

**PROPOSED IDAPA LANGUAGE IN FURTHERANCE OF
IMPLEMENTING IDAHO CODE sec. 37-506.**

Protocols for Testing Milk and Cream. All testing of milk and cream pursuant to Idaho Code sec. 37-506 must be done in accordance with the most current edition of the “Standard Methods for the Examination of Dairy Products”. Split samples must be tested according to an ISDA-approved testing method.

Auditing Payments for Milk or Cream. The department shall initiate an audit of samples and test results of milk and cream taken pursuant to Idaho Code sec. 37-506 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.

1. Commencement of Audit. An audit shall be commenced upon the department’s receipt of a request of a buyer or seller for an audit. The party requesting the audit must submit a written request to the department on forms approved by the department within sixty (60) days of the collection of any sample that is disputed. The request for audit of the buyer or seller shall be served upon the buyer and seller by the department within five (5) days of receipt.
2. Scope of Audit. The scope of any audit is limited to the sixty (60) days preceding the date of the written request for an audit from a buyer or seller, and the time period during which the audit is conducted.
3. Right to Split Samples. During the audit process the buyer and seller shall each receive, upon request, splits from the same samples and have the right to have samples independently tested.
4. Answer to Audit Notice. Within ten (10) days after receipt of a written request of a buyer or seller for an audit, the party responding to the audit request shall file an answer to the audit request with the department. The answer received by the department shall be served upon the buyer and seller by the department within five (5) days of receipt.
5. Referral to Audit Committee. The request for audit, and the answer, shall be referred to a three (3) person audit committee upon service of the answer by the department. 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.

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 audit committee shall select a chairman from its membership. The chairman shall conduct deliberations of the audit committee and direct all of its other activities. Upon request by the chairman, the department may provide administrative support to the audit committee.

6. Audit Committee Investigation and Report. The audit committee shall make a prompt and full investigation of the matters encompassed by 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 agency action of the department.
7. 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, said samples to be taken by a milk hauler authorized by the department pursuant to chapter 3, title 37, Idaho Code.
 - 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.
8. Non Waiver. The rights and procedures provided by this rule may not be altered or varied by agreement, contract or otherwise.