine (9) individual samples, each of which: (3-21-12)

a. Cannot be more than twenty-one (21) days old; (3-21-12)

b. Must be a fresh milk sample preserved with bronopol (2-bromo-2-nitro-1, 3-propanediol) or another approved preservative. Preservative methods, formulations and concentrations must be approved by the department. (3-21-12)

c. Must have a known percentage content of each relevant milk component, determined by the sample provider. (3-21-12)

d. Must meet the requirements of Section 120 of this rule. (3-21-12)

03. Calibration Procedure. To calibrate a testing device, the official laboratory must use the device to test a set of calibration samples. The testing device shall be adjusted, as necessary, to satisfy each of the following requirements: (3-21-12)

a. The performance error on each calibration sample shall be as near as practicable to zero (0). (3-21-12)

b. The mean difference for the entire set of calibration samples shall be as near as practicable to zero (0), and shall not exceed plus or minus forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat. The mean difference is the sum of the performance errors for the individual calibration samples, divided by the number of samples in the set. (3-21-12)

c. The standard deviation of test results, calculated for the set of calibration samples shall not exceed forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat. (3-21-12)

112 - 119. (RESERVED)

120. SAMPLE INTEGRITY.
Milk or cream samples must be handled, stored, and shipped in a manner that maintains the integrity of the samples. Samples must be maintained in a temperature range of thirty-three degrees (33°) to forty-five degrees (45°) Fahrenheit (zero point fifty-five hundredths degrees (0.55°) to seven point twenty-two hundredths degrees (7.22°) Celsius). (4-11-19)

121. DAILY PERFORMANCE CHECKS.
All testing devices must be subjected to a daily performance check before each day's testing, in accordance with the standards set by the testing device manufacturer, or as set forth in this section. (3-21-12)

01. Daily Performance Check Samples. (3-21-12)

a. Source. A set of daily performance check samples must be obtained from a sample provider approved by the department, or may be made by the official laboratory. (3-21-12)

b. Number. Unless otherwise specified by the manufacturer of the testing device, a minimum of two (2) control milk samples must be analyzed before daily component testing begins. (3-21-12)

c. Requirements. The control samples must comply with the requirements set forth in Section 111 of this rule and fall within the component ranges typically found in the samples to be tested. (4-11-19)

02. Procedure. To conduct a daily performance check, the official laboratory must test a set of daily performance check samples. Based on the daily performance check, the official laboratory must do the following: (3-21-12)

a. Determine the performance error of the testing device with respect to each daily performance check sample. The performance error is the difference between the known percentage content of each milk component in that sample, as determined by the sample provider, and the percentage content as measured by the testing device; and (3-21-12)

b. Calculate the mean difference for the set of daily performance check samples. The mean difference is the sum of the performance errors for the individual samples, divided by the number of samples in the set. (3-21-12)

03. Calibration Based On Daily Performance Check. If the mean difference calculated on a daily performance check exceeds plus or minus forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat, the testing device shall not be used until it is recalibrated in accordance with Section 111. (3-21-12)

122. -- 129. (RESERVED)

130. ACCURACY CHECKS.
All testing devices shall be subjected to daily and hourly accuracy checks in accordance with the protocols set by the testing device manufacturer, or as set forth in this Section. (3-21-12)

01. Daily Accuracy Check. A daily accuracy check must be conducted for each relevant milk component before each day's testing at the same time that the daily performance check is conducted. The official laboratory must perform ten (10) tests on a reference sample. The reference sample may be a homogenized milk sample prepared by the official laboratory, or it may be a daily performance check sample obtained from an approved sample provider. The ten (10) test results must be averaged, and the average result will be used as a comparison value for the hourly accuracy checks required in Subsection 130.02. (3-21-12)

02. Hourly Accuracy Check. An hourly accuracy check must be conducted for each milk component before each hour's testing for that component. (3-21-12)

a. To conduct an hourly accuracy check, the official laboratory must test the same reference sample used for the daily accuracy check. (3-21-12)

b. For each relevant milk component, the hourly accuracy check result must be compared to the average result obtained on the daily reference check under Subsection 130.01. If an hourly accuracy check result differs from the average result on the daily accuracy check by more than thirty-four thousandths percent (.034%) for milkfat or protein, or sixty-four thousandths percent (.064%) for total solids or solids-nonfat, the testing device shall not be used until the condition causing the difference is found and corrected. (3-21-12)

c. Test results obtained before the device is corrected, and subsequent to the last previous conforming accuracy check, must not be used in determining the amount paid to milk producers. (3-21-12)

131. -- 139. (RESERVED)

140. ABNORMAL TESTS.
Whenever an abnormal test occurs on a producer's sample, that result may not be used as a basis of payment. (3-21-12)

01. Alternate Tests. In the case of an abnormal test, the official laboratory will use an average of the previous three (3) tests from that producer or another department approved method. (3-21-12)

02. Accidents and Sampling Errors. Laboratory accidents or sampling errors on milk or cream to be tested will not be used as official results and the criteria in Subsection 140.01 will be instituted. (3-21-12)

03. Documentation. All abnormal tests must be documented by the person conducting the test. (3-21-12)

141. -- 199. (RESERVED)

200. DETAILED PRICING DESCRIPTION.
On each pay record to the seller, purchasers or procurers of milk or cream must provide the seller with all pricing detail needed to determine the net payment for the product sold. At a minimum, the detail must include the following: (3-21-12)

01. Pricing Method and Pounds Purchased. If more than one (1) pricing method is used, the detail must include the pounds purchased at each method. The pricing method may include: (3-21-12)

a. The value of each component per pound; (3-21-12)

b. The total value of total component pounds; (3-21-12)

c. The yield formula type and value of the end product(s); or (3-21-12)

d. Fixed pricing type. (3-21-12)

02. Total Weight or Volume. If weight is used, it must be expressed by pounds. If volume is used, it must be expressed in U.S. gallons. (3-21-12)

03. Component Information. All relevant component testing averages or pounds of solids for each component. (3-21-12)

04. Bonuses and Deductions. All quality bonuses or deductions and the applicable quality parameters used to calculate the bonuses or deductions. (3-21-12)

05. Hauling Charges. All hauling charges and any applicable surcharges. (3-21-12)

06. Other Deductions. All other payment deductions including check-offs, administrative fees, and laboratory fees. (3-21-12)

07. Other Factors. All other factors affecting net payment. (3-21-12)

08. Availability. Pay records must be made available to the department upon request, and be maintained by the procurer or processor for at least one (1) year. (3-21-12)

201. -- 300. (RESERVED)

301. REGULATORY COMPLIANCE - INSPECTIONS AND RECORDS REVIEW.
The department shall have access at any time to official laboratories to review testing procedures, records, or to conduct other inspections or tests to determine compliance with these rules and Title 37, Chapter 5, Idaho Code. Any time a testing device is being operated to test for milk components or other quality parameters, the department may provide samples to an official laboratory, and require the official laboratory to immediately process those samples in order to ensure compliance with these rules. (3-21-12)

302. REGULATORY SAMPLES.

01. Sample Set. (4-11-19)

a. The department will provide sample sets to official laboratories, on a bi-weekly basis or at a frequency determined by the department to be necessary to ensure accurate component testing results. (4-11-19)

b. The samples will be obtained from the company or entity that provides calibration samples to the official laboratory, if available. The department may provide regulatory samples from other sources if necessary. (3-21-12)

c. The official laboratory must immediately process the samples, while being observed by a department employee or agent, for those components used by the processor or procurer as a basis of payment. (3-21-12)

d. The official laboratory must evaluate the sample set using identical control standards and device settings which are used to routinely evaluate Idaho producer milk components for basis of payment. (4-11-19)

e. If the official laboratory is unable to process the samples due to maintenance or mechanical issues, the department employee or agent who is delivering the samples may wait for the testing device to become operable. If the integrity of the regulatory samples is compromised due to the delay, the department may obtain and deliver an additional set of regulatory samples. (3-21-12)

02. Regulatory Sample Results. The regulatory sample results will be compiled and evaluated by the department in rolling groups of thirteen (13) (4-11-19)

03. Outliers. Sample results that have been identified as outliers will not be used in the calculation of tolerance for regulatory test results. (3-21-12)

04. Regulatory Sample Tolerances. Each group of rolling thirteen (13) average shall be within the following tolerances for those components used as a basis of payment by the processor or procurer: (4-11-19)

a. Plus or minus two hundredths percent (.02%) for milkfat and protein. (4-11-19)

b. Plus or minus sixty-five thousandths percent (.065%) for solids, other than milkfat or protein. (3-21-12)

303. LICENSE SUSPENSION AND REVOCATION BASED ON REGULATORY SAMPLES.

01. Two (2) Out of Four (4) Violation. Whenever the average performance error of two (2) of the last four (4) rolling groups of thirteen (13) exceed the tolerance for milkfat, protein, or solids as set forth in Subsection 302.04 of this rule, the Department will issue a written notice to the official laboratory. This notice shall be in effect as long as two (2) of the last four (4) rolling groups of thirteen (13) exceed the allowable tolerance for component testing. (4-11-19)

02. License Suspension. If two (2) out of four (4) of an official laboratory's rolling groups of thirteen (13) average are out of tolerance pursuant to Subsection 302.04 of this rule, the Department will evaluate the following items prior to suspending the testing license. (4-11-19)

a. Records Review. The Department shall review records kept by the official laboratory pursuant to Section 350 of this rule. (4-11-19)

b. Clearance Test. The average performance error of the official laboratory must be within plus or minus thirty-one thousandths percent (.031%) protein, thirty-three thousandths percent (.033%) milkfat and sixty-five thousandths percent (.065%) other solids on all scheduled sample sets, until the official laboratory no longer exceeds the performance tolerance on two (2) out of four (4) rolling groups of thirteen (13) average. If an official laboratory does not meet these performance requirements on each component of the clearance test, the testing license shall be suspended. (4-11-19)

c. Probation. The Department may place an official laboratory on probation for two (2) weeks if: (4-11-19)

i. The records demonstrate all calibration and performance checks of all testing devices were performed, as required under these rules, and are operating within the tolerances set forth in Sections 110, 111, and 130 of this rule; and (4-11-19)

ii. The average performance error in the clearance test sample set was within plus or minus thirty-one thousandths percent (.031%) protein, thirty-three thousandths percent (.033%) milkfat, and sixty-five thousandths percent (.065%) other solids. Clearance test results from laboratories on probationary status shall be included in the calculation of the rolling group of thirteen (13) average. (4-11-19)

03. License Reinstatement. An official laboratory may seek reinstatement of a suspended license by completing the following: (4-11-19)

a. Written Request. The official laboratory shall provide the Department a written request for reinstatement of their testing license. The request shall include documentation detailing the procedural corrections that have been made to the testing device(s), as well as a minimum of two (2) weeks of component testing results demonstrating that the testing device(s) have been and will remain in tolerance. (4-11-19)

b. Clearance Test. The average performance error of the official laboratory must be within plus or minus thirty-one thousandths percent (.031%) protein, thirty-three thousandths percent (.033%) milkfat, and sixty-five thousandths percent (.065%) other solids on a sample set issued by the Department. If the request for reinstatement does not coincide with the normal biweekly sample set issued by the Department, the official laboratory will be solely responsible for the cost of procuring and shipping the additional sample set. Clearance test results used for license reinstatement shall not be included in the calculation of the rolling group of thirteen (13) average. (4-11-19)

04. License Revocation for Repeated Out of Tolerance Test Results. If the regulatory sample results are repeatedly out of tolerance, the department may initiate steps to revoke the official laboratory's license to conduct component testing for three (3) months or more. (3-21-12)

304. – 349. (RESERVED)

350. RECORD KEEPING.
Records must be maintained by the official laboratory in accordance with this section, and must be made available for examination by the department, upon the department's request. (3-21-12)

01. General Provisions. (3-21-12)

a. No record may be altered except that errors may be corrected by striking through the original entry and inserting the correct entry immediately adjacent to the original. A corrected entry shall be initialed by the person who made the corrected entry. (3-21-12)

b. Records may be maintained in paper or electronic format. In either case, the records must: (3-21-12)

i. Be effectively secured against loss or tampering. (3-21-12)

ii. Be readily retrievable for inspection by the dairy plant operator and the department. (3-21-12)

iii. If corrected, have the correction identified so that the reader may easily compare the corrected version to the original. (3-21-12)

02. Calibration Check Equipment Records. All calibration check and equipment maintenance records must be documented and provided during an inspection by the department. The documentation must include

the following: (3-21-12)

a. Instrument identification. (3-21-12)

b. Name of the laboratory technician or maintenance person who performed the calibration or maintenance. (3-21-12)

c. Time and date of the calibration check or maintenance. (3-21-12)

d. Type of analytical test or maintenance performed. (3-21-12)

e. Results of the analytical test or maintenance. (3-21-12)

f. Details of action taken to correct calibration tolerances or mechanical problems. (3-21-12)

03. Records Retention - Time Limit. The dairy plant operator or the official laboratory must maintain the records required under this section for at least one (1) year. (3-21-12)

351. -- 399. (RESERVED)

400. ENFORCEMENT.

01. License Suspension. The director may suspend official laboratory component testing from any laboratory not meeting these rules until the official laboratory has satisfactorily demonstrated compliance with these rules. (3-21-12)

02. Effect of License Suspension. If an official laboratory's license is suspended, the official laboratory cannot conduct component testing for use as a basis of payment and must use a licensed third-party laboratory. Procurers of milk who must use a licensed third-party laboratory must pay any associated component testing fees. (3-21-12)

401. -- 999. (RESERVED)

Subject Index