



**BRAD LITTLE**, GOVERNOR

**CELIA GOULD**, DIRECTOR

## ISDA 2021 Negotiated Rulemaking

### April 2021 Update

Dear Stakeholders,

As the rulemaking season approaches, we wanted to provide a roadmap as to what rulemaking will look like this year. We will have some new processes and rulemakings as a result of executive orders or legislative changes. The one constant is the importance of having your participation and involvement. We know our agency benefits from a close relationship with our programs and the needs or expectations of stakeholders.

ISDA’s 2021 negotiated rulemaking will fall into two categories:

- Rules reviewed as part of the Governor’s Zero-Based Regulation Executive Order, and/or
- Rules reviewed as a result of new legislation.

All notices for these negotiated rulemakings will publish in the Administrative Bulletin on April 2, 2021. The Administrative Bulletin can be found at <https://adminrules.idaho.gov/bulletin/>.

### **Zero-Based Rulemaking**

Governor Little’s Executive Order No. 2020-01 – Zero Based Regulation – directs agencies to facilitate an ongoing review process for existing rules, requiring agencies to put each rule on a five-year review schedule. This process aims to reduce the overall regulatory burden, or remain neutral, as compared to the original rule. Attached you will find the entire five-year review schedule for the agency. Specifically, for 2021, the following rules are scheduled for Zero Based Rulemaking. Notices will be published in the April Administrative Bulletin and meeting dates also are listed below. We strongly encourage all interested stakeholders to participate in these rulemaking meetings.

IDAPA	Name	Meeting Dates
IDAPA 02.04.05	Rules Governing Grade A Milk and Manufacture Grade Milk	Tuesday, April 20, May 18, and June 15 all from 8:30 a.m. to noon
IDAPA 02.04.13	Rules Governing Raw Milk	Tuesday, April 20, May 18, and June 15 all from 1:30 to 5 p.m.
IDAPA 02.04.19	Rules Governing Domestic Cervidae *needs to be updated per legislative action, will include ZBR*	Wednesday, April 21, May 19, and June 16 all from 8:30 a.m. to noon
IDAPA 02.06.33	Organic Food Products Rules	Wednesday, April 21, Monday, May 17, and Wednesday, June 16 all from 1:30 to 5 p.m.
IDAPA 02.04.21	Rules Governing Importation of Animals	Thursday, April 22, May 20, June 17 from 8:30 a.m. to noon
IDAPA 02.04.27	Rules Governing Deleterious Exotic Animals	Thursday, April 22,

		May 20, June 17 from 1:30 to 5 p.m.
IDAPA 02.06.06	Rules Governing the Planting of Beans	Friday, April 23, May 21, June 18 from 8:30 a.m. to noon
IDAPA 02.06.09	Rules Governing Invasive Species and Noxious Weeds	Friday, April 23, May 21, June 18 from 1:30 to 5 p.m.
IDAPA 02.04.14	Rules Governing Dairy Byproduct *needs to be updated per legislative action, will include ZBR*	Monday, April 19, Wednesday, May 19, Monday, June 14 from 1:30 to 5 p.m.

The format of each rulemaking meeting will be similar:

- Facilitated by the Rules Review Coordinator with ISDA staff on hand to answer technical questions and present draft language from previous discussions or as provided by law.
- Initial discussion drafts will be developed by agency staff simply as a starting point for the first meeting and drafts will reference those sections required by statute and those sections that may be out of date with the statute or other incorporated reference documents.
- If stakeholders have proposed changes or drafts they would like to submit for discussion during the meetings, they can email them to [rulesinfo@isda.idaho.gov](mailto:rulesinfo@isda.idaho.gov) prior to the next meeting so they can be shared on screen.
- Meetings will be held via WebEx.
- As always, all rulemaking information will be posted on the ISDA website under “Laws and Rules.” Information for joining all upcoming meetings will be posted on the website.
- Agency staff will compile minutes, presented materials, and stakeholders’ recommended draft changes. This information also will be posted to the ISDA website.
- ISDA needs to have proposed rules and other supporting materials submitted to DFM in mid-July to ensure adequate time for review prior to publication in the September Bulletin, the subsequent comment period, and a final rule to be prepared for presentation for review by the 2022 Legislature.

If you have any questions or to RSVP for a meeting, please contact Lloyd Knight, ISDA’s Rules Review Coordinator at [rulesinfo@isda.idaho.gov](mailto:rulesinfo@isda.idaho.gov).

## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.04.05 - RULES GOVERNING GRADE A MILK AND MANUFACTURE GRADE MILK

#### 02.04.13 - RULES GOVERNING RAW MILK

#### 02.04.19 - RULES GOVERNING DOMESTIC CERVIDAE

#### 02.06.33 – ORGANIC FOOD PRODUCTS RULES

#### 02.04.21 - RULES GOVERNING IMPORTATION OF ANIMALS

#### 02.04.27 - RULES GOVERNING DELETERIOUS EXOTIC ANIMALS

#### 02.06.06- RULES GOVERNING THE PLANTING OF BEANS

#### 02.06.09- RULES GOVERNING INVASIVE SPECIES AND NOXIOUS WEEDS

DOCKET NO. 02-XXXX-XXXX (OARC will assign)

### NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 22-1103, 22-1907, 22-2004, 22-2006, 25-203, 25-303, 25-305, 25-401, 25-601, 25-3704, 25-3903, 37-303, 37-402, 37-405, 37-516, 37-1101(5), Idaho Code.

**MEETING SCHEDULE:** Public meetings on the negotiated rulemaking meetings will be held as follows. Additional meetings may be scheduled and will be posted on the ISDA website.

#### MEETINGS SET FOR PUBLIC PARTICIPATION VIA TELEPHONE AND WEB CONFERENCING

<b>IDAPA 02.04.05 Rules Governing Grade A Milk and Manufacture Grade Milk</b> Tuesday, April 20, May 18, and June 15 from 8:30 am to noon
<b>IDAPA 02.04.13 Rules Governing Raw Milk</b> Tuesday, April 20, May 18, and June 15 from 1:30 to 5:00 pm
<b>IDAPA 02.04.19 Rules Governing Domestic Cervidae</b> Wednesday, April 21, May 19, and June 16 from 8:30 am to noon
<b>IDAPA 02.06.33 Organic Food Products Rules</b> Wednesday, April 21, Monday, May 17, and Wednesday, June 16 from 1:30 to 5:00 pm
<b>IDAPA 02.04.21 Rules Governing Importation of Animals</b> Thursday, April 22, May 20, June 17 from 8:30 am to noon
<b>IDAPA 02.04.27 Rules Governing Deleterious Exotic Animals</b> Thursday, April 22, May 20, June 17 from 1:30 to 5:00 pm
<b>IDAPA 02.06.06 Rules Governing the Planting of Beans</b> Friday, April 23, May 21, June 18 from 8:30 am to noon
<b>IDAPA 02.06.09 Rules Governing Invasive Species and Noxious Weeds</b> Friday, April 23, May 21, June 18 from 1:30 to 5:00 pm

Contact [rulesinfo@isda.idaho.gov](mailto:rulesinfo@isda.idaho.gov) to make arrangements for participation by telephone and web conferencing.

On March 25, 2020, Governor Little issued a Proclamation declaring an emergency and taking steps to reduce and slow the coronavirus spread. In compliance with the Proclamation and Stages of Reopening, ISDA will hold this meeting via telephone and web conferencing.

**METHOD OF PARTICIPATION:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the scheduled meeting via telephone and web conferencing. Individuals interested in participating by telephone and web conferencing should contact [rulesinfo@isda.idaho.gov](mailto:rulesinfo@isda.idaho.gov). For those who cannot participate by attending the meeting, information for submitting written comments is provided below.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency website.

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**DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

These rules are being presented for authorization as part of the ISDA's plan to review each rule every 5 years. There are no specific rulemaking changes planned by the ISDA at this time except for evaluation and amendment consistent with the Governor's Zero-Based Regulation Executive Order. It is anticipated that rulemaking stakeholders will propose and advocate for rulemaking changes as part of the negotiated rulemaking process. The ISDA intends to carefully consider all changes presented by the public and may propose certain changes so long as they are consistent with the rules' statutory authority and the Governor's Executive Order. The ISDA will review the documents that are currently incorporated by reference in this rule and update that list as applicable.

Incorporated by reference documents presented for review will be part of informal negotiated rulemaking and stakeholders will provide input on that process.

**ASSISTANCE ON TECHNICAL QUESTIONS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking, contact Lloyd Knight, Rules Review Officer at (208) 332-8664. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the ISDA web site at the following web address: ([www.agri.idaho.gov/rulemaking](http://www.agri.idaho.gov/rulemaking).)

**SUBMISSION OF WRITTEN COMMENTS:** Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 20, 2021.

DATED this 3<sup>rd</sup> day of March, 2021.



Lloyd B. Knight  
Rules Review Officer  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 7249  
Boise, Idaho 83707  
Phone: (208) 332-8664  
Fax: (208) 334-2170

**From:** [Greg Collett](#)  
**To:** [Rulesinfo](#)  
**Subject:** {External}Re: Raw Milk Strawman Update  
**Date:** Sunday, June 20, 2021 11:56:12 PM

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After attending the meeting on June 15, I wanted to share some additional thoughts:

Speculation was voiced stating that product liability insurance would be more difficult to obtain if the state did not perform regular testing of raw milk. This is simply not true. I checked with my insurance provider and they only require "Compliance with County, State, and Federal Food and Safety Regulations". It does not matter what those regulations are. If the state does not require product testing then the insurance company does not require it.

There seemed to be quite some controversy over combining the Small Herd and Unlimited programs. The opposition was primarily coming from a few Unlimited producers. My feeling is that they were attempting to stifle competition by keeping barriers to entry in place for smaller farms to grow into larger operations. Please note that I am one of the larger Unlimited producers and do not share those feelings. I believe in free market principles and I feel it is morally wrong to use the power of the state to further my business interests by reducing competition.

I remember one of the producers stating that the reason the small herd limit was set at three was because he was willing to build a Grade A facility for that number of cows. Does that mean if I was willing to build a Grade A facility for a single goat or cow, we should then require all producers to do the same? That is absurd.

Having different requirements for different herd sizes does not make sense. In either case, raw milk is being provided to consumers. Are we trying to "protect" some consumers but not others? A four cow dairy is a completely different operation than a 100 cow dairy, but under the current rules they are treated the same. A three cow dairy is not much different than a four cow dairy yet under the current rules they are treated quite differently. Setting a herd limit size is arbitrary, no matter the size.

If an industry wants to have standards, so be it. Those who are new to the industry might find that knowledge base helpful. The problem comes when standards are enforced by the state. This conformity, usually done in the name of safety, stifles innovation and increases costs. Consumers will demand the quality they seek and any business not providing it will have a hard time staying in business.

Each producer can decide what they need for infrastructure to scale up. As larger facilities and equipment are needed, they will naturally become more commercial. Hand milking will be replaced by machine, pails will be replaced with bulk tanks, single stanchions will be replaced by milking parlors, refrigerators will be replaced by walk-in coolers, etc. Why does one producer need to worry about what another producer uses? Just because I have some nice piece of equipment does not mean I should require everyone to obtain it. Just because I have a great procedure in place does not mean I should require everyone to follow it.

Questions were raised as to why the state would continue to require Brucellosis and TB testing while not continuing to require drug, bacteria, and SCC testing. I don't think anyone pointed out that one was testing animals and the other was testing milk. I would recommend eliminating both requirements, but logically either one could be eliminated without the other.

I concur with the comments that have been made about Brucellosis and TB testing and the problem with a regressing anniversary date. I also agree with the comments questioning the need for such testing considering the rarity of problems. I propose that section 013 STANDARDS FOR RAW MILK AND RAW MILK PRODUCTS be completely eliminated. If this proposal is not accepted, at least fix the discrepancy between the text preceding the table and the text within the table.

One of the primary arguments against removing testing and sanitation requirements was that human

nature, when not compelled by the state, would result in poor quality products and outbreaks of food-borne illnesses. This is just the opinion of a scaremonger. It relies on two premises: (1) that motivation to provide quality products comes from the state, and (2) that the product is inherently unsafe if not produced in some manner dictated by the state. Both are false.

Producers should be motivated by their consumers and their own inner sense of respect to provide quality products, which I believe is largely the case. Those who aren't will have a hard time staying in business. If someone feels like the force of the state is needed for motivating others, could it be that they themselves are that way?

I have visited and consumed milk from some raw milk dairies where I would never go back as a customer. And yet, they met all of the requirements of the state. On the other hand, I have visited dairies that chose not to be regulated by the state and yet I had confidence in their operations and products. State enforcement of industry standard regulations does not guarantee that milk will not get contaminated and the lack of enforcement in no way increases the chance that milk will get contaminated.

The state made it very clear that the measures they put in place for product safety with testing and sanitation requirements did not produce the intended result. Why are some producers so adamant in keeping around something that didn't work? There was a lot of money spent on the well meant effort, but it was not worth it. Those putting up the money are now calling it into question and want to institute user fees instead. Do producers really want to directly pay for something that is not necessary?

To those producers who believe that reduced regulations will cause mayhem I would suggest they continue with all the measures they hold so dear. Enforce them yourselves on your own farm. If you are correct in your fears, you will be the only ones standing at the end as all others go out of business from the predicted food-borne illness outbreaks and you will have the monopoly you desire. If you are wrong, then... maybe you will eventually recognize that fact.

Another comment I have has to do with the attitude about the safety of raw milk in general. This attitude comes primarily from the propaganda produced by the CDC. If raw milk is inherently unsafe, as they claim, then why is there even a raw milk program in Idaho? The proposed warning just continues the propaganda:

"WARNING: This product has not been pasteurized and may contain harmful bacteria. Raw milk, no matter how carefully produced, may be unsafe."

Is there any food that a similar label could be put on where such a statement would be false? There is a risk of contamination everywhere. Yes, we try to be careful in production of all foods, but all foods are at some level of risk, including pasteurized milk and other cooked foods. Where is the warning on those foods? Why have they not been condemned and singled out like raw milk? Even the CDC has admitted that the top ten riskiest foods are: Leafy greens, Eggs, Tuna, Oysters, Potatoes, Cheese, Ice Cream, Tomatoes, Sprouts, and Berries. Where is the agenda against those foods? Where are the warning labels for those foods? Why are those foods not banned in interstate commerce? Raw milk does not even come close to being near the top in the list of the most risky foods and yet it gets treated like it is the greatest threat to humanity.

I was shocked that raw milk providers have also bought into the propaganda. Why are you even selling raw milk? Why are you willing to perpetuate the fraud by clinging to testing standards that have no scientific basis or meaning?

Pasteurized milk gets tested for bacterial levels to confirm the efficacy of the pasteurization process. Raw milk needs no such testing since it should contain bacteria. The beneficial bacteria in raw milk has been shown in experiments to crowd out and eliminate pathogens whereas pasteurized milk leaves behind a breeding ground for pathogens. Raw milk is a living food; pasteurized milk is a dead (cooked) food. Try this simple experiment: Leave raw milk sitting out and it will sour and curdle yet still be a viable food source. Leave pasteurized milk sitting out and it will putrefy and become deadly.

Raw milk has survived as a food source through not just the centuries, but through the millennia— in fact throughout all recorded history. Can we please stop vilifying it? This is not a philosophical debate. These are real facts, supported by logic and science. The CDC is not just misleading, but they (and other organizations and agencies) publish outright lies about raw milk. Please read the research. It can be found from many sources, but an easy place to start is here: <https://www.westonaprice.org/health-topics/facts-about-raw-milk/>. Also, read the actual studies that the CDC uses as references in their publications and compare it to what they say.

I agree with the comments made by others about the impracticality of implementing warnings on labels, especially glass bottles. However, I believe the stronger argument is that no other food is required to carry such warnings even though they pose much more of a risk for food-borne illnesses, so why should raw milk carry a warning? I propose that section 014 LABELING - 03 Product Warning be eliminated.

To say that it is irresponsible of the state to pull back from testing and sanitary inspections is to completely ignore science and common sense. The efficacy of the existing program has been called into question. If you believe those programs are necessary then prove it by logic, facts, or scientific research. All of those prove otherwise.

Some have expressed the feeling that the state has a duty, obligation, mandate, or responsibility to protect the public by regulating raw milk. If this really was the case, then what liability does the state incur? The answer is none at all. Even though the force of law requires raw milk providers to get a permit, submit samples for testing, implement sanitation requirements, etc.— all in the name of food safety— if someone does get sick the state takes no responsibility and is not held liable in any way for such an occurrence even when the producer has met all requirements. If the state is not willing to accept any liability then why should the state get any say?

The argument that consumers expect or demand oversight from the state regarding raw milk is a generalization. While some may, others do not. Regardless, it is not a valid reason for the state to take action anyway. Government should stay within its proper role, not act on the whims of self-serving individuals. Government oversight does not result in food safety. Compare the historical numbers and types of food-borne illness outbreaks with amounts of corresponding regulatory oversight and it will become very apparent. Any consumer confidence in government regulation is a sham.

Finally, I wanted to address the legal standing of the state to regulate raw milk. From comments made by state officials in previous meetings, the state believes it has authority to regulate all raw milk sales in the state. However, the only law dealing with the sale of raw milk is in regard to herd shares, of which we were told there were zero permits currently registered with the state. That means that all current sales of raw milk in the state are outside of the regulation provided for by statute. The small herd and unlimited raw permits are simply made up in administrative rules and are not in keeping with the statute. The sale of raw milk in Idaho is not declared unlawful except in the administrative rule. Administrative rules should be in keeping with the statutes, and in the case of raw milk regulation it is clearly not. If the state wishes to “remedy” this it should do so through legislative action. My proposal is to eliminate all sections of the current proposed rules except for section 040 HERD SHARE PROGRAMS. Otherwise, the state leaves itself in a very vulnerable legal position should the need for a challenge ever arise.

Comments about the very latest proposal adding requirements regarding Nutrient Management Plans:

The latest proposal that added Nutrient Management Plan requirements was very unsettling. Once again, the state wants to set up an arbitrary distinction on herd size. Why was the number 30 chosen? Is there scientific data behind this? What about 29 or 31 or 3 (like it is with existing rules) or 1000? My current herd size is 33. Did this factor in? To meet customer demand, I have been growing my herd over the past several years and plan to continue to do so up to a maximum herd size of 50 allowed by my current lease. However, if I know there are additional regulations for herd sizes over 30 I may decide to curtail back to that number just to avoid the extra hassle. Is that the intent of the state— to artificially keep herd sizes smaller?

Also, the requirement for a NMP does not consider the facilities of the dairy; for instance, pasture versus

confined feeding. Even though animal units are used to define herd size, it does not properly consider the complexities of manure handling for different species. Most importantly, this is a situation where government is trying to solve a problem that it created itself by classifying something that is good and beneficial as waste and a pollutant.

I know one of the producers mentioned the NMP in the last meeting and the benefit from becoming certified to write his own plan. I am also certified to write my own plan and I can assure you that there was no benefit on my part to the certification meeting nor to the existence of an actual plan. It is simply red tape, time consuming, and a complete waste of money. If followed as required, it also poses a breach of privacy for unwitting citizens.

As with other aspects of running a dairy, producers can take care of the manure from their farms as they see fit without needing someone else telling them how to do it. If for some reason a dairy farmer is negligent and causes problems with neighbors they should be prosecuted for that. A NMP is not required.

One of the desirable side effects of eliminating testing and sanitary inspections from the administrative rules will be reducing the cost of administering the raw milk program. Does the state really want to add costs back in with manure inspections that have no perceivable benefit?

I propose that section 030 NUTRIENT MANAGEMENT PLANS be eliminated along with the definition in 010-04. If the state is unwilling to consider my proposal, I suggest they at least modify the herd size to be more in line with a larger CAFO.

Greg Collett  
Provident Farm LLC





June 17, 2021

Dr. Scott Leibsle  
Idaho State Department of Agriculture  
Idaho State Veterinarian

Mr. Lloyd Knight  
Idaho State Department of Agriculture  
Rules Review Officer

RE: IDAPA 02.04.13 Rules Governing Raw Milk

Dr. Leibsle and Mr. Knight,

This letter is a follow-up from our June 9<sup>th</sup> letter related to the Rules Governing Raw Milk (IDAPA 02.02.13).

The IDA is supportive of the changes made at the latest negotiated rulemaking meeting for Rules Governing Raw Milk. We are appreciative of the efforts made to reduce expenditures from the dedicated dairy fund, which resulted in reduced testing. We feel it is a fiscally prudent approach. We believe maintain Brucellosis and Tuberculosis testing requirement is sensible to protect from the potential of transmission of those diseases.

We also support the addition of Nutrient Management Plan (NMP) for all raw milk operations with 30 or more animal units. That requirement is more than justified given all licensed Grade A dairies, regardless of size, are required by law to have an NMP.

Lastly, the addition of Labeling - 14.03 Product Warning, adds valuable consumer protections for those inclined to purchase raw milk products. We do believe reconsideration should be given to adding back into the Rule sanitation inspections. This process underscores the sanitary process and provides an opportunity for those marketing raw milk products to better understand the on-farm factors that may be linked to food born illness resulting from the consumption of said products.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Naerebout", is written over a horizontal line.

Rick Naerebout  
Chief Executive Officer  
Idaho Dairymen's Association, Inc.

195 River Vista Place  
Twin Falls, Idaho 83301  
208.736.1953  
[www.idahodairymens.org](http://www.idahodairymens.org)

**Dicsie R. Gullick**

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**From:** Guernsey Goodness <paul@pleasantmeadowcreamery.com>  
**Sent:** Friday, June 18, 2021 12:05 PM  
**To:** \_Rulesinfo  
**Subject:** {External}Raw milk rules comment regarding final strawman

I strongly urge the Department to add a retail shelf warning option, similar to what Washington state requires, in lieu of a product label warning where adding the warning to the product label is not feasible.

In our glass bottle situation, we have no label on the bottles - since the bottles are re-usable glass and attempting to apply and then remove labels to the glass upon cleansing and sanitizing for re-use is not economically or practically feasible.

Our caps are the only place we place a label, and the label, being so small, is at least half-consumed with the barcode and then other requirements of labeling under the raw milk rule. It would be impossible to put a warning on the cap label:



A retail shelf warning option provides the same benefit claimed for the warning label requirement in the final negotiated rule-making meeting, made by Dr. Liebsle, that the purpose of the warning is to alert that consumer who otherwise has not idea about raw milk and is about to make an adhoc purchase without prior study of the hazards.

Paul Herndon  
Pleasant Meadow Creamery Inc

**From:** [Sara Sweet](#)  
**To:** [Dr. Scott Leibsle](#); [Lloyd Knight](#)  
**Subject:** {External}Re: Raw Milk Strawman Update  
**Date:** Friday, June 18, 2021 1:19:52 AM  
**Attachments:** [image003.png](#)

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Here is my input on these changes, for the record. If this is not the right way to submit my input please redirect me!

My name is Sara Sweet and I am permitted by the ISDA for a small herd exemption to sell raw milk. I have been operating under this permit for several years, being the second individual to obtain such a permit. I have reviewed the 2021 changes proposed for the raw milk rules in Idaho. In short, the proposed changes eliminate all milk quality testing for anyone selling raw milk, everyone from an individual with one backyard cow to a large raw milk dairy, and also eliminate any facility inspection for any large raw milk facility. To me, this change is irresponsible on behalf of the ISDA.

Prior to the small herd exemption being created, the sales of raw milk was technically illegal in Idaho. Why? Presumably because there was no way for the ISDA to oversee the quality of the products being sold, and at that time, the ISDA felt a responsibility to Idahoans that products being offered for sale were under the umbrella of oversight that the ISDA provides. The initial raw milk rules provided that oversight. The 2021 changes being proposed now imply that the ISDA has no responsibility to oversee the quality or practices of raw milk production or raw milk products produced or sold in Idaho. To me, the idea that the ISDA has no responsibility to do so is false, because Idaho consumers believe that such oversight must be occurring if products are legal to sell.

Consumers believe that the state has a responsibility of oversight, and as a producer, so do I. When the small herd exemption was instituted, I helped other small herd producers distribute their products to consumers via home delivery. Because I was involved in the distribution, monitoring milk quality results was important to me, so I requested copies of milk quality tests for all small herd exempted producers and reviewed them regularly. I visited St Johns raw milk dairy and discussed principles of milk quality with owner Peter Dill to better understand how to produce a quality product. I know from my record requests that there were many small producers who were failing milk quality tests. I personally visited a few of these producers (with their consent and by request) and observed their milking and milk handling procedures to help them identify factors in their practices that might be causing problems.

There were producers with practices and milking areas that were not clean, and they were not producing an uncontaminated product. For example, one producer washed but did not dry the cow's udder. In this case, the dirt and manure that may have been on the cow's udder would have been still present in the wash water on the udder and sucked into the machine or dripped into the bucket. These well-intentioned individuals were alerted to their cleanliness issues because of the milk quality test results. The testing was helpful to myself as well, as we introduced a milking machine and found that with so many milk contact surfaces, we had to take into account many new factors to produce a product that would reliably pass milk quality tests. In my experience, the milk quality tests were very helpful in identifying problems in cleanliness of the products.

I understand that because of the "honor code" style of the milk sample collections from

small herd producers, not all milk samples were representative of the final raw milk product. By this I mean that because milk samples collected for testing were provided by the small herd producers without any regulation in how those samples were collected, this meant that the samples could have just been taken straight from the cow's udder into the collection tubes, rather than run through the milking machine, strainers, and/or batch cooling procedure. Method of collection was on the honor system. Other requirements such as the duration of cooling to a set temperature were not able to be monitored by the state. It was impractical to do so. But such guidelines, indeed all the quality guidelines listed for small herd producers to follow did provide a benchmark for inexperienced producers to use as goals for their practices, even when the samples were on the honor system.

In the meeting on raw milk rules that I was able to attend on June 15, I did not hear support from very many individuals present on the changes being proposed. I don't feel like the raw milk producers in that meeting believed that it is in the best interest of the consumers to do away with all milk quality and facilities testing for raw milk producers. How could it be? Eliminating all oversight is not in the consumers' best interest. Grouping all raw milk producers, regardless of size, into one category is not wise, since the practices of small-scale and large-scale producers is vastly different and present a completely different risk to consumers. A small producer where customers come visit that farm vs large producers whose products appear on store shelves for consumers to purchase without knowing where it comes from are totally different things. I believe that making a distinction between small scale producers with a couple of cows who can hand milk and hand bottle vs large scale producers with milking equipment and cooling equipment is completely different and requires different oversight.

I ABSOLUTELY believe that the ISDA has a responsibility to Idaho consumers to inspect ALL large scale raw milk facilities, both pasteurized and raw milk producers, whose products are being sold to consumers, particularly in retail locations. To eliminate inspection of facilities is completely irresponsible. Even if milk quality testing requirements were adjusted, facilities inspection should continue. Exempting raw milk production from any rules is to set up the whole raw milk industry to fail, and perhaps that is the goal of de-regulating raw milk?

I understand that the current milk quality testing may not be able to predict food-borne illness, because specific pathogens that cause illness are not being tested for. However, I agree with the several raw milk producers who voiced in the June 15 meeting that milk quality tests do help identify overall cleanliness.

There were concerns brought up by the ISDA regarding the cost of milk quality testing. I do think that there are some alternate changes that could be beneficial for the raw milk program to lower the costs of testing. For example, I do not think that regular milk quality testing is necessary for all small herd raw milk producers who have a history of passing milk quality tests and who have consumers come to them for pickup. Such producers could demonstrate in 5-6 months of consistent passing of milk quality tests that their milk is satisfactory, and could thereafter be tested quarterly or bi-annually. This should reduce costs and man-hours significantly.

To address the issue of samples being on the "honor system," if the ISDA wished to obtain a more accurate milk sample from the small herd producers, I believe they would

need to personally witness the producer pour such a sample from a finished container of milk. I do understand, however, that when a small herd producer is selling only a few gallons of milk a week or filling up jars provided by customers that this is quite inconvenient, as obtaining the sample “ruins” that container (as it is then short) or relies on the consumer to provide a sterile container. Perhaps producers selling less than 15-20 gallons AND/OR any producer who sells directly from the farm only could provide the “honor system” milk samples, while those selling in locations off their farm or selling a higher quantity of milk could be held to a higher standard.

In regards to the new labeling proposal to require lengthy warnings posted on all raw milk products; if the ISDA is requesting that producers label raw milk in a way that indicates that it is dangerous, then that means the ISDA believes that raw milk presents a risk, and therefore should do their part to mitigate this risk rather than “opt out” of all oversight. Slapping a warning label on raw milk rather than attempting to facilitate the safe production of raw milk is a cop-out. Labeling does not make the consumer more safe, whereas facilities inspection and milk quality testing has the potential to do so. Labeling is also very inconvenient for small producers who do not use labels for their raw milk products and/or when milk jars are being washed and reused regularly (and labels do not stay on the jars). Again, when customers come to the farm, they know exactly what they are purchasing. The only place where labels on raw milk would be necessary would be in a retail location, where consumers may not know what they are buying. Even then, if the words “Raw” and “Unpasteurized” are prominent on the label, further warnings are not needed. If the store wished to reduce any liability they may feel is present when selling raw milk, or if the ISDA wished to increase awareness of risks associated with raw milk consumption, a warning posted on the refrigerators containing raw milk products should be sufficient. Requiring unnecessary labeling is an unnecessary burden to raw milk producers, particularly small-scale producers.

I truly hope that those who might be reading this letter can understand the responsibility that the ISDA has toward Idaho’s consumers to be involved in raw milk production in Idaho. Raw milk producers share this responsibility to provide quality raw milk products to Idahoans, but the responsibility is indeed shared and part of it should be shouldered by the ISDA in the future as it has in the past.

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**From:** "Dr. Scott Leibsle" <Scott.Leibsle@ISDA.IDAHO.GOV>  
**To:** "\_Rulesinfo" <\_rulesinfo@ISDA.IDAHO.GOV>  
**Sent:** Thursday, June 17, 2021 8:14:42 PM  
**Subject:** Raw Milk Strawman Update

Raw Milk Stakeholders –

The updated version of the Raw Milk Strawman has been posted to the ISDA rulemaking website. The document is titled “Post Meeting Strawman”. Please use the following link to access the document:

<https://agri.idaho.gov/main/i-need-to/see-lawsrules/rulemaking/isda-rulemaking-2021-2022/>

For purposes of clarification of the new language, the nutrient management plan (NMP) requirement in this rule will only come into play for those raw dairies choosing to milk more than 30 cows; 150 goats or

150 sheep (or any combination of the three that totals more than 30 Animal Units). Please remember, the comment period for this rule closes on June 20. If you have any questions, please feel free to contact me or Lloyd Knight. Thank you.



**Scott R. Leibsle DVM, DABVP**

State Veterinarian/Administrator – Animal Industries

Idaho State Department of Agriculture – Boise, ID

[scott.leibsle@isda.idaho.gov](mailto:scott.leibsle@isda.idaho.gov)

(O) 208.332.8540

**From:** [Guernsey Goodness](#)  
**To:** [Dr. Scott Leibsle](#); [\\_Rulesinfo](#)  
**Subject:** {External}RE: Raw Milk Strawman Update  
**Date:** Thursday, June 17, 2021 8:26:29 PM  
**Attachments:** [image003.png](#)

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What is the point of commenting on this straw man when this straw man doesn't even resemble the straw man from the second meeting? I submitted good comments on the prior strawman documents only to have this strawman document come out of left field. There is no way anyone with any scientific training, like you, could support a raw milk rule that has no testing requirement. As for the warning label requirement, there is no way I will ever comply with such a stupid requirement I'll just continue to do my business and why would I even bother to take out a permit from the state when the state wants to write stupid rules that have no basis in science or protection of the public? Basically, if this rule gets approved by the legislature, which I will fight, I plan not to comply with any part of it but continue to stay in the raw milk dairy business, since astral demonstrates the state obviously has no viable interest.

Paul Herndon  
208-597-2086

----- Original message -----

From: "Dr. Scott Leibsle" <Scott.Leibsle@ISDA.IDAHO.GOV>  
Date: 6/17/21 19:14 (GMT-08:00)  
To: [\\_Rulesinfo](#) <[rulesinfo@ISDA.IDAHO.GOV](#)>  
Subject: Raw Milk Strawman Update

Raw Milk Stakeholders –

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<https://agri.idaho.gov/main/i-need-to/see-lawsrules/rulemaking/isda-rulemaking-2021-2022/>

For purposes of clarification of the new language, the nutrient management plan (NMP) requirement in this rule will only come into play for those raw dairies choosing to milk more than 30 cows; 150 goats or 150 sheep (or any combination of the three that totals more than 30 Animal Units). Please remember, the comment period for this rule closes on June 20. If you have any questions, please feel free to contact me or Lloyd Knight. Thank you.





**Scott R. Leibsle DVM, DABVP**

State Veterinarian/Administrator – Animal Industries

Idaho State Department of Agriculture – Boise, ID

[scott.leibsle@isda.idaho.gov](mailto:scott.leibsle@isda.idaho.gov)

(O) 208.332.8540

**From:** [Guernsey Goodness](#)  
**To:** [Rulesinfo](#)  
**Subject:** {External}Comments on proposed Raw Milk Rule changes - strawman for June 15 2021  
**Date:** Friday, June 4, 2021 7:33:39 PM  
**Attachments:** [image001.png](#)

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In an email from Dr. Liebsle, dated 06/04/2021, raw milk rules stakeholders were informed that the “Strawman” for June 15 meeting has been put up at the website. The email, and in fact the Strawman, contains the following proposed changes:

*“A summary of the proposed changes is as follows:*

*Section 013. Raw Milk Testing Requirements. All raw milk testing requirements are being removed from the rule. Milk samples will no longer be collected monthly to be tested for bacteria, coliform, drugs or somatic cell counts. Annual brucellosis and tuberculosis testing on all animals in the raw milk program will remain in place.*

*Section 014. Labelling. All raw milk product labels must now include the warning statement listed below.*

*03. Product Warning. All raw milk dairy product labels must contain the following language:*

*a. “WARNING: This product has not been pasteurized and may contain harmful bacteria. Raw milk, no matter how carefully produced, may be unsafe.”*

*b. The warning shall appear within a heavy borderline in a color sharply contrasting to that of the background. The signal word “WARNING” shall appear in capital letters of ten point type or greater. The remaining text of the warning shall be printed in capital letters of six point type or greater.*

*Sections .020 and .030. Herd Sizes. There will no longer be any limitations on the size of a raw milk herd or the number of animals that can be milked for sale of their raw milk products. The “small herd exempt” and “unlimited raw” permits are being combined into a single “raw milk permit”. No sanitation inspections will be performed on any facility, regardless of the size of the herd. “*

I categorically oppose every one of these proposed changes.

1. If producers are not compelled to either test their product, or have the state test the product, using industry standard tests which have been in place, the product quality is almost certainly going to go downhill generally, and very likely will result in a food-borne disease outbreak among consumers at some level.
2. It’s actually ridiculous that we are going to compel testing for Brucellosis, when in fact the occurrence of the disease-causing pathogen related to it are much less likely than E. coli, listeria, or any number of other pathogens. The SPC and coliform tests were indicator tests for overall milk quality handling and should absolutely not be abandoned.
3. The product warning label provides ZERO value to the consumer. Every consumer of raw milk that I sell to already knows this about the product, and the basic labeling requirement already

in existence states the product is “raw unpasteurized”. This is perfectly adequate. CDC has an entire website devoted to the topic that no matter how carefully produced, it can never totally be considered safe. People already know this and accept the risk. As a producer, I had my own voluntary warning label at one time for at least a full year and my consumers generally told me it was unnecessary. Not only was it unnecessary, but it costs money, and is actually hard to do on a returnable glass milk bottle without creating extraneous “waste” – both cost and garbage. I am strongly opposed to this requirement. It’s wasteful, redundant, and provides zero value to the consumer.

4. No longer limiting herd size and not inspecting for sanitation? Who proposed this? Are we trying to torpedo this part of the Idaho dairy industry? First, this literally removes a significant barrier to entry that is necessary when scaling up an operation. Any of the inspectors and even samplers will tell you that there is a HUGE difference between inspected facilities and non-inspected facilities. By going to a nearly totally unregulated environment, it is going to make it much more difficult to obtain affordable product liability insurance, especially once disease outbreaks begin to occur.

All of the “deregulation” proposals make the warning label practically laughable. These proposals make no rational sense in my opinion, based on experience. The job of ISDA needs to be to provide some assurance that this program meets basic sanitation and health standards lest every mom-and-pop shade-tree operation feel they can go “big time” without regulations in place to force basic standards.

Such folly can only possibly lead to disease outbreaks and even a decimation of the ability to provide raw milk to consumers simply because the product will end up uninsurable. No grocery store will carry it, and no sane producer will produce it.

Paul Herndon  
Pleasant Meadow Creamery  
<http://pleasantmeadowcreamery.com>  
<https://facebook.com/GuernseyGoodness>

[paul@pleasantmeadowcreamery.com](mailto:paul@pleasantmeadowcreamery.com)





**From:** [Greg Collett](#)  
**To:** [Rulesinfo](#)  
**Subject:** {External}Comments for the June 15 meeting  
**Date:** Tuesday, June 15, 2021 1:16:46 PM

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I am sorry for submitting these comments so close to the meeting time, but I was just able to read the comments in opposition to the latest proposed strawman and felt I needed to address them. I want to go on record as being in favor of any measure that will reduce the burden of regulation, and the proposal does that to a large measure.

As I mentioned before, I believe the statutes of Idaho do not make the sale of raw milk unlawful in the state of Idaho even though it may be implied. I therefore believe the administrative rules should not make it unlawful and should not regulate the production and sale of raw milk outside of what the statute states with regard to herd shares. The proposal is a step in the right direction.

The current proposal would eliminate most of the cost of the program which addresses the concerns of the Idaho Dairymen's Association. It addresses my concerns about the validity of testing. It addresses the concerns others have had about herd size. It addresses concerns that many of us have about regulation in general.

If any producer has any concerns about removing regulation I would question their motives.

Now, to address specific comments:

To say that stopping industry standard testing will result in poorer quality products and disease outbreaks begs the question: Why do producers have sanitary measures in place? If it is because of state oversight rather than providing a quality product for consumers then I feel sorry for their customers. A nanny state is not necessary for quality products.

I have already commented on general bacteria and coliform testing and why they are not necessary and it has been made clear that it is not feasible to test for actual pathogens. The current tests are based on a number that was admittedly made up and not based on science. It does not accommodate for time controls and fat content, both of which significantly affect the results. It is meaningless, and even detrimental, to a product that should contain bacteria.

I would like to say that I agree that a warning label is unnecessary, but not for the reasons given. Why is the raw milk industry willing to accept the narrative of the CDC, FDA, and others as to the danger of raw milk? It is misleading. Do the research. Why would a producer want to sell raw milk if they believe it is any more dangerous than other accepted foods? There are easier ways to make money.

Nobody is saying there is no chance that someone could get sick from drinking contaminated raw milk; but there is a much higher likelihood they will get sick from many other contaminated foods that do not carry warnings and are not regulated as though they are inherently risky. Why is a warning necessary for raw milk?

I would like to make it clear that I do not agree with the sentiments with regard to scaling up. I have a larger operation, but I see no need to denigrate smaller operations and I do not know of anyone who does not realize that proper infrastructure is necessary to scale up. I would welcome anyone who has the desire to do so to enter the market. It is a hard business and there is demand. Should someone be allowed to use the state create an artificial barrier of entry for a larger operation? It sounds more like trying to protect one's own interest.

There is no need to force anyone to provide a quality product. Individuals can do that on their own. There is no need to try to scare people about disease outbreaks if the state is not involved. If a producer needs the hand holding of the state then they should not be in the business anyway.

As for product liability insurance, there were no questions asked of me about whether the state tested my products or inspected my facilities. I think that is a non-issue.

To summarize, I support every measure of the proposal that simplifies and removes regulation. I do not think a warning label is necessary and I cannot support the idea; however, if all of the other proposed "deregulation" is made possible in the eyes of the state by having a warning on the labels, then it is a small price to pay to be relieved of the cost and burden of the current rules.

Greg Collett  
Provident Farm LLC

To whom it may concern,

Regarding our discussion at the May meeting on the testing for brucellosis and tuberculosis, I also would like to see some changes, and while the current proposed language is much better, I think it could be improved. The current proposal is that producers can now test anytime before their one year anniversary month, and if they want to change that month, they can test anytime in addition to get that anniversary month changed. However, for some of us, that would mean having to pay for testing twice in the initial year. I would suggest that we just have an annual test, meaning we can test anytime within a calendar year. Now someone mentioned that if we did that, someone could then test say, in December 2021 and then January 2022 and not have to test again till December 2023, which would be about 2 years without a test. But my question would be who would do that? It wouldn't save any expense and even if someone did do that, would it really be that problematic, since neither of those diseases is an issue in Idaho anyway? If there is still objection to that suggestion, then my only other thought is that maybe there could be a way we could request the anniversary month from the department, and they would agree to wait for that month without suspending our permits.

I would also like to bring up something another producer mentioned to me. There seems to be a change regarding when a producer fails a test. Previously, producers were allowed to bring in samples to the lab for another test if they failed, but this producer said that wasn't allowed anymore and we would just have to wait a whole month for the state tester to come back out. None of this of course is in the rules, but if we need to clarify that so we have recourse when we have issues, that would be helpful.

Thank you for your consideration!

Andrea Sater  
Sweet Cream Pastures  
Meridian, ID  
Permit #RGM123

**From:** [jicansley](#)  
**To:** [Rulesinfo](#)  
**Subject:** {External}7 goat or 7 sheep exemption  
**Date:** Friday, June 4, 2021 3:42:44 PM

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I would like to further address the 7 goats or 7 sheep arbitrary number in the state regulation for the small herd exemption. I suggested that the amount of goats or sheep should be raised to 21 goats or 21 sheep. In the discussion at the last meeting it was suggested that having 21 goats or 21 sheep would be too many animals and then sanitation would be compromised. As stated from several people goats are far cleaner than cows. Goats are very clean in the barn. They rarely urinate or defecate while in the barn leaving a clean environment. Cows not so much. Also when they do you are not dealing with a liquid manure just pellets. In the barn yard it is much the same. Cows leave very runny manure which when they lay in it can get on their udder and leave a mess. Goats and sheep on the other hand their manure is pelleted and rarely leaves any manure on their udder. Thus by comparison goats and sheep are much cleaner.

Another comment was made that maybe other states could be looked at as how they handle raw milk. Dr. Leibsle pulled up 2 States while we were in the meeting. One was Utah. Utah allowed 120 gallons of raw milk to be sold each week. No species was mentioned. All species were considered equal.

With all this information 21 goats or 21 sheep becoming the amount of animals used in the small herd exemption would be more equal to the 3 cows that are allowed.

In regards to testing bacteria as a whole in our testing cycle I do think that bacteria in general is a good thing. After all cheese and yogurt are made with bacteria. We really should be testing for pathogens instead.





May 24, 2021

Dr. Scott Leibsle  
Idaho State Department of Agriculture  
Idaho State Veterinarian

Mr. Lloyd Knight  
Idaho State Department of Agriculture  
Rules Review Officer

RE: IDAPA 02.04.13 Rules Governing Raw Milk

Dr Leibsle and Mr. Knight,

At the Idaho Dairymen's Association board meeting held on May 19, 2021 the following concerns have been identified with IDAPA 02.04.13 Rules Governing Raw Milk.

The board's concern is with the total cost of the program being paid for by the butterfat assessment dedicated fund. That fund is paid for by the commercial dairy industry with an exceedingly small portion being covered by a few unlimited raw milk producers that sell a limited amount of their milk to the commercial market. The fiscal note you presented showed that the estimated fiscal cost in 2020 was \$187,056, which is approximately 10% of the total assessment collected.

The commercial dairy industry's involvement in the legislation was to protect the health and welfare of the consumer and by doing so protect the image of "mainstream" dairy products. We were agreeable to cover the cost of the program but never anticipated the cost being so significant. If the Rule continues to be administered as it currently is we propose that moving forward funding the program should be through a user fee, the general fund or both. The legislation providing for this rule was HB 675 which passed in 2010. The Fiscal Note states "there is no fiscal impact to the state budget" which, it could be argued leaves the burden on a user fee program.

The statement of purpose is silent on protecting consumers and states the purpose as being ".. to provide acquisition of raw milk and raw milk product by owners, to provide cow shares, sheep shares and goat shares, to provide contractual terms, to provide for testing, to provide testing, to provide registration with Idaho Department of Agriculture and to provide penalties".

We do not believe the limited testing provides any assurances of consumer protection or in any way can protect the image of dairy. In other words, doing a cost – benefit analysis it has significant cost with little benefit for the investment. Any increase in testing only would exacerbate the problem and is not an option.

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195 River Vista Place  
Twin Falls, Idaho 83301  
208.736.1953  
[www.idahodairymens.org](http://www.idahodairymens.org)

Therefore, we believe it is time to reevaluate the program and identify the benefits of the program are. In addition, moving forward, funding for the program must be wholly covered by the program participants and the general fund. If consumers truly benefit than consideration should be given to have a portion of the cost coming from the general fund or a sister agency like Health and Welfare, who has had representatives participating in the negotiated rule.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rick Naerebout', with a stylized flourish extending to the right.

Rick Naerebout  
Chief Executive Officer  
Idaho Dairymen's Association, Inc.

**From:** [Guernsey Goodness](#)  
**To:** [Rulesinfo](#)  
**Cc:** [Lloyd Knight](#)  
**Subject:** {External}Raw Milk Rule Comment #2  
**Date:** Tuesday, May 18, 2021 4:41:19 PM

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Please enter the following proposal into the raw milk rule comments to be discussed.

I propose the following changes be made to 010.13 of IDAPA 02.04.13 – Rules Governing Raw Milk:

Current wording:

13. Small Herd. The production of raw milk or raw milk products for human consumption, for use by people other than members of their immediate household or non-paying guests, in a facility with no more than three  
(3) lactating cows, seven (7) lactating goats, or seven (7) lactating sheep. The dairy farm herd may include other cows,  
goats, or sheep that are dry or are producing milk for purposes other than human consumption. (4-7-11)

Proposed wording:

13. Small Herd. The production of raw milk or raw milk products for human consumption, for use by people other than members of their immediate household or non-paying guests, in a facility with no more than three  
(3) lactating cows, ~~seven (7)~~ twenty one (21) lactating goats, or ~~seven (7)~~ twenty one (21) lactating sheep. The dairy farm herd may include other cows,  
goats, or sheep that are dry or are producing milk for purposes other than human consumption. (4-7-11)

Comments:

I propose this change because it allows for sheep and goat owners to produce at or nearly an equal volume to what cow owners can produce, with what are arguably cleaner animals, so there should not be an increase in nutrient management or other sanitation issues. It puts sheep and goat small herd owners on equal financial footing to the cow owner, given revenues are typically going to be measured in dollars per gallon produced.

Best regards,

Paul Herndon  
Producer, Unlimited Raw Milk  
Pleasant Meadow Creamery Inc

**From:** [Guernsey Goodness](#)  
**To:** [Rulesinfo](#)  
**Cc:** [Lloyd Knight](#)  
**Subject:** {External}Raw Milk Rule Comment  
**Date:** Tuesday, May 18, 2021 4:15:22 PM

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Please enter the following proposal into the raw milk rule comments to be discussed.

I propose the wording of 013.02 of 02.04.13 – Rules Governing Raw Milk be changed.

The current proposed wording of the rule related to Tuberculosis is:

Tuberculosis Test

All raw milk must be from animals that have been accredited as tuberculosis free or must have passed an annual tuberculosis test within the last twelve (12) months.

I propose the following wording instead:

Tuberculosis Test

All raw milk must be from animals that have been accredited as tuberculosis free or must have passed an annual tuberculosis test within the last prior twelve (12) months in the period beginning on the first day of the current month in the prior calendar year, and ending on the last day of the current month of the current calendar year.

Comments:

I propose this change because it allows for testing to occur within an anniversary month on any day of the month rather than on a specific day of the month.

For example, if my animal's TB test is dated April 17, 2020, this language would allow for milk produced in May 2020, June 2020, July 2020, August 2020, September 2020, October 2020, November 2020, December 2020, January 2021, February 2021, March 2021, and all of April 2021 to meet the requirement of the proposed wording. Once May 1, 2021 comes, if no new TB test has been performed, the criteria would fail, since there are no valid tests in the period of May 1, 2020 to May 31, 2021.

The effect is that a producer is ultimately going to end up doing an annual test of animals, but the test can fall anywhere within a calendar month, from first day to last, without disqualifying any portion of the month from sale of raw milk. This benefits producers by allowing them to have more flexible scheduling with their veterinarians, keeping TB testing within the same month every year, without having to continually bump up anniversary date as the current practice would force, with weekends and veterinary schedules as they are. It allows for the animals to theoretically go a day under a full 13 months between negative tests, without crossing into the full 13 month duration.

Best regards,

Paul Herndon  
Producer, Unlimited Raw Milk  
Pleasant Meadow Creamery Inc

**From:** [Jen Hays](#)  
**To:** [Rulesinfo](#)  
**Cc:** [Lloyd Knight](#)  
**Subject:** {External}Rules Governing Raw Milk  
**Date:** Tuesday, May 11, 2021 4:55:29 PM

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Attention Agency members for Rules Governing Raw Milk:

I am writing because I was unable to attend the rules governing raw milk meeting on April 20th. I raise dairy goats and I am a very small producer operating on a small herd exemption raw milk permit. I am not profiting from selling my milk but having the ability to sell my raw milk helps pay for some of my expenses like buying hay for my goats. One of the larger expenses in my small operation is the yearly TB and brucellosis testing required for my permit. To save on my expenses, I coordinate the yearly testing for my permit with other biosecurity tests I run yearly that are above and beyond what is required by my permit. Having the veterinarian come out once and only needing to have a blood draw once a year for all the testing is most efficient, most cost conscientious, and best for the goats to only have to have one blood draw per year.

The breed of my goats is Nubian and Nubians are seasonal breeders. This means they only come into heat for part of the year. My goats typically come into heat from September through February so I have a limited window as to when they can be bred. I like to run my biosecurity tests before I breed them so I know the goat is in good health before breeding. I would not breed a goat who tested positive for any diseases. I had a routine of doing my testing in October and then if the results come back negative for diseases I would go ahead and breed them in November. The way the TB and brucellosis testing is set up for my permit makes it problematic to stay on that routine. According to the letter I receive every year "The test(s) results **must** be received by the ISDA, prior to the one year anniversary of each animal's last test result to remain qualified to sell or distribute raw milk for human consumption." So after being involved in this program for several years, my testing has had to move up slightly every year and I am now testing in September. Last year my testing was on September 14 so in order to accommodate the way it reads in the letter means I'll have to schedule at the beginning of September in order to have my results back before September 14. And it continues to get pushed earlier every year. This is not ideal as it's best to do the biosecurity tests as close to breeding as possible. I don't understand why it can't be an annual test - for example if you tested in October last year, you need to have the results back to ISDA by October this year. It does read as annual testing in the Small Herd Exemption (IDAPA 02.04.13 Rules Governing Raw Milk) but the letter specifies "The test(s) results **must** be received by the ISDA, prior to the one year anniversary of each animal's last test result." This throws off everyone's routine. I have talked to several other producers who feel the same as me on this issue. This is not a big ask. Can you please be more accommodating for us?

Thank you for your time,  
Jennifer Hays  
Endless Winter Farm, LLC  
Victor, ID  
Permit # RGM 091

**From:** [jansley](#)  
**To:** [\\_Rulesinfo](#)  
**Subject:** {External}Raw Milk Rule Making  
**Date:** Monday, May 10, 2021 9:20:33 AM

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Hello,

I would like to propose that in the language of the rules in the small herd exemption that the amount of sheep and goat that are allowed under the regulation be changed to 21 goats, or 21 sheep. In the regulation now it only allows 7 goats or 7 sheep to be used for the sell of milk. The amount of milk produced by these 2 species are far less than produced by 3 cows. I believe that would be a closer representation of the amount that is produced by all species.

Thank you for your consideration.

Gail Ansley  
Picabo Desert Farm

**From:** [Greg Collett](#)  
**To:** [Rulesinfo](#)  
**Subject:** {External}Rules Governing Raw Milk  
**Date:** Tuesday, April 20, 2021 12:07:18 AM

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Written by Greg Collett, Provident Farm LLC

Comments regarding general bacteria and coliform testing requirements as found in IDAPA – IDAHO DEPARTMENT OF AGRICULTURE Animals Division 02.04.13 – Rules Governing Raw Milk

State regulation regarding raw milk centers around food safety concerns, particularly food borne illnesses caused by bacteria or parasites, known as pathogens, such as Campylobacter, Cryptosporidium, Salmonella, Shiga toxin-producing Escherichia coli, Shigella, and Yersinia. Since raw milk is not subject to pasteurization, which presumably destroys pathogens, the state has instead mandated that raw milk be tested on a monthly basis.

However, the state does not test for any specific pathogens; rather, it simply tests for general bacteria and coliform counts. Because of this, consumers are given a false sense of security. Using general bacteria counts will statistically result in false indications of problems and rare cases of actual problems will go undiscovered. Because they are simply indications rather than confirmed pathogens, there is a laid back approach to the results. Instead of taking immediate action on the discovery of confirmed pathogens, the state instead does not take action until 3 of the last 5 tests are over the limit.

For instance, a pathogen commonly known as E. Coli is really just one of a very few Shiga toxin-producing Escherichia coli like O157:H7. These pathogens are a tiny subset of all E. Coli bacteria in general. The CDC states, "Most E. coli are harmless and actually are an important part of a healthy human intestinal tract." (<https://www.cdc.gov/ecoli/general/index.html>). E. Coli constitutes a small subset of fecal coliform (coliform that live in the host's intestines), which in turn is just a small subset of total coliform.

There are two reasons I have been given for coliform testing:

- (1) Hygienic indicator - High coliform counts can be an indication of unsanitary practices, especially fecal contamination during the milking process. This is not always a valid reason, however, because a very common source of coliform is a contaminated water supply which has no bearing on the sanitization procedures or cleanliness of a dairy and is tested separately from the milk.
- (2) Pathogenic indicator - Coliform testing has been used because it is cheaper than testing for actual pathogens; however, the risk of actual pathogens is low even with a high total coliform count.

If coliform testing is used as an indicator then it must be treated as an indicator, not as a cause to declare a public health hazard. For example, if there is an elevated coliform count then an E. coli test should be performed. This is already the case with water testing. In addition, if there is an elevated E. coli count then testing should be done for actual pathogens. Only the confirmed presence of actual pathogens should be cause to take action.

Under the current rules, a permit may be suspended when general bacteria or coliform counts exceed the arbitrary limits set by the state. In such a case, there has been no confirmation of an actual public health hazard because no pathogens have been identified. Suspending a permit when a public health hazard does not exist creates unfounded concern from retailers and consumers, unnecessarily decreases the raw milk supply for consumers, negatively affects the reputation of a dairy, and causes severe financial impacts on the dairy.

One of the reasons consumers desire raw milk is because it contains live bacteria, so it does not make sense to base raw milk standards on general bacterial counts. A better approach would be for dairies to test for actual pathogens so they could take immediate action if a real problem is discovered.



***Idaho State Department of Agriculture***

***02.04.13 Rules Governing Raw Milk***

***April 20, 2021, 1:30 p.m.***

***Lloyd Knight, Dr. Scott Leibsle, Chanel Tewalt, Hosts/Facilitators***

Present: Dallas Burkhalter, Office of Attorney General – ISDA; Katy DeVries, Office of Attorney General – ISDA; Mitch Vermeer, ISDA; Martha Walbey, ISDA; Kyle Wilmot, ISDA; Scott Barnes, ISDA; Bob Naerebout, Idaho Dairymen’s Association; Marv Patten, Milk Producers of Idaho; Candy VanNorman; Andrea (Sater)?; Corrina (Arnold)?; Mike Reid; Greg Collett; Shellie Frey; Steve Barnhart; Meadow Thompson; David Spencer; Rebecca Leach; Gail Ansley via telephone.

**AGENDA ITEMS**

**WELCOME:**

Lloyd Knight started the meeting at 1:34 p.m. by teleconference. Mr. Knight discussed the house rules and indicated this was the first of three rule meetings. He then turned the meeting over to Dr. Scott Leibsle to present the strawman.

Dr. Leibsle introduced himself and explained that the strawman was structured as follows: the items highlighted in blue are attempts to simplify the rule, and yellow highlights are changes to the rule. Scott Leibsle started the meeting by explaining the fiscal budget for the Raw Milk program, IDAPA 02.04.13 Rules Governing Raw Milk. Scott Leibsle explained that this rule has no fees and the funds are taken out of the dairy dedicated fund. The total personnel costs for the last fiscal year were approximately \$168,767, the operating expenses were \$18,289.00 for a total of \$187,056. The raw program has had a historical total of approximately 169 cow facilities and 193 goat facilities. Currently the program has 69 active cow facilities and 64 active goat facilities.

Bob Naerebout said at the end of the rule we need to talk about the cost of the program and some different funding sources, rather than just the dairy dedicated fund.

Scott Leibsle discussed the strawman by explaining if you are an unlimited raw facility you are required to be inspected and need to abide by the PMO, if you are a Small Herd facility this does not apply. Under the definition section of a herd share, this is mandated by statute 37-1101 so therefore can’t be changed.

Section 010 – clarified permit definitions. Scott Leibsle further described there are three types of permits you can have; a herd share, a small herd exemption, or an unlimited raw permit.

Section 012 – Clarified that raw milk and raw milk products can only be sold in Idaho....they cannot be sold across state lines under any circumstances.

Section 013 – updated PMO version and clarified language. Only unlimited raw facilities must abide by the PMO.

Gail Ansley stated she didn't know about the unlimited raw permit, she said she could not find it anywhere, and asked where exactly it is in the PMO. The only reason she knew about it was a letter that came from the Department.

Mike Reid questioned how going from the 2017 PMO to the 2019 PMO was going to lower his regulation. How is this going to make less regulation for me with regards to the Governors zero base regulation. If we update to the 2019 PMO what would need to be updated.

Scott Leibsle replied it has been a common practice for the department to update our rules to the most current version of the PMO.

Mike Reid responded by asking how is this going to help someone like me in putting forth the Governors' zero base regulation.

Scott Leibsle answered this is not increasing any regulation by changing to the current version of the PMO, but any can submit a written suggestion to the group for a discussion.

Mike Reid asked do you think it is a net zero for someone like me who produces raw milk. For example will I have to update my antibiotic testing equipment?

Mitch Vermeer said on the sanitation side of the PMO nothing new was added. The changes are listed on the FDA's website.

Scott Leibsle said this group may modify the standards for small herd or unlimited raw but not herd share, because the herdshare requirements are set in statute.

Marv Patten stated regarding the brucellosis test, the agency does BRT tests that are done more than once a year so maybe that should be clarified.

Mitch Vermeer said BRTs are what Dr. Lawrence does.

Gregg Collett said should we discuss what I sent in on coliform standards now. The State is not testing for specific pathogens just general coliform.

Scott Leibsle indicated we will post your comment on the website so everyone can review it.

Chanel Tewalt said we will get it posted so stakeholders can see it and comment on it, and have an open discussion.

Scott Leibsle gave a brief description of Gregg Colletts' written comment which stated the State is not testing for specific pathogens when testing for general coliforms.

Gregg Collett replied we need to test for E. Coli at the very least.

Mitch Vermeer said we can't test for all of those pathogens individually.

Scott Leibsle answered we don't test for the specific type of coliform....only general coliforms. He said we will get in contact with the ISDA dairy lab and ask them to do a cost analysis for individual coliform pathogen testing and have it for the next meeting.

Mike Reid asked to define annual. Will there be more regulation? He said he has been governed both ways, it used to be his responsibility to submit a test, and its difficult when you are on a deadline that is based on your last test.

Scott Leibsle responded that we are clarifying it, but we are not changing it.

Gail Ansley asked when did we decide on how many cows and goats were allowed in the program. If I can have 3 cows why not the equivalent of 21 goats?

Scott Leibsle said it's the volume of milk, not the size of the animal. It was a hot topic in the rule making when the rule originally was being established by the stakeholders, and that was the number that was agreed upon.

Gail Ansley said the volume of milk from each animal is not the same.

Steve Barnhart asked if brucellosis testing is done before the animal is a year old, why do we have to do it every year.

Scott Leibsle answered it is for public safety since the raw milk is not going for pasteurization. Also, we border Yellowstone Park which is wildlife reservoir for brucellosis.

Steve Barnhart said the vaccine may not work.

Marv Patten stated the discussion on the coliform limits went back and forth for 3 years, some wanted the limit to be 50 per ml, some wanted it to be 10 per ml, so it was a coin toss to be somewhere between 50 and 10, and finished Grade A products is 10 per ml.

Section 014 labeling clarification. The language was intended to provide for conspicuous labeling standards. A label needs to be very clearly identifiable as a raw unpasteurized product.

Greg Collett asked if we already have labels that are printed do we have to change all of them and get them reprinted. We have different size fonts for the words raw and unpasteurized.

Scott Leibsle responded that our concern is that the label be as conspicuous as possible. People need to clearly know they are consuming a raw and unpasteurized product.

Greg Collett said equal size font is too descriptive.

Mike Reid said not pasteurized or unpasteurized in addition to raw is too much.

Mitch Vermeer acknowledged Greg and Mike's input. He added ISDA reviews very busy labels and the words raw and unpasteurized are in a small font in the corner. The overall font is large and the raw and unpasteurized is in small font...which is misleading.

Scott Leibsle stated - Section 020. Name of the permit was clarified. Dr. Leibsle noted that there currently is not a penalty for sale of raw milk without a permit, even though the rule says it is unlawful. Dr. Leibsle clarified that a producer may only operate one type of raw milk permit. Subsection .03 – Clarified unlimited raw facilities will be inspected every three months, and held to the sanitation requirements in the PMO.

Greg Collett asked if he is changing locations does he have to change his permit number.

Mitch Vermeer said if you are talking about an unlimited raw permit then yes. But we could arrange to keep your same permit number if we knew ahead of time.

Steve Barnhart asked what if you are milking more cows, but only sell the milk from three cows.

Scott Leibsle replied yes that is correct, you can only sell the milk from three cows under the small herd exempt.

Section 030 – same as the previous section. Sale of raw milk is unlawful without a permit, but there is not penalty. The rest of the section is clarification of language.

Marv Patten asked if I have an unlimited raw permit could I sell to a Grade A facility and if I had all of my animals tested for TB etc. could I get a Small Herd permit?

Scott Leibsle replied if you are already Grade A facility and being inspected for sanitation, I'm not sure why you would want to limit yourself to a small herd exempt permit.

Mitch Vermeer said if you are a Grade A facility and you could get your unlimited raw permit, why would you want to limit yourself by getting a small herd.

Scott Leibsle clarified a produce could operate both a Grade A and small herd permit.

Rebecca Leach said in regards to the PMO if that is going to overlap that will confuse people.

Scott Leibsle said there shouldn't be any confusion; the 2019 PMO only applies to the unlimited raw permits. It does not affect the small herd.

Gail Ansley said there is confusion, I haven't heard about the unlimited raw, because if you are unlimited why would you want a small herd. If you have a Grade A then you can do small herd and if you have a Grade A you can go across state lines.

Section 040 – Herd Share, this language is verbatim out of the statute and is redundant...proposing to strike it.

Section 050 - Clarification of language...no substantial changes.

Marv Patten asked regarding herd share is milk quality stated in the rule?

Scott Leibsle confirmed that it was.

Bob Naerebout said the cost of the raw milk program is more than what the industry had anticipated; we need to see if there are alternatives. We will put in writing our suggestions after we meet with our stakeholders.

Dallas stated this would best be addressed in statute.

Bob Naerebout responded we need to look at the statement and purpose back in the original rule to determine if the funds were to come out of dairy funds entirely and to look at the benefits to the State of Idaho and the dairy industry.

Gail Ansley asked where is this document, is it attached in the email that was sent to me.

Scot Leibsle replied it's not in the email, it's on the website on the rule making page.

Lloyd Knight adjourned the meeting at 2:54 p.m.

# Estimated Raw Milk Annual Expenses FY20

Total Personnel (Estimated)	168,767.22
Total Operating	18,289.00

<b>Total Estimated Annual Expenses</b>	<b>\$187,056</b>
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Total Permitted Facilities (historically)	169 cow 193 goat
Currently Active Facilities	69 cow 64 goat

## **Rulemaking Summary**

### **IDAPA 02.04.13 – Rules Governing Raw Milk**

#### **Where is the rulemaking authority?**

Authority for this rulemaking resides in the Title 37 Chapter 1101 Idaho Code

#### **What does this rule do?**

These rules govern the production, processing, distribution, and sale of raw milk for human consumption, but not intended for pasteurization.

#### **What is the agency proposing to change?**

The agency has performed Zero Based Regulation to simplify, clarify or remove outdated, unnecessary or irrelevant language in sections highlighted **blue** in the attached strawman. The amended language in these sections does not change the regulatory impact, scope, intent or authority in the current rule.

The agency has conducted an internal audit of this rule and identified multiple sections that may require amendments due to inaccurate or confusing language, recommendations to improve the efficiency of the program or changes that must be made to coincide with recent statutory amendments. The changes listed below, and highlighted in **yellow** in the attached strawman, do result in a change to the regulatory impact, scope, intent or authority in the current rule.

- Updating incorporations by reference to current version (Section 004, 013 and 020)
- Require raw milk label fonts be of equal size (Section 14)



## 02.04.13 – RULES GOVERNING RAW MILK

### 000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 37-1101(5), Idaho Code. (4-7-11)

### 001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is “Rules Governing Raw Milk.” (3-29-10)

02. **Scope.** These rules govern the production, processing, distribution, and sale of raw milk for human consumption, but not intended for pasteurization. (4-7-11)

### 002. – 003. (RESERVED)

### 004. INCORPORATION BY REFERENCE.

The following document is incorporated by reference: The Grade A Pasteurized Milk Ordinance ~~2017~~ 2019 Revision, U.S. Department of Health and Human Services Public Health Service Food and Drug Administration (“2017 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>. (3-20-20)

### 005. – 009. (RESERVED)

### 010. DEFINITIONS.

The following definitions apply in the interpretation and the enforcement of this chapter: (3-29-10)

01. **Adulterated.** The meaning of adulterated includes the following: (4-7-11)

a. The addition or inclusion of unclean, unwholesome, inferior, impure or foreign material into a food product; or (4-7-11)

b. The production, distribution, or sale of raw milk or raw milk products from a facility that does not possess a valid permit from the Department or is not registered with the Department as a Herd Share program; or (4-7-11)

c. Any raw milk product or facility that fails to meet any of the requirements of these rules. (4-7-11)

02. **Dairy Farm.** Any place or premises where one (1) or more cows, goats or sheep are milked and where a part or all of the raw milk or raw milk products are produced that are not intended for pasteurization, or are intended for human consumption without pasteurization, and are distributed, sold or offered for sale to persons other than members of the dairy farm’s immediate household. (4-7-11)

03. **Denatured.** To change the usual or normal nature of a material or substance by either chemical or physical means. (3-29-10)

04. **Herd Share.** The undivided ownership interest in no more than seven (7) cows, fifteen (15) goats, or fifteen (15) sheep resulting from an investment of monetary value through a written contractual agreement between an owner and a farmer in exchange for raw milk or raw milk products. (4-7-11)

05. **Official Laboratory.** A biological, chemical, or physical laboratory that is approved by the Department. (4-7-11)

06. **Owner.** A person who has made an investment of monetary value in the ownership or care of cows,

Commented [DSL1]: Mandated in statute. 37-1101c

goats, or sheep and participates in a Herd Share program pursuant to a written contractual agreement. (4-7-11)

**07. Raw Milk.** The lacteal secretion, practically free from colostrum, obtained by the complete milking of one (1) or more healthy cows, goats, or sheep, and that has not been pasteurized and is intended for human consumption. (4-7-11)

**08. Raw Milk Permit.** ~~Written authorization from the Department allowing raw milk and raw milk products to be sold for human consumption by a dairy farm or raw milk plant that complies with the requirements of these rules.~~

(4-7-11)

**a. Small Herd Exemption Raw Milk Permit.** Sale of raw milk and raw milk products as provide in Section 030 of these rules.

**b. Unlimited Raw Milk Permit.** Sale of an unlimited volume of raw milk and raw milk products as provided in Section 020 of these rules.

~~**09. Raw Milk Plant.** Any place, premises, or establishment where raw milk is collected, handled, stored, bottled, or processed into raw milk or raw milk products for sale or offered for sale for human consumption.~~

(4-7-11)

**10. Raw Milk Products.** Raw milk products include any milk product processed from raw milk that has not been pasteurized and is intended for human consumption by persons other than members of the dairy farm's immediate household. Cheese made from raw milk that has been processed and aged for a minimum of sixty (60) days at a temperature greater than thirty-five degrees Fahrenheit (35°F) in a licensed dairy processing plant is exempt from these rules. (4-7-11)

**11. Registration.** A requirement by the Department for the authorization of a Herd Share to provide raw milk and raw milk products for human consumption to owners of that Herd Share as provided in Section 040 of these rules. (4-7-11)

**12. Sanitization.** The application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable. Such treatment may not adversely affect the equipment, the raw milk or raw milk products or the health of consumers, and be acceptable to the Department.

(3-29-10)

**13. Small Herd.** The production of raw milk or raw milk products for human consumption, for use by people other than members of their immediate household or non-paying guests, in a facility with no more than three (3) lactating cows, seven (7) lactating goats, or seven (7) lactating sheep. The dairy farm herd may include other cows, goats, or sheep that are dry or are producing milk for purposes other than human consumption. (4-7-11)

~~**14. Small Herd Raw Milk Permit.** Written authorization from the Department to a small herd dairy farm allowing raw milk and raw milk products to be sold for human consumption as provided in Section 030 of these rules. (4-7-11)~~

**15. Sterilized.** The condition achieved by application of heat, chemical sterilant or other appropriate treatment that renders the piping, equipment and containers used for raw milk and raw milk products free of viable microorganisms. (3-29-10)

**011. (RESERVED)**

**012. ADULTERATED OR MISBRANDED RAW MILK OR RAW MILK PRODUCTS.**

**01. Prohibited Acts.** No person shall produce, provide, sell, offer, or expose for sale, or possess with intent to sell, within the State or its jurisdiction, any adulterated or misbranded raw milk or raw milk products for human consumption. (4-7-11)

**02. Restriction on Sale.** Raw milk or raw milk products may not be sold or offered for sale through restaurants or other food service establishments. Grocery stores and similar establishments where raw milk or raw milk products are sold at retail, but not processed there, are exempt from the requirements of these rules, provided those stores and establishments receive raw milk or raw milk products from Department-authorized facilities. The sale of raw milk and raw milk products, produced under the authority of this Rule, shall be limited to locations within the state of Idaho. The sale of raw milk and raw milk products outside the state of Idaho is prohibited.

(4-7-11)

**03. Disposition of Adulterated or Misbranded Product.** Any adulterated or misbranded raw milk or raw milk product may be impounded and disposed of as directed by the Department. The Department may issue a hold order when it is deemed necessary to protect human health.

(4-7-11)

**013. 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 013.02 of this rule. Unlimited Raw Milk Permit dairy farms must meet the sanitation requirements of the 2019 Pasteurized Milk Ordinance. Permitted dairy farms and raw milk plants must meet the sanitation requirements of the 2017 Pasteurized Milk Ordinance, unless the dairy farm has a Small Herd Raw Milk Permit or has registered a herd share arrangement with the Department.

(4-11-19)

**02. Chemical, Bacteriological, and Temperature Standards.**

<b>RAW MILK</b>	
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 <u>an annual brucellosis test performed by an official laboratory within the last twelve (12) months.</u> 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 <u>an annual tuberculosis test within the last twelve (12) months.</u>

**Commented [DSL2]:** These standards are mandated in statute for herdshares (37-1101c).

(4-7-11)

**03. Commingled Milk.** Milk from commingled species must meet the somatic cell count of the most restrictive species.

(4-7-11)

**014. LABELING.**

**01. Applicability.** Section 014 applies to holders of Unlimited Raw Milk Permits and holders of Small

**Herd Exemption Raw Milk Permits.** (4-7-11)

**02. Requirements.** All raw milk and raw milk products must have Department-approved labeling. All bottles, containers, and packages enclosing raw milk or raw milk products must be conspicuously marked with the following: (4-7-11)

- a. The words “not pasteurized,” or “unpasteurized” in addition to “raw” must precede the name of the product, **in equal size font**; (4-7-11)
- b. The quantity of contents; (4-7-11)
- c. The name and address or permit number of the permit holder; and (4-7-11)
- d. When applicable, the word “goat” or “sheep” must precede the name of the raw milk or raw milk products. (4-7-11)

**03. Commingled Milk Label.** The label of raw milk or raw milk products containing milk from commingled species must **conspicuously** identify the species from which the raw milk was obtained. (4-7-11)

**04. Small Herds.** Department-approved labels are not required for the holders of Small Herd **Exemption** Raw Milk Permits if the raw milk or raw milk products are sold at the point of production. (4-7-11)

**05. Misleading Labels.** It is a violation of these rules to use any misleading marks, words, or endorsements on the label. Registered trade designs or similar terms on the bottle cap or label may be used if the Department determines that the designs or terms are not misleading and do not obscure the labeling required by these rules. Any misleading labeling on the final container will cause the product to be considered misbranded. (3-29-10)

**015. -- 019. (RESERVED)**

**020. UNLIMITED RAW MILK PERMITS.**

**01. RequirementsLegal Sale.** It is **unlawful** for any person who does not possess an **Unlimited 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)

**Commented [DSL3]:** Penalty for unlawful production?

**02. Obtaining a Raw Milk Permit Requirements.** ~~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 an unlimited raw milk 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 **2017-2019** Pasteurized Milk Ordinance; (4-11-19)
- c. Meet the raw milk and raw milk products quality standards in Section 013 of these rules; (4-7-11)
- d. Meet the tuberculosis and brucellosis standards in Section 013 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)
- ~~f. The dairy farm is not concurrently operating a herdshare or small herd exemption raw milk permit~~

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

**04. Sanitation Requirements.** All unlimited raw milk permitted 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 2017-2019 Pasteurized Milk Ordinance, and Section 013 of these rules if the raw milk or raw milk products are for use by persons other than the dairy farm's immediate household. (4-11-19)

**05. Transfer of Permits.** Unlimited Raw Milk Permits are not transferable to another person or location.

**021. -- 029. (RESERVED)**

**030. SMALL HERD EXEMPTION RAW MILK PERMITS.**

**01. Legal Sale.** It is unlawful for any person who does not possess a with a small herd exemption permit from the Department 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, 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)

Commented [DSL4]: Penalty?

**0102. Obtaining a Small Herd Raw Milk Permit Requirements.** Only a person who complies with these rules may receive and retain a Small Herd Raw Milk Permit. Prior to the issuance of a small herd exempt raw milk permit, each dairy farm must comply with the following requirements: 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.** Submit an application to the Department indicating the physical location of the small herd and the mailing address of the responsible party.

**b.** Meet the raw milk and raw milk products quality standards as set forth in Section 013 of these rules; (4-7-11)

**b.c.** Meet the tuberculosis and brucellosis standards as set forth in Section 013 of these rules; (4-7-11)

**ed.** 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)

**de.** All raw milk and raw milk products must be produced and processed on the same premises. (4-7-11)

**f.** The dairy farm is not concurrently operating a herdshare or unlimited raw milk permit

**0203. Testing Frequency.** Raw milk ~~or and~~ 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)

**0304. 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 013 of these rules. (4-7-11)

**0405. 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)

**0506. 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 2017 Pasteurized Milk Ordinance. (4-11-19)

**07. Transfer of Permits.** Small Herd Exemption Raw Milk Permits are not transferable to another person or location.

031. -- 039. (RESERVED)

040. HERD SHARE PROGRAMS.

**01. Registration.** The dairy farm or farmer responsible for a herd participating in a herd share program must register the farm or dairy with the Department and is subject to all the provisions of Section 37-1101, Idaho Code. Registration may be upon a form provided by the Department or may be a written statement containing, at a minimum, the following information: (4-7-11)

Commented [DSL5]: All redundant language. 37-1101(1c)

a. The name of the farmer, farm, or dairy; (4-7-11)

b. A valid, current address for the farmer, farm, or dairy; and (4-7-11)

c. A statement that raw milk or raw milk products are being produced at the farm or dairy. (4-7-11)

**02. Proof of Ownership Interest.** The farmer and each owner of the herd share must enter into a written contract evidencing the herd share arrangement. The contractual documents must include, at a minimum, the following: (4-7-11)

Commented [DSL6]: All redundant language. 37-1101(1c)

a. A bill of sale, stock certificate, or other written evidence satisfactory to the Department; (4-7-11)

b. A boarding and care plan for the livestock; (4-7-11)

c. A conspicuous notice that the milk or milk products received under the contract will be raw; and (4-7-11)

d. Proof that written information regarding the herd health and production standards used by the dairy or farm have been provided to each herd share owner. (4-7-11)

**03. Testing and Results.** The farm or dairy must comply with the testing frequency and standards set forth in Section 37-1101, Idaho Code. A copy of all test results, the name of the tests performed, and an explanation of the tests and test results must be provided to each owner. Proof that the information has been provided to the owners must be sent to the Department. (4-7-11)

Commented [DSL7]: Redundant. 37-1101(1d)

**04. 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 013 of these rules. (4-7-11)

Commented [DSL8]: Redundant. 37-1101(1f)

**05. Restriction on Sale.** No person who obtains raw milk or raw milk products under a herd share arrangement may sell, offer for sale, advertise for sale, or distribute such raw milk or raw milk products to any person, restaurant, food establishment, grocery store, or farmers' market. (4-7-11)

Commented [DSL9]: Redundant. 37-1101(3)

**06. Procurement of Raw Milk or Raw Milk Products.** Raw milk or raw milk products may only be received directly from the dairy farm by the owners of a herd share or by an owner on behalf of another herd share owner participating in the same herd share program. (4-7-11)

Commented [DSL10]: Redundant. 37-1101(1b)

041. -- 049. (RESERVED)

**050. PERMIT ENFORCEMENT.**

Section 050 applies to the enforcement of Unlimited Raw Milk Permits and Small Herd Exempt Raw Milk Permits.  
(4-7-11)

**01. Permit Suspension.** The Department may suspend a permit whenever it has reason to believe that a public health hazard exists, whenever the permit holder has violated any of the requirements of these rules, or whenever the permit holder has interfered with the Department in the performance of its duties. (4-7-11)

**a.** Prior to suspending a permit, the Department will serve a written notice of intent to suspend the permit on the permit holder. The notice will ~~that~~ specify the alleged violation(s), and afford the permit holder a reasonable opportunity to correct such violation(s) in a manner agreed to by the parties. In the absence of such agreement, the corrective actions may be designated by the Department. The ~~r~~Reasonable opportunity to ~~comply~~ correct the violation(s) will be given before the permit suspension order becomes effective. A permit suspension will remain in effect until the violation has been corrected to the satisfaction of the Department. (4-7-11)

**b.** Whenever the raw milk or raw milk products create or appear to create an imminent hazard to the public health, or in the event of a willful refusal to permit an authorized inspection, the Department may immediately suspend the permit without the prior notice procedure set forth in these rules. The Department will provide notice and opportunity for hearing after the suspension, in accordance with Title 67, Chapter 52, Idaho Code. (4-7-11)

**c.** Upon written request by any person whose permit has been suspended, or by any person who has been served with a notice of intent to suspend, the Department will proceed to a hearing and, upon evidence presented at such hearing, may affirm, modify, or rescind the suspension or intention to suspend. (4-7-11)

**d.** The Department may forego permit suspension provided the raw milk or raw milk products in violation are not sold, offered for sale, or distributed for human consumption. (4-7-11)

**02. Permit Revocation.** If repeated violations occur, the Department may revoke a permit after reasonable notice and an opportunity for a hearing have been given to the permit holder. This section is not intended to preclude the institution of court action. (4-7-11)

**03. Permit Reinstatement.** Any raw milk producer whose permit has been suspended or revoked may make written application for the reinstatement of the permit. (4-7-11)

**a.** When the permit has been suspended due to a violation of any of the bacterial, somatic cell, coliform, drug, or cooling-temperature standards, the Department ~~may re-issue a temporary the permit~~ after raw milk samples show that the conditions responsible for the violation have been corrected. (4-7-11)

**b.** Whenever the permit has been suspended due to a violation of a requirement other than bacteriological, coliform, somatic cell count, or cooling-temperature standards, the application for reinstatement must show that the violation has been corrected. Within one (1) week of the receipt of such application, the Department will make an inspection of the applicant's establishment, ~~if applicable~~, and may make additional subsequent inspections as deemed necessary. If the inspection shows that the raw milk or raw milk products meet the applicable standards and are in compliance with these rules, the permit will be reinstated. (4-7-11)

**051. -- 999. (RESERVED)**

Commented [DSL11]: Are these standards still appropriate?

***Idaho State Department of Agriculture***

***02.04.13 Rules Governing Raw Milk***

***May 18, 2021, 1:30 p.m.***

***Lloyd Knight, Dr. Scott Leibsle, Chanel Tewalt, Hosts/Facilitators***

Present: Dallas Burkhalter, Office of Attorney General – ISDA; Katy DeVries, Office of Attorney General – ISDA; Mitch Vermeer, ISDA; Martha Walbey, ISDA; Celia Gould, ISDA; Bob Naerebout, Idaho Dairymen’s Association; Marv Patten, Milk Producers of Idaho; Steve VanNorman; Andrea Sater; Greg Collett; Meadow Thompson; Gail Ansley; Meadow Thompson; Michelle Metcalf; Doc Dugenske; Paul Herndon; Kami Jenkins; Leslie Tengelsen; Health & Welfare; Kathryn Turner.

**AGENDA ITEMS**

**WELCOME:**

Lloyd Knight started the meeting at 1:32 p.m. by teleconference. Mr. Knight discussed the house rules and indicated this was the second of three rule meetings. He then turned the meeting over to Dr. Scott Leibsle to present the strawman.

Dr. Leibsle introduced himself and explained that the strawman was structured as follows: the items highlighted in blue are attempts to simplify rule language, without changing the scope or impact of the rule. Yellow highlighted sections are changes that will alter the scope of the rule.

Scott Leibsle discussed the strawman by explaining the first section are documents that are incorporated by reference and if you are an unlimited raw facility you are required to be inspected and need to abide by the PMO for sanitation requirements.

Section 010 – was the definition section and Gail Ansley had submitted a comment requesting the number of goat and sheep be changed from 7 animals to 21 animals since they do not produce as much milk as a cow.

Scott Leibsle opened this to the group for discussion.

Leslie Tengelsen responded she understood the volume concept but does it equal the level of sanitation, can you milk 21 animals as cleanly as 7 animals.

Paul Herndon said that 21 goats could produce more than 3 cows, and that Leslie Tengelsen brings up a good point regarding sanitation. Milking more animals is going to take a lot more and you are more likely to introduce contamination.



Marv Patten responded when the rule was originally developed the animal numbers were taken out of thin air. It was somewhat based upon how counties define “animal units”. Marv Patten also commented that he disagreed with Paul regarding sanitation vs. number of animals.

Kami Jenkins said they milk more than 3 cows and 7 goats but only sell from the allowed amount and I have never had a bad result. I don’t think cleanliness is an issue.

Gail Ansley stated milking a cow takes longer than milking a goat.

Leslie Tengelsen asked if we had examples of what other states do in their raw milk program.

Scott Leibsle responded every state runs their program a little different.

Paul Herndon stated he was not against changing the number of goats to 21 but, the trend will then be to have more and sanitation standards would be a good idea.

Greg Collett stated he has visited goat facilities and he believes sanitation cleanliness is easier when dealing with goats than cows.

Kami Jenkins said she has both cows and goats and the goats are much easier to milk and the sanitation is also easier than cows.

Andrea Sater indicated she was not familiar with the unlimited rules and asked why there needed to be a limit at all.

Marv Patten said a lot of people think raw milk should not be allowed for human consumption and we have rules in place to protect the public, you have less chance of having issues if the milk is pasteurized.

Scott Leibsle circled back to Leslie Tengelsen’s question regarding the protocols for other states and their raw milk programs and indicated Utah allows the sale of 120 gallons per week without being inspected, and Connecticut allows less than 10 animals if you are enrolled in the state mastitis program.

Paul Herndon indicated he started with the Small Herd and then went to unlimited raw and goats are cleaner and once you move past a certain number of animals you should be required to have an inspection, and he also agrees there should be limits on the number of animals you can have.

Kami Jenkins asked Paul Herndon to explain his response in more detail. She feels if your milk test comes out clean then wouldn’t that point to good sanitation.

Paul Herndon stated not every batch is getting tested, if you did test every day or every week your test results would be different because there is enough variation in each milking and the more animals you milk the more important it is to have a cooling system and abide by Grade A standards. Only testing once a month can’t guarantee quality.

Gail Ansley asked under the unlimited raw permit how many times is their milk tested.

Scott Leibsle responded it is the same as the Small Herd which is once a month, however, if you are Grade A and unlimited raw you as the producer must test every load of milk.

Gail Ansley asked if ISDA was not testing unlimited raw any more than small herd.

Scott Leibsle said correct, however, they have sanitation standards they must adhere to.

Mitch Vermeer stated unlimited raw facilities are held to the inspection frequency and sanitation and construction requirements.

Scott Leibsle gave a brief description of Greg Collett's written comment requesting the change of limiting the coliform tests. Our dairy lab provided an analysis of testing for pathogens and to type them and the conclusion was it is not cost effective or feasible to do at this time.

Greg Collet stated the state doesn't have the intent in testing for pathogens and I noticed in the laws it requires rules to address Title 37 chapter 11 and the interpretation infers, but doesn't prohibit the sale of raw milk.

Scott Leibsle displayed Title 37 Chapter 11 and read the first sentence which explained the allowance of raw milk for sale and from that the department developed these rules.

Greg Collet indicated the rule doesn't prohibit the sale of raw milk, but the departments' rules prohibit the sale of raw milk unless you do this or this.

Chanel Tewalt commented that our agency has the authority for rule making and the legislation has reviewed our rules many times and has approved them and our department is operating within our authority and scope.

Marv Patten said raw milk has been in law for a long time and it was an attempt to try to come to an agreement to make raw milk work, and there was a lengthy discussion on coliform limits.

Greg Collet responded he didn't think our agency is operating within its' scope. He also said there are two other issues with coliform; it is an arbitrary number and it doesn't address when the milk is taken from the cow and how long it has been sitting before testing. Coliform numbers will be different for each product and cream will test higher for coliform so why would there be the same tolerance levels for coliform.

Scott Leibsle asked Greg if he had a proposal he would like to make.

Greg Collet answered to eliminate the bacteria criteria.

Scott Leibsle asked if Greg could clarify if he wanted to eliminate all bacteria and coliform counts.

Leslie Tengelsen indicated there are many human pathogens, what do you propose to test instead of coliform. How would you provide a safe product for consumers?

Greg Colett answered test for pathogens that relate to cleanliness.

Marv Patten said what about SCC, that's what's in the udder.

Greg Colett responded he considers SCC different than bacteria testing.

Paul Herndon stated he found bacteria limits to be very helpful. It was a good indication of sanitary conditions, and that protocols are being followed.

Greg Collett said the testing that the state is doing now is not acceptable and more thought needs to be put into it.

Scott Leibsle said he encourages any stakeholder to submit any comment or suggestion in writing and the agency will post it on the website and it can be reviewed.

Scott Leibsle responded to a comment by Marv Patten requesting clarification of brucellosis.

Marv Patten said that helps people understand what is required.

Kami Jenkins asked for clarification if brucellosis needs to be done on cows.

Scott Leibsle responded you don't have to test your cow for brucellosis, our lab does it through a BRT test of the milk, which cannot be done on goats or sheep and that is why your vet needs to draw blood for those animals.

Scott Leibsle gave a summary of a comment submitted by Jennifer Hays that stated each year she has to get her test results submitted earlier and she tries to combine her vet visits with other tests and it becomes difficult and was suggesting a grace period after the test have lapsed before getting taken off the market.

Paul Herndon replied he understood because he has the same issues. He proposed to have the due date within the month and not on a specific day of the month. He also wanted an option to change the anniversary date.

Marv Patten asked how long had it been since we have had a positive TB test.

Scott Leibsle said it has been a very long time.

Marv Patten stated if we are a TB free state do we need the requirement.

Scott Leibsle said TB is a public health concern that can arise without pasteurization.

Leslie Tengelsen stated TB testing is important and it should remain.

Greg Collet said the testing should just be within the year.

Scott Leibsle said you can certainly change your anniversary date to whatever you like. You would call your vet a have them do the required testing and that would change your anniversary date.

Section 014 - labeling this language was simply clarified. It was re-clarified due to a request from Greg Collett and Mike Reid.

Greg Collett said that is acceptable.

Section 020 - clarified unlimited raw.

Marv Patten asked if you have a small herd can you also have a herd share permit at the same time.

Scott Leibsle said that's correct, you can only have one.

Marv Patten said it's not clearly stated that you can't have both on the same facility.

Scott Leibsle responded we have had a legal interpretation that you can only have one permit at a time and the Department has never allowed a producer to hold 2 types of raw milk permits, since the program was created in 2011.

Section 030 - Small Herd Exempt we are simplifying the language.

Section 040 – Herd Share, this language is verbatim out of the statute and is redundant....proposing to strike it.

Section 050 - Permit enforcement – no changes.

Kami Jenkins asked if the state was still testing for QFever.

Scott Leibsle responded we are not testing milk for QFever.

Kami Jenkins asked if it could be tested. There are some herds that have it in South Eastern Idaho from birthing fluids.

Scott Leibsle said the department has the ability however, it is a very hardy bacteria and it is difficult to get the farm cleared of it.

Gregg Collett said his landlord requires his animals to be tested for QFever and false positives are extremely high.

Lloyd Knight adjourned the meeting at 3:01 p.m.

## Feasibility of Identification of Pathogenic Coliform Bacteria in Dairy Products at the ISDA Dairy Laboratory

Coliforms are types of bacteria that fit into the category based on their form and function. Coliforms are defined as aerobic and facultatively anaerobic, gram negative, non-spore-forming rod bacteria that ferment lactose with the production of acid and gas within 48 hours at 35-37°C.

While most coliforms are not necessarily pathogenic, coliform presence in processed dairy is an overall indication of cleanliness (or lack thereof) and an indicator that there is high likelihood of post-processing contamination and unsanitary conditions.

Most coliforms are from 4 genera of the Enterobacteriaceae family (however not all strains of these genera are coliforms and some coliforms are not a part of these genera, e.g. *Aeromonas* spp.)

Enterobacteriaceae family genera of most coliforms are *Citrobacter*, *Enterobacter*, *Escherichia*, and *Klebsiella* and have been found to constitute about 35%, 30%, 11%, and 24% of coliforms found in raw milk respectively. Some of the more common pathogenic dairy coliforms are:

*Citrobacter freundii* – can cause foodborne illness.

*Enterobacter* spp (e.g. *sakazakii* and *Enterobacter aerogenes*) – can cause foodborne illness.

*Escherichia coli* (over 700 serotypes have been identified) – some serotypes can cause foodborne illness, many do not. Dangerous shiga toxin producing types include **O157:H7** (most common for severe illness), **O6:NM**, **O104:H21**, **O111:NM** and can cause gastroenteritis and hemolytic uremic syndrome.

*Klebsiella pneumoniae*- potentially dangerous, associate with mastitis.

*Aeromonas* spp. – some species can cause gastroenteritis and necrotizing fasciitis.

Currently the Dairy Laboratory utilizes a commercially prepared dehydrated media to culture all aerobic bacteria and coliforms. This media allows for us to test large numbers of samples in an efficient and economical manner. There are no similar commercial culture media platforms that would allow for identification of most coliforms on the species level. There is the ability for us to easily determine the presence and CFU counts for *Escherichia coli* in addition to the overall coliform count in fluid milk. Testing for *E. coli* would cost \$0.75 more per sample. As *E. coli* is ubiquitous in most environments and many forms are not pathenogenic, this may not be any more informative that total coliform testing. There is also the option to test/quantify total Enterobacteriaceae at a cost of about \$0.10 more per sample, but this would provide more generalized information and include more types of organisms that just coliforms.

There are molecular based test kits for the identification of *E. coli* O157 which would require the purchase of a Molecular Detection Instrument (approximately \$10,000-12,000), block heater,

April 26, 2021

and chill block in addition to the test kit which can test 96 samples for \$520.79. The testing protocol and sample preparation appears to be involved and we do not currently have the laboratory personnel and equipment to accommodate this additional testing for the current volume of raw samples we receive.

All species-specific identification would be molecular based testing involving PCR and/or DNA sequencing which would be cost prohibitive and would require more staffing to support.

## **Rulemaking Summary**

### **IDAPA 02.04.13 – Rules Governing Raw Milk**

#### **Where is the rulemaking authority?**

Authority for this rulemaking resides in the Title 37 Chapter 1101 Idaho Code

#### **What does this rule do?**

These rules govern the production, processing, distribution, and sale of raw milk for human consumption, but not intended for pasteurization.

#### **What is the agency proposing to change?**

The agency has performed Zero Based Regulation to simplify, clarify or remove outdated, unnecessary or irrelevant language in sections highlighted **blue** in the attached strawman. The amended language in these sections does not change the regulatory impact, scope, intent or authority in the current rule.

The agency has conducted an internal audit of this rule and identified multiple sections that may require amendments due to inaccurate or confusing language, recommendations to improve the efficiency of the program or changes that must be made to coincide with recent statutory amendments. The changes listed below, and highlighted in **yellow** in the attached strawman, do result in a change to the regulatory impact, scope, intent or authority in the current rule.

- Updating incorporations by reference to current version (Section 004, 013 and 020)
- Require raw milk label fonts be of equal size (Section 14)

## 02.04.13 – RULES GOVERNING RAW MILK

### 000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 37-1101(5), Idaho Code. (4-7-11)

### 001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is “Rules Governing Raw Milk.” (3-29-10)

02. **Scope.** These rules govern the production, processing, distribution, and sale of raw milk for human consumption, but not intended for pasteurization. (4-7-11)

### 002. – 003. (RESERVED)

### 004. INCORPORATION BY REFERENCE.

The following document is incorporated by reference: The Grade A Pasteurized Milk Ordinance ~~2017~~ 2019 Revision, U.S. Department of Health and Human Services Public Health Service Food and Drug Administration (“2017 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>. (3-20-20)

### 005. – 009. (RESERVED)

### 010. DEFINITIONS.

The following definitions apply in the interpretation and the enforcement of this chapter: (3-29-10)

01. **Adulterated.** The meaning of adulterated includes the following: (4-7-11)

a. The addition or inclusion of unclean, unwholesome, inferior, impure or foreign material into a food product; or (4-7-11)

b. The production, distribution, or sale of raw milk or raw milk products from a facility that does not possess a valid permit from the Department or is not registered with the Department as a Herd Share program; or (4-7-11)

c. Any raw milk product or facility that fails to meet any of the requirements of these rules. (4-7-11)

02. **Dairy Farm.** Any place or premises where one (1) or more cows, goats or sheep are milked and where a part or all of the raw milk or raw milk products are produced that are not intended for pasteurization, or are intended for human consumption without pasteurization, and are distributed, sold or offered for sale to persons other than members of the dairy farm’s immediate household. (4-7-11)

03. **Denatured.** To change the usual or normal nature of a material or substance by either chemical or physical means. (3-29-10)

04. **Herd Share.** The undivided ownership interest in no more than seven (7) cows, fifteen (15) goats, or fifteen (15) sheep resulting from an investment of monetary value through a written contractual agreement between an owner and a farmer in exchange for raw milk or raw milk products. (4-7-11)

05. **Official Laboratory.** A biological, chemical, or physical laboratory that is approved by the Department. (4-7-11)

06. **Owner.** A person who has made an investment of monetary value in the ownership or care of cows,

Commented [DSL1]: Mandated in statute. 37-1101c



goats, or sheep and participates in a Herd Share program pursuant to a written contractual agreement. (4-7-11)

**07. Raw Milk.** The lacteal secretion, practically free from colostrum, obtained by the complete milking of one (1) or more healthy cows, goats, or sheep, and that has not been pasteurized and is intended for human consumption. (4-7-11)

**08. Raw Milk Permit.** ~~Written authorization from the Department allowing raw milk and raw milk products to be sold for human consumption by a dairy farm or raw milk plant that complies with the requirements of these rules.~~

(4-7-11)

**a. Small Herd Exemption Raw Milk Permit.** Sale of raw milk and raw milk products as provide in Section 030 of these rules.

**b. Unlimited Raw Milk Permit.** Sale of an unlimited volume of raw milk and raw milk products as provided in Section 020 of these rules.

~~**09. Raw Milk Plant.** Any place, premises, or establishment where raw milk is collected, handled, stored, bottled, or processed into raw milk or raw milk products for sale or offered for sale for human consumption.~~

(4-7-11)

**10. Raw Milk Products.** Raw milk products include any milk product processed from raw milk that has not been pasteurized and is intended for human consumption by persons other than members of the dairy farm's immediate household. Cheese made from raw milk that has been processed and aged for a minimum of sixty (60) days at a temperature greater than thirty-five degrees Fahrenheit (35°F) in a licensed dairy processing plant is exempt from these rules. (4-7-11)

**11. Registration.** A requirement by the Department for the authorization of a Herd Share to provide raw milk and raw milk products for human consumption to owners of that Herd Share as provided in Section 040 of these rules. (4-7-11)

**12. Sanitization.** The application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable. Such treatment may not adversely affect the equipment, the raw milk or raw milk products or the health of consumers, and be acceptable to the Department.

(3-29-10)

**13. Small Herd.** The production of raw milk or raw milk products for human consumption, for use by people other than members of their immediate household or non-paying guests, in a facility with no more than three (3) lactating cows, seven (7) lactating goats, or seven (7) lactating sheep. The dairy farm herd may include other cows, goats, or sheep that are dry or are producing milk for purposes other than human consumption. (4-7-11)

~~**14. Small Herd Raw Milk Permit.** Written authorization from the Department to a small herd dairy farm allowing raw milk and raw milk products to be sold for human consumption as provided in Section 030 of these rules. (4-7-11)~~

**15. Sterilized.** The condition achieved by application of heat, chemical sterilant or other appropriate treatment that renders the piping, equipment and containers used for raw milk and raw milk products free of viable microorganisms. (3-29-10)

**011. (RESERVED)**

**012. ADULTERATED OR MISBRANDED RAW MILK OR RAW MILK PRODUCTS.**

**01. Prohibited Acts.** No person shall produce, provide, sell, offer, or expose for sale, or possess with intent to sell, within the State or its jurisdiction, any adulterated or misbranded raw milk or raw milk products for human consumption. (4-7-11)

**02. Restriction on Sale.** Raw milk or raw milk products may not be sold or offered for sale through restaurants or other food service establishments. Grocery stores and similar establishments where raw milk or raw milk products are sold at retail, but not processed there, are exempt from the requirements of these rules, provided those stores and establishments receive raw milk or raw milk products from Department-authorized facilities. The sale of raw milk and raw milk products, produced under the authority of this Rule, shall be limited to locations within the state of Idaho. The sale of raw milk and raw milk products outside the state of Idaho is prohibited.

(4-7-11)

**03. Disposition of Adulterated or Misbranded Product.** Any adulterated or misbranded raw milk or raw milk product may be impounded and disposed of as directed by the Department. The Department may issue a hold order when it is deemed necessary to protect human health.

(4-7-11)

**013. 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 013.02 of this rule. Unlimited Raw Milk Permit dairy farms must meet the sanitation requirements of the 2019 Pasteurized Milk Ordinance. Permitted dairy farms and raw milk plants must meet the sanitation requirements of the 2017 Pasteurized Milk Ordinance, unless the dairy farm has a Small Herd Raw Milk Permit or has registered a herd share arrangement with the Department.

(4-11-19)

**02. Chemical, Bacteriological, and Temperature Standards.**

<b>RAW MILK</b>	
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	<u>Raw milk and raw milk products may not exceed twenty-five (25) per ml.</u>
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	<u>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. All animals in the raw milk program must receive one of the following tests:</u> <u>Bovina – Negative Brucellosis Ring Test (BRT) – no less than every three (3) months</u> <u>Goats – Negative Brucellosis Card Test – no less than every twelve (12) months</u> <u>Sheep – Negative Brucella Ovis Test – no less than every twelve (12) months</u>
Tuberculosis Test	All raw milk must be from animals that have been accredited as tuberculosis free or must have passed an <del>annual</del> tuberculosis <u>test within the last twelve (12) months.</u>

**Commented [DSL2]:** These standards are mandated in statute for herdshares (37-1101c).

**Commented [DSL3]:** Limit coliform testing to pathogens only. Greg Collett.

**Commented [DSL4R3]:** Feasibility of pathogen testing only -

**Commented [DSL5]:** Request to clarify test requirements. Milk Producer's of Idaho

(4-7-11)

**03. Commingled Milk.** Milk from commingled species must meet the somatic cell count of the most restrictive species.

(4-7-11)

**014. LABELING.**

**01. Applicability.** Section 014 applies to holders of **Unlimited Raw Milk Permits** and holders of **Small Herd Exemption Raw Milk Permits**. (4-7-11)

**02. Requirements.** All raw milk and raw milk products must have Department-approved labeling. All bottles, containers, and packages enclosing raw milk or raw milk products must be conspicuously marked with the following: (4-7-11)

a. The words “not pasteurized,” or “unpasteurized” in addition to “raw” must precede the name of the product and be displayed in such a way on the label to not obscure and/or confuse the identity of this raw unpasteurized dairy product by the consumer. (4-7-11)

**Commented [DSL6]:** Revised labeling language. Greg Collett; Mike Reid

b. The quantity of contents; (4-7-11)

c. The name and address or permit number of the permit holder; and (4-7-11)

d. When applicable, the word “goat” or “sheep” must precede the name of the raw milk or raw milk products. (4-7-11)

**03. Commingled Milk Label.** The label of raw milk or raw milk products containing milk from commingled species must **conspicuously** identify the species from which the raw milk was obtained. (4-7-11)

**04. Small Herds.** Department-approved labels are not required for the holders of Small Herd **Exemption Raw Milk Permits** if the raw milk or raw milk products are sold at the point of production. (4-7-11)

**05. Misleading Labels.** It is a violation of these rules to use any misleading marks, words, or endorsements on the label. Registered trade designs or similar terms on the bottle cap or label may be used if the Department determines that the designs or terms are not misleading and do not obscure the labeling required by these rules. Any misleading labeling on the final container will cause the product to be considered misbranded. (3-29-10)

**015. – 019. (RESERVED)**

**020. UNLIMITED RAW MILK PERMITS.**

**01. Requirements/Legal Sale.** It is unlawful for any person who does not possess an **Unlimited 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 Requirements.** 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 an **unlimited raw milk 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 **2017-2019** Pasteurized Milk Ordinance; (4-11-19)

c. Meet the raw milk and raw milk products quality standards in Section 013 of these rules; (4-7-11)

d. Meet the tuberculosis and brucellosis standards in Section 013 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)

~~f. The dairy farm is not concurrently operating a herdshare or small herd exemption raw milk permit.~~

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

**04. Sanitation Requirements.** ~~All unlimited raw milk permitted dairy farms and raw milk plants that process raw milk or raw milk products into final containers for human consumption must meet the sanitation requirements of the 2017 2019 Pasteurized Milk Ordinance, and Section 013 of these rules if the raw milk or raw milk products are for use by persons other than the dairy farm's immediate household.~~ (4-11-19)

~~05. Transfer of Permits. Unlimited Raw Milk Permits are not transferable to another person or location.~~

021. -- 029. (RESERVED)

**030. SMALL HERD EXEMPTION RAW MILK PERMITS.**

~~01. Legal Sale. It is unlawful for any person who does not possess a with a small herd exemption permit from the Department 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, 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)

~~0102. Obtaining a Small Herd Raw Milk Permit Requirements. Only a person who complies with these rules may receive and retain a Small Herd Raw Milk Permit. Prior to the issuance of a small herd exempt raw milk permit, each dairy farm must comply with the following requirements: 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. Submit an application to the Department indicating the physical location of the small herd and the mailing address of the responsible party.~~

~~b. Meet the raw milk and raw milk products quality standards as set forth in Section 013 of these rules;~~ (4-7-11)

~~bc. Meet the tuberculosis and brucellosis standards as set forth in Section 013 of these rules;~~ (4-7-11)

~~ed. 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)

~~de. All raw milk and raw milk products must be produced and processed on the same premises.~~ (4-7-11)

~~f. The dairy farm is not concurrently operating a herdshare or unlimited raw milk permit.~~

~~0203. Testing Frequency.~~ Raw milk ~~or and~~ 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)

~~0304. 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 013 of these rules. (4-7-11)

**0405. 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)

**0506. 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 2017 Pasteurized Milk Ordinance. (4-11-19)

**07. Transfer of Permits.** Small Herd Exemption Raw Milk Permits are not transferable to another person or location.

031. -- 039. (RESERVED)

**040. HERD SHARE PROGRAMS.**

**01. Registration.** The dairy farm or farmer responsible for a herd participating in a herd share program must register the farm or dairy with the Department and is subject to all the provisions of Section 37-1101, Idaho Code. Registration may be upon a form provided by the Department or may be a written statement containing, at a minimum, the following information: (4-7-11)

Commented [DSL7]: All redundant language. 37-1101(1c)

a. The name of the farmer, farm, or dairy; (4-7-11)

b. A valid, current address for the farmer, farm, or dairy; and (4-7-11)

c. A statement that raw milk or raw milk products are being produced at the farm or dairy. (4-7-11)

**02. Proof of Ownership Interest.** The farmer and each owner of the herd share must enter into a written contract evidencing the herd share arrangement. The contractual documents must include, at a minimum, the following: (4-7-11)

Commented [DSL8]: All redundant language. 37-1101(1c)

a. A bill of sale, stock certificate, or other written evidence satisfactory to the Department; (4-7-11)

b. A boarding and care plan for the livestock; (4-7-11)

c. A conspicuous notice that the milk or milk products received under the contract will be raw; and (4-7-11)

d. Proof that written information regarding the herd health and production standards used by the dairy or farm have been provided to each herd share owner. (4-7-11)

**03. Testing and Results.** The farm or dairy must comply with the testing frequency and standards set forth in Section 37-1101, Idaho Code. A copy of all test results, the name of the tests performed, and an explanation of the tests and test results must be provided to each owner. Proof that the information has been provided to the owners must be sent to the Department. (4-7-11)

Commented [DSL9]: Redundant. 37-1101(1d)

**04. 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 013 of these rules. (4-7-11)

Commented [DSL10]: Redundant. 37-1101(1f)

**05. Restriction on Sale.** No person who obtains raw milk or raw milk products under a herd share arrangement may sell, offer for sale, advertise for sale, or distribute such raw milk or raw milk products to any person, restaurant, food establishment, grocery store, or farmers' market. (4-7-11)

Commented [DSL11]: Redundant. 37-1101(3)

**06. Procurement of Raw Milk or Raw Milk Products.** Raw milk or raw milk products may only be

Commented [DSL12]: Redundant. 37-1101(1b)

received directly from the dairy farm by the owners of a herd share or by an owner on behalf of another herd share owner participating in the same herd share program. (4-7-11)

041. -- 049. (RESERVED)

**050. PERMIT ENFORCEMENT.**

Section 050 applies to the enforcement of Unlimited Raw Milk Permits and Small Herd Exempt Raw Milk Permits. (4-7-11)

**01. Permit Suspension.** The Department may suspend a permit whenever it has reason to believe that a public health hazard exists, whenever the permit holder has violated any of the requirements of these rules, or whenever the permit holder has interfered with the Department in the performance of its duties. (4-7-11)

**a.** Prior to suspending a permit, the Department will serve a written notice of intent to suspend the permit on the permit holder. The notice will specify the alleged violation(s), and afford the permit holder a reasonable opportunity to correct such violation(s) in a manner agreed to by the parties. In the absence of such agreement, the corrective actions may be designated by the Department. Reasonable opportunity to correct the violation(s) will be given before the permit suspension order becomes effective. A permit suspension will remain in effect until the violation has been corrected to the satisfaction of the Department. (4-7-11)

**b.** Whenever the raw milk or raw milk products create or appear to create an imminent hazard to the public health, or in the event of a willful refusal to permit an authorized inspection, the Department may immediately suspend the permit without the prior notice procedure set forth in these rules. The Department will provide notice and opportunity for hearing after the suspension, in accordance with Title 67, Chapter 52, Idaho Code. (4-7-11)

**c.** Upon written request by any person whose permit has been suspended, or by any person who has been served with a notice of intent to suspend, the Department will proceed to a hearing and, upon evidence presented at such hearing, may affirm, modify, or rescind the suspension or intention to suspend. (4-7-11)

**d.** The Department may forego permit suspension provided the raw milk or raw milk products in violation are not sold, offered for sale, or distributed for human consumption. (4-7-11)

**02. Permit Revocation.** If repeated violations occur, the Department may revoke a permit after reasonable notice and an opportunity for a hearing have been given to the permit holder. This section is not intended to preclude the institution of court action. (4-7-11)

**03. Permit Reinstatement.** Any raw milk producer whose permit has been suspended or revoked may make written application for the reinstatement of the permit. (4-7-11)

**a.** When the permit has been suspended due to a violation of any of the bacterial, somatic cell, coliform, drug, or cooling-temperature standards, the Department may re-issue a temporary the permit after raw milk samples show that the conditions responsible for the violation have been corrected. (4-7-11)

**b.** Whenever the permit has been suspended due to a violation of a requirement other than bacteriological, coliform, somatic cell count, or cooling-temperature standards, the application for reinstatement must show that the violation has been corrected. Within one (1) week of the receipt of such application, the Department will make an inspection of the applicant's establishment, if applicable, and may make additional subsequent inspections as deemed necessary. If the inspection shows that the raw milk or raw milk products meet the applicable standards and are in compliance with these rules, the permit will be reinstated. (4-7-11)

051. -- 999. (RESERVED)

**IDAHO DEPARTMENT OF AGRICULTURE  
2270 Old Penitentiary Road  
PO Box 7249  
Boise, Id 83707**

**02.04.13 RULES GOVERNING RAW MILK  
Minutes of June 15, 2021 Meeting**

**HOSTS/FACILITATORS:** Lloyd Knight, ISDA  
Dr. Scott Leibsle, ISDA  
Chanel Tewalt, ISDA

**STAKEHOLDERS PRESENT:** Bob Naerebout, Idaho Dairymen's Association  
Marv Patten, Milk Producers of Idaho  
Shellie Frey  
Gail Ansley  
Paul Herndon, Producer Unlimited Raw Milk  
Sara Sweet, Producer Small Herd  
Greg Collett, Producer Unlimited Raw Milk  
Leslie Tengelsen, Health & Welfare  
Kami Jenkins, Producer Small Herd  
Matt Walker  
Sydney Plum  
Jarryd Samples  
Robert Dugenske

**DEPARTMENT STAFF:** Dallas Burkhalter, Office of Attorney General – ISDA  
Katy Devries, Office of Attorney General – ISDA  
Celia Gould, ISDA  
Pamm Juker, ISDA  
Dr. Scott Barnes, ISDA  
Mitch Vermeer, ISDA  
Andrea Thompson, ISDA  
Dicsie Gullick, ISDA

Lloyd Knight called the meeting to order at 1:33 PM MDT. He explained that the comment period was open until June 20<sup>th</sup> and then turned the meeting over to Dr. Scott Leibsle to present the strawman. He also stated he had muted everyone and explained the process for unmuting and participating. He then turned the meeting over to Dr. Leibsle.

Dr. Leibsle explained where to find rulemaking information on the department's website. He then presented the strawman draft with a brief overview and stated that he would return to areas of discussion afterwards.

The main changes in the rules were:

- The document incorporated by reference was removed because the rules proposed would no longer differentiate between small herd and unlimited raw milk production.
- Definitions were removed that no longer appeared in rule or were listed in statute.
- Raw milk must remain in Idaho and cannot be transported across state lines.
- Section 013.02 would only include testing for Brucellosis and Tuberculosis.
- Labeling would now require a product warning to be placed on all products at point of production.
- Small herd and unlimited raw milk permits were combined

The discussion began with changes to section 013.02, monthly product testing.

Matt Walker began by opposing the elimination of testing standards. He felt having testing of product is important to guarantee freshness. Also, consumers assume there is some sort of oversight and removing the testing requirement does not serve consumers. He was also concerned that insurance carriers may not cover producers if there is no testing. He pointed out that the chance of having a positive test for Brucellosis is very low and there was a better chance for finding E.coli.

Gail Ansley asked for clarification on which tests were required. Dr. Leibsle stated that only tests for Brucellosis and Tuberculosis would be required.

Mike Reid stated that the Idaho Dairyman Association volunteered to fund the cost of testing as goodwill toward consumers. Even though the pathogens tested for do not make people sick, testing is important to provide guidelines and should be adhered to. Producers should have to prove that they can have clean samples.

Dr. Leibsle stated that the proposed change does not have to do with funding. It is more closely related to Mr. Reid's second point. The pathogens that are making people sick are not being tested for. Also, because milk is being produced daily, the monthly test is only 12 days out of 365. This small sample creates a false sense of security. The reason for the change in the rules is because there is little value in such large gaps in testing.

Mike Reid disagreed with taking limits off of the number of cows that can be milked. It is easy to keep small operations clean. Removing the limits could spell disaster and could lead some producers to take on more than they can handle. To not require testing on top of it could be a collision waiting to happen. When the program first started half of the producers could not produce clean samples. He stated that it is an easy test to pass and not passing it should tell someone they shouldn't be doing this. He felt that it is a free for all and with insurance carriers possibly not covering producers there needed to be a balance.

Dr. Leibsle stated that there are a number of private labs that can do testing and producers can submit samples directly to the lab for insurance reasons.

Sara Sweet asked if the tests and inspections are not catching things, are there other options that can catch it?



Dr. Leibsle answered that what is being tested for is not what is making people sick. What is making people sick are things like Listeria, E. coli and Salmonella. Most of the outbreaks of those illnesses were from unlimited raw milk farms that had passed their monthly testing. It would be cost prohibitive to test for specific bacteria.

Sara Sweet asked if a producer is having trouble, how does it just keep going on? What happens to the producer?

Dr. Leibsle answered that the Department of Health & Welfare investigates. The Department of Agriculture would reach out to the dairy and try to come to a solution. We try to get to the bottom of it, but passing the monthly tests will not prevent ongoing illness.

Dr. Leslie Tengelsen from the Department of Health & Welfare added that Health & Welfare collaborates very closely with ISDA. If we see a trend with a particular dairy, we work with ISDA to help protect the public.

Paul Herndon stated that there is value to the monthly testing, even with the large gaps. If a producer fails once in a month, they would more than likely fail a second month and continue to fail until changes are made. This is not just a public health matter; those tests are also a predictor of shelf life. On the subject of liability insurance, he added that he did not think his insurance carrier wanted him to do his own testing, they would want independent testing done. He was concerned that if there are not any standards that certain producers would let their standards slip.

Greg Collett, an unlimited permit producer sent in a written comment that was posted just a few minutes before the meeting. He did want to respond to a few of the previous comments. First, he felt there was no value in bacterial tests because the product being produced has bacteria in it. He also felt that the state should not be the one to set sanitation standards. He also felt that there was a difference in tests between in house, private labs and state tests. He had never failed an in house or independent lab test, but he had failed state tests. He also never had an insurance carrier ask if there were any state testing or inspections. His other comments can be found on the website.

Kami Jenkins stated that she had been helped immensely by ISDA staff and wondered how many people would lose their jobs.

Dr. Leibsle assured her that raw milk is a small portion of the full-time staff's responsibilities so there would be no staffing changes due to these rules.

Gail Ansley asked how often a Grade A dairy was tested and when, before or after pasteurization.

Mitch Vermeer stated that Grade A milk was tested before and after pasteurization. Every load is tested and even after testing plants have their own standard and can decline loads based on temperature and other reasons. After pasteurization ISDA does product sampling.

Mike Reid stated that not having testing is a reason to have small herds have their own permit.

Dr. Leibsle stated that the line drawn for small herds, 7 sheep/goat or 3 cows was arbitrary. They could not justify the line since it was just “pulled out of thin air” according to one comment. The sanitation inspections that were required for larger lots were not guaranteeing food safety or preventing food borne illnesses.

Mike Reid said that the number was not pulled out of thin air. At the time the rules were written he had three cows and it was a hotly debated issue. It was decided that if he could have a grade A facility with 3 cows, so could anybody.

Dr. Leibsle reiterated that the sanitation inspection did not prevent food borne illness. The last 6 instances happened at unlimited raw dairies that had passed inspections.

Mike Reid stated that he thought there should be a line drawn in regards to equipment used.

Marv Patten stated that in state law every load of Grade A milk is tested for drugs, not coliform. Processors do more tests for Grade A milk coming from the farm. He stated that there are standards, which is a fairly reasonable conceptual idea that we have safety. He is concerned that doing away with testing goes against good common sense to have some sort of comfort that milk is produced and kept cool and sanitary. He believes that if you take away the testing, prices will go down because there are no standards. He also asked a question regarding the Brucellosis test, if it can be the BRT test.

Dr. Leibsle said yes and Marv asked if clarification could be added to the rule.

Greg Collett had a follow-up question/comment to herd size and wanting a distinction based on equipment used. He thought people understand that if you are upscaling your operation, you need more equipment. It sounded to him that other producers were wanting everyone to buy the same equipment as they have, which he did not like. He thought that businesses that need the state to hold their hand, should not be in business.

Paul Herndon brought up testing standards, herd side standards and Nutrient Management Programs (NMP). He also stated that if you leave things completely to the free market the environment suffers because it ultimately leads to self-interest. He thought that the state needed to have the testing system because the results were indicative of overall cleanliness. For some things in life there is a state interest and the state should be very interested in preserving raw milk and the dairy industry as a whole. He felt the rules as they have existed served the purpose of preserving the industry. Paul also voiced concern that if there was a failure at a dairy and the dairy was sued, having no testing would leave the dairy more vulnerable to law suits.

Dr. Leibsle did clarify that the Nutrient Management Plan is not required for raw milk. It is required for Grade A milk, under a separate set of rules. Small herd exempt and unlimited raw dairies that do not hold a Grade A milk permit are not required to have an NMP. Regarding herd size, you are allowed to milk as many animals as you would like, but with the current language you are only allowed to sell the milk from 3 cows or 7 goats or sheep. There is no way for ISDA to enforce that rule. There is no reporting requirement for the amount of product a producer sells

or where. There is no real way for ISDA to verify the arbitrary line that has been drawn between small herd exempt and unlimited raw. If you only have three animals on your farm, then it's pretty easy, but if you have 20 goats, but you say only the milk from 7 are going into the sale of raw milk products and the other 13 are being used elsewhere, there is no way for ISDA to investigate or verify. Having two different herd sizes is problematic.

Paul Herndon stated that NMPs only being required for Grade A dairies supports his point. His example is that as an unlimited raw milk dairy, he could be milking as many cows as the Grade A dairy next door, but he does not need to meet the same standards because he bottles his own milk and distributes it himself. It did not make sense to him that there is a standard that Grade A producer needs to meet, that the raw milk producer does not. He thinks that if there is going to be a standard in the industry, it should be applied across the board to all dairies in Idaho.

Dr. Leibsle stated that nutrient management had not been discussed until now and that written comments could be submitted if someone thinks that nutrient management should be part of these rules.

Marv Patten stated that unlimited raw milk producers' permits are Grade A permits because they have to meet the sanitation requirements. Therefore, Mr. Herndon would need an NMP because his permit allows his milk to go for pasteurization or raw. The requirements for the finished product are different, but he would need an NMP.

Dr. Leibsle stated that the words "Grade A" were taken off of the unlimited raw permit a while ago to eliminate confusion. There are 6 dairies in the state that sometimes milk Grade A and sometimes milk raw and an improved NMP would be necessary for them. However, for an unlimited dairy that only deals with raw milk, an NMP would not be necessary. There are two separate permits.

Paul stated that his unlimited raw permit was issued at least a year ago, maybe as much as two years ago and he was held to the Grade A standard with having an NMP. He went through the class to be able to write his NMP and believes in the process and thinks it is a good standard to have. He believes that as an unlimited raw producer he should be able to switch any day to selling to a Grade A processor if he chooses. However, his permit only says unlimited raw, it does not say Grade A.

Dr. Leibsle pointed out that if you choose to sell to a Grade A processor it would be a separate permit.

Greg Collett asked for clarification because raw milk permits do not require an NMP, but he was required to have an NMP.

Mitch Vermeer clarified that unlimited raw dairies are required to have an NMP because of how they are defined under the NMP rule. He added that small herd exempt is exempt from that portion of the NMP rule.

Greg asked for clarification about the new proposal and asked if an NMP would still be required.

Dr. Leibsle stated that it had not come up before but it was something that needed consideration.

Paul Herndon stated that it did not matter if an NMP was required or not that it would not change how he handles manure. He stated he was not against standards, just against enforcement.

Gail Ansley asked if most counties have regulation regarding NMPs after you have a certain number of animals that are in a confined area.

Dr. Leibsle stated that some counties do and some counties do not. Mitch Vermeer stated that ISDA considers large cap at 1000, where Owyhee county considers 750 as a large cap.

Gail Ansley commented that in the counties where she had dealings, if you have more than 99 animal units in a confined area for more than a certain time it is an automatic (to require an NMP) whether you are milking or feeding.

Marv Patten wanted to point out that Gail is in Lincoln county and some counties are more restrictive than the 1000 animal unit federal cap. For instance, in Jerome county, the cap is 75 animal units and Gooding county had a cap of 70 animal units.

Andrea Sayer, a producer asked if the permits are merging between small herd and unlimited, would small herds now be required to get an NMP?

Dr. Leibsle stated that there is not a requirement in this rule, it is in the rules regarding nutrient management and how a dairy farm is defined. ISDA will need to look at that.

Marv stated that the NMP rule states that Manufacture grade or Grade A dairies are required to have them.

Dr. Leibsle stated that according the NMP rule you would be exempt, but he would have to look into the definition of a dairy and get back to her.

Gail Ansley asked what was considered a manufacturing dairy.

Dr. Leibsle answered that there used to be two grades of milk, Grade A and Grade B, and Grade B was renamed Manufacture Grade. It has to do with the quality standards of milk. Liquid milk and yogurt are considered Grade A and ice cream and cheese are considered manufacture grade.

Gail asked how that would affect a person who is making cheese out of their small herd exempt milk.

Dr. Leibsle mentioned that this is addressed in another rule, but if you are making the cheese from raw milk, it would not affect you. But there is a process, and if you are aging the cheese for a certain time it is considered pasteurized, but that is not addressed in this rule.

Dr. Leibsle continued reviewing the rule beginning with product warning. The intent is to let the public know that they are buying a product that is non-pasteurized and not inspected.

Paul Herndon opposes the warning label. He had used a similar label in the past and found through consumer feedback that the label was of no value. People know what the difference is between raw and pasteurized. The label that is required offers the consumer know value, but the producer incurs a cost. For dairies using glass bottles, it is at least 8 cents a label. It is a waste product when the bottles are returned.

Dr. Leibsle stated that for the customers that regularly buy raw milk, there would be little value in the label, but the casual customer may find value because it serves as notice to what they are buying. We want to make sure that each consumer has the opportunity to be informed about what they are buying.

Paul Herndon stated that in Washington there is a warning requirement, but the warning is on the store shelf. If there is a warning label, he would prefer it be on the shelf, even though it makes the shelf look silly. At least it can be seen and stands out to the casual. With the font size requirement and being placed on the bottom of the bottle, he believes most people will not see it.

Sarah Sweet stated that labeling the shelf makes more sense. People go to her house to pick up milk and bring their own bottles. In order to comply with the changes, she would have to put a label on some one else's bottle. Putting the label on her refrigerator, or the display would make more sense to her than putting a label on every bottle handled.

Andrea Sayer stated that she agreed with the previous two comments. She is also small herd exempt and people come to her house and they put milk in other people's jars. How would labeling someone else's container work?

Marv Patten asked who thought it was a good idea to label product at the point of production? He also wondered if the product label did any good. He thinks that everyone knows what they are buying. He asked if the warning label reduced product liability. He thinks that it should be a decision made by the producer.

Dr. Leibsle asked what his solution would be and Marv answered that it should be a producer option.

Mike Reid stated that there is already a label on the milk. It started out as saying "Raw" and now it says "Raw Unpasteurized." He does not think it can get any clearer with another warning label. He pointed out that everybody has an opinion on raw milk, whether you like it, dislike it or are afraid of it, but they know what it is. We are giving the program less regulation on other things and he believes there should be less regulation for labeling. He suggested making it a producer option.

Greg Collett was also against product warning labels, but for a different reason than the previous commenters. He does not see why raw milk is being treated any differently than other fresh foods. He believes that many have bought into the "danger of raw milk" and contends that raw

milk is not any more dangerous than many other foods out there. In fact, it is less dangerous than a lot of foods. We do not see warning labels like this on fresh produce and he wanted to know why it needed to go on raw milk.

Dr. Leibsle answered that consumers want a delineation between raw and pasteurized milk and the safety factor with the raw milk is just not the same as pasteurized.

Greg pointed out that pasteurized milk is a dead food and raw milk is a living food so to treat them the same does not make any sense.

Dr. Leibsle finished reviewing the changes to the rule and called for final comments and reminded everyone that comments can be emailed in as well. All comments received will be considered and a proposed rule will be published and sent to the Division of Financial Management. That is the document that will be considered by the Legislature next January.

Bob Naerebout asked about the cost of the program and how ISDA anticipates it being addressed.

Dr. Leibsle answered that the product testing was the largest amount of the program. There is no current estimate for the program costs after the change, but he would guess it would be a fraction of what it is currently. The current program was roughly \$180,000 and the majority of the cost was the time for collecting samples, testing supplies and lab testing. A significant portion of program costs will go away if these rules go into effect.

Bob Naerebout thinks there is merit in user fees to cover whatever remaining costs there are.

Marv Patten disagrees with a certain portion of this. He believes sanitary requirements for large facilities is important. Having standards is important and sanitary procedures are for food safety.

Mike Reid asked if we are reducing testing to just Brucellosis and TB testing, what the estimate is on the number of positive tests we have had in the last few years.

Dr. Leibsle stated that there has not been a positive Brucellosis test in many years. There have been many suspected cases, and those are sent to the federal laboratory in Ames, IA. The same is true for TB, there are many suspected cases and those are sent on. The pasteurization process is largely intended to destroy organisms like Brucellosis and TB, so this is a public health issue. The state of Idaho is adjacent to Yellowstone Park, which is the last reservoir of Brucellosis in the United States. Because Idaho is part of the Greater Yellowstone Area we have additional surveillance and testing programs in place for everything, including beef cattle and Cervidae. Idaho does not currently have a cattle herd in quarantine, there is an elk herd in Idaho that is currently under quarantine for Brucellosis.

Mike Reid asked if we are not testing for any other pathogens and there have been no positive test results for Brucellosis and TB, why do we still need to test for Brucellosis and TB?

Dr. Leibsle stated that there is an increased risk because of our proximity to Yellowstone. The state of Idaho needs to keep testing. In regards to TB, there are still reservoirs of TB around the country. We are managing Brucellosis and TB, but the ongoing surveillance is a big part of it.

Chanel Tewalt asked what Brucellosis means on a state-wide basis if there is a confirmed case.

Dr. Leibsle explained that Brucellosis is a bacteria and each state is granted a status by the USDA of either Brucellosis free or Tuberculosis free and there is an expectation of ongoing surveillance and testing. This is Idaho's year to be audited by USDA, and they will look at our testing, our surveillance program, how it's administered and how we monitor movement of the animals coming in and out of high-risk areas. As an example, if an animal is identified as positive for Brucellosis, the USDA will investigate if we have been compliant with our surveillance program. If it is found that Idaho has not followed the surveillance program then they would downgrade the state's status. The downgraded status would be a tremendous blow to our livestock industry as a whole. There would be immediate sanctions on cattle and cattle could not be moved without testing being sent a different state. Testing must be done by not just for the raw milk program, but for everyone who owns livestock in Idaho.

Dr. Leibsle asked for final comments and thanks everyone for having the most interaction with stake holders he has had. He reminded everyone that comments are due by June 20<sup>th</sup>. Afterwards we will post the final version of the strawmen and showed where to find it. The final version will be sent to DFM and will be the version that Legislature will review next year.

Lloyd Knight gave the email addresses where comments could be sent and adjourned the meeting at 3:13 PM MDT.

#### **Chat Comment from meeting:**

Mitch Vermeer - Just wanted to clarify the comment I made earlier. Grade A product testing. SPC, SCC is reported once a month to ISDA for regulatory purposes. Antibiotics is tested every load. However, some of the larger processors test daily for all of the above. Additionally, product samples and bulk tank samples are also reported to ISDA monthly. I just wanted to clarify to Gails Ansley's question earlier.

**From:** [Dr. Scott Leibsle](#)  
**To:** [\\_Rulesinfo](#)  
**Subject:** Raw Milk Strawman Update  
**Date:** Thursday, June 17, 2021 8:14:45 PM  
**Attachments:** [image003.png](#)

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Raw Milk Stakeholders –

The updated version of the Raw Milk Strawman has been posted to the ISDA rulemaking website. The document is titled “Post Meeting Strawman”. Please use the following link to access the document:

<https://agri.idaho.gov/main/i-need-to/see-lawsrules/rulemaking/isda-rulemaking-2021-2022/>

For purposes of clarification of the new language, the nutrient management plan (NMP) requirement in this rule will only come into play for those raw dairies choosing to milk more than 30 cows; 150 goats or 150 sheep (or any combination of the three that totals more than 30 Animal Units). Please remember, the comment period for this rule closes on June 20. If you have any questions, please feel free to contact me or Lloyd Knight. Thank you.



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## 02.04.13 – RULES GOVERNING RAW MILK

### 000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 37-1101(5) and 37-6, Idaho Code. (4-7-11)

### 001. ~~TITLE AND SCOPE.~~

~~01. Title. The title of this chapter is “Rules Governing Raw Milk.” (3-29-10)~~

~~02. Scope. These rules govern the production, processing, distribution, and sale of raw milk for human consumption, but not intended for pasteurization. (4-7-11)~~

### 002. -- 0039. (RESERVED)

### ~~004. INCORPORATION BY REFERENCE.~~

~~The following document is incorporated by reference: The Grade A Pasteurized Milk Ordinance 2017 Revision, U.S. Department of Health and Human Services Public Health Service Food and Drug Administration (“2017 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>. (3-20-20)~~

### ~~005. 009. (RESERVED)~~

### 010. DEFINITIONS.

The following definitions apply in the interpretation and the enforcement of this chapter: (3-29-10)

01. **Adulterated.** The meaning of adulterated includes the following: (4-7-11)

a. The addition or inclusion of unclean, unwholesome, inferior, impure or foreign material into a food product; or (4-7-11)

b. The production, distribution, or sale of raw milk or raw milk products from a facility that does not possess a valid permit from the Department or is not registered with the Department as a Herd Share program; or (4-7-11)

c. Any raw milk product or facility that fails to meet any of the requirements of these rules. (4-7-11)

02. **Animal Unit (AU).** For the purposes of nutrient management for raw dairy farms, one (1) Animal Unit is equivalent to one (1) mature cow; five (5) mature goats; or five (5) mature sheep.

~~023. **Dairy Farm.** Any place or premises where one (1) or more cows, goats or sheep are milked and where a part or all of the raw milk or raw milk products are produced that are not intended for pasteurization, or are intended for human consumption without pasteurization, and are distributed, sold or offered for sale to persons other than members of the dairy farm’s immediate household. (4-7-11)~~

~~04. **Dairy Nutrient Management Plan (DNMP).** A plan prepared in conformance with the NMS for managing the land application of dairy byproducts that is prepared by a certified planner and approved by the Department.~~

~~03. **Denatured.** To change the usual or normal nature of a material or substance by either chemical or physical means. (3-29-10)~~

~~045. **Herd Share.** The undivided ownership interest in no more than seven (7) cows, fifteen (15) goats, or fifteen (15) sheep resulting from an investment of monetary value through a written contractual agreement between~~

an owner and a farmer in exchange for raw milk or raw milk products. (4-7-11)

~~05. Official Laboratory. A biological, chemical, or physical laboratory that is approved by the Department. (4-7-11)~~

06. **Owner.** A person who has made an investment of monetary value in the ownership or care of cows, goats, or sheep and participates in a Herd Share program pursuant to a written contractual agreement. (4-7-11)

07. **Raw Milk.** The lacteal secretion, practically free from colostrum, obtained by the complete milking of one (1) or more healthy cows, goats, or sheep, and that has not been pasteurized and is intended for human consumption. (4-7-11)

08. **Raw Milk Permit.** ~~Written~~ Authorization from the Department allowing raw milk and raw milk products to be sold for human consumption by a dairy farm ~~or raw milk plant~~ that complies with the requirements of these rules. (4-7-11)

~~09. Raw Milk Plant. Any place, premises, or establishment where raw milk is collected, handled, stored, bottled, or processed into raw milk or raw milk products for sale or offered for sale for human consumption. (4-7-11)~~

~~1009. Raw Milk Products. Raw milk products include any milk product processed from raw milk that has not been pasteurized and is intended for human consumption by persons other than members of the dairy farm's immediate household. Cheese made from raw milk that has been processed and aged for a minimum of sixty (60) days at a temperature greater than thirty-five degrees Fahrenheit (35°F) in a licensed dairy processing plant is exempt from these rules. (4-7-11)~~

~~110. Registration. A requirement by the Department for the authorization of a Herd Share to provide raw milk and raw milk products for human consumption to owners of that Herd Share as provided in Section 040 37-1101 (2), Idaho Code of these rules. (4-7-11)~~

~~12. Sanitization. The application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable. Such treatment may not adversely affect the equipment, the raw milk or raw milk products or the health of consumers, and be acceptable to the Department. (3-29-10)~~

~~13. Small Herd. The production of raw milk or raw milk products for human consumption, for use by people other than members of their immediate household or non-paying guests, in a facility with no more than three (3) lactating cows, seven (7) lactating goats, or seven (7) lactating sheep. The dairy farm herd may include other cows, goats, or sheep that are dry or are producing milk for purposes other than human consumption. (4-7-11)~~

~~14. Small Herd Raw Milk Permit. Written authorization from the Department to a small herd dairy farm allowing raw milk and raw milk products to be sold for human consumption as provided in Section 030 of these rules. (4-7-11)~~

~~15. Sterilized. The condition achieved by application of heat, chemical sterilant or other appropriate treatment that renders the piping, equipment and containers used for raw milk and raw milk products free of viable microorganisms. (3-29-10)~~

011. (RESERVED)

012. **ADULTERATED OR MISBRANDED RAW MILK OR RAW MILK PRODUCTS.**

01. **Prohibited Acts.** No person shall produce, provide, sell, offer, or expose for sale, or possess with

intent to sell, within the State or its jurisdiction, any adulterated or misbranded raw milk or raw milk products for human consumption. (4-7-11)

**02. Restriction on Sale.** Raw milk or raw milk products may not be sold or offered for sale through restaurants or other food service establishments. Grocery stores and similar establishments where raw milk or raw milk products are sold at retail, but not processed there, are exempt from the requirements of these rules, provided those stores and establishments receive raw milk or raw milk products from Department-authorized facilities. The sale of raw milk and raw milk products, produced under the authority of this Rule, is limited only to locations within the state of Idaho.

(4-7-11)

**03. Disposition of Adulterated or Misbranded Product.** Any adulterated or misbranded raw milk or raw milk product may be impounded and disposed of as directed by the Department. The Department may issue a hold order when it is deemed necessary to protect human health. (4-7-11)

**013. 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 013.02 of this rule. ~~Permitted dairy farms and raw milk plants must meet the sanitation requirements of the 2017 Pasteurized Milk Ordinance, unless the dairy farm has a Small Herd Raw Milk Permit or has registered a herd share arrangement with the Department.~~ (4-11-19)

**02. ~~Chemical, Bacteriological, and Temperature~~ Testing Standards.** Test results must be submitted to ISDA no later than the last day of the calendar month in which the previous test was conducted.

RAW MILK	
Temperature	<del>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).</del>
Bacterial Limits	<del>Raw milk and raw milk products except cultured raw milk products shall not exceed fifteen thousand (15,000) per ml.</del>
Coliform Limits	<del>Raw milk and raw milk products may not exceed twenty five (25) per ml.</del>
Drugs	<del>Raw milk must test negative by a test method approved by the Department.</del>
Somatic Cell Counts	<del>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.</del>
Brucellosis Test	<del>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.</del> <u>All raw milk must be from animals that have received one of the following tests:</u> <u>Bovine – Negative Brucellosis Test (blood or milk) – no less than every twelve (12) months</u> <u>Goats – Negative Brucellosis Card Test – no less than every twelve (12) months</u> <u>Sheep – Negative Brucella Ovis Test – no less than every twelve (12) months</u>
Tuberculosis Test	<del>All raw milk must be from animals that have been accredited as tuberculosis free or must have passed a annual tuberculosis test within the last twelve (12) months.</del>

(4-7-11)

**03. ~~Commingled Milk.~~** ~~Milk from commingled species must meet the somatic cell count of the most~~

restrictive species. \_\_\_\_\_ (4-7-11)

**014. LABELING.**

**01. Applicability.** Section 014 applies to holders of ~~Raw Milk Permits and holders of Small Herd Raw Milk Permits.~~ (4-7-11)

**02. Requirements.** All raw milk and raw milk products must have Department-approved labeling, with the exception of containers provided by customers. All bottles, containers, and packages enclosing raw milk or raw milk products must be conspicuously marked with the following:  
(4-7-11)

- a. The words ~~“not pasteurized,” or “unpasteurized” in addition to~~ “raw” must precede the name of the product; (4-7-11)
- b. The quantity of contents; (4-7-11)
- c. The name and address or permit number of the permit holder; and (4-7-11)
- d. When applicable, the word “goat” or “sheep” must precede the name of the raw milk or raw milk products. (4-7-11)

**03. Product Warning.** All raw milk dairy product labels must contain the following language:

- a. “WARNING: This product has not been pasteurized or inspected and may contain harmful bacteria. Raw milk, no matter how carefully produced, may be unsafe.”
- b. The warning shall appear within a heavy borderline in a color sharply contrasting to that of the background. The signal word “WARNING” shall appear in capital letters of ten point type or greater. The remaining text of the warning shall be printed in capital letters of six point type or greater.

~~0304. Commingled Milk Label.~~ The label of raw milk or raw milk products containing milk from commingled species must identify the species from which the raw milk was obtained. (4-7-11)

~~04. Small Herds.~~ Department approved labels are not required for the holders of Small Herd Raw Milk Permits if the raw milk or raw milk products are sold at the point of production. \_\_\_\_\_ (4-7-11)

~~0505. Misleading Labels.~~ It is a violation of these rules to use any misleading marks, words, or endorsements on the label. Registered trade designs or similar terms on the bottle cap or label may be used if the Department determines that the designs or terms are not misleading and do not obscure the labeling required by these rules. Any misleading labeling on the final container will cause the product to be considered misbranded. (3-29-10)

**015. -- 019. (RESERVED)**

**~~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 2017 Pasteurized Milk Ordinance; (4-11-19)~~

~~c. Meet the raw milk and raw milk products quality standards in Section 013 of these rules; (4-7-11)~~

~~d. Meet the tuberculosis and brucellosis standards in Section 013 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 2017 Pasteurized Milk Ordinance and Section 013 of these rules if the raw milk or raw milk products are for use by persons other than the dairy farm's immediate household. (4-11-19)~~

~~021. 029. (RESERVED)~~

#### ~~0230. SMALL HERD RAW MILK PERMITS.~~

~~01. **Legal Sale.** It is unlawful for any person who does not possess a with a small herd 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, 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)~~

~~0102. **Obtaining a Small Herd Raw Milk Permit Requirements.** Only a person who complies with these rules may receive and retain a Small Herd Raw Milk Permit. Prior to the issuance of a raw milk permit, each dairy farm must comply with the following requirements: 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. Submit an application to the Department indicating the physical location of the dairy and the mailing address of the responsible party;~~

~~Meet the raw milk and raw milk products quality standards as set forth in Section 013 of these rules; (4-7-11)~~

~~b. Meet the tuberculosis and brucellosis standards as set forth in Section 013 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 013 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 2017 Pasteurized Milk Ordinance. (4-11-19)~~

03. — **Transfer of Permits.** Raw Milk Permits are not transferable to another person or location.

0321. -- 0329. (RESERVED)

### 030. NUTRIENT MANAGEMENT PLANS

01. — **Dairy Nutrient Management Plan (DNMP).** All raw milk dairy farms with animals registered to the raw milk program that exceed a cumulative total of thirty (30) Animal Units shall be required to have a dairy nutrient management plan that is approved by the Department and conforms to the requirements set forth in IDAPA 02.04.14 Rules Governing Dairy Byproduct and IDAPA 02.04.30 Rules Governing Environmental and Nutrient Management.

031. -- 039. (RESERVED)

### 040. HERD SHARE PROGRAMS.

01. — **Registration.** The dairy farm or farmer responsible for a herd participating in a herd share program must register the farm or dairy with the Department and is subject to all the provisions of Section 37-1101, Idaho Code. Registration may be upon a form provided by the Department or may be a written statement containing, at a minimum, the following information: (4-7-11)

a. — The name of the farmer, farm, or dairy; (4-7-11)

b. — A valid, current address for the farmer, farm, or dairy; and (4-7-11)

c. — A statement that raw milk or raw milk products are being produced at the farm or dairy. (4-7-11)

02. — **Proof of Ownership Interest.** The farmer and each owner of the herd share must enter into a written contract evidencing the herd share arrangement. The contractual documents must include, at a minimum, the following: (4-7-11)

a. — A bill of sale, stock certificate, or other written evidence satisfactory to the Department; (4-7-11)

b. — A boarding and care plan for the livestock; (4-7-11)

c. — A conspicuous notice that the milk or milk products received under the contract will be raw; and (4-7-11)

d. — Proof that written information regarding the herd health and production standards used by the dairy or farm have been provided to each herd share owner. (4-7-11)

~~03. Testing and Results. The farm or dairy must comply with the testing frequency and standards set forth in Section 37-1101, Idaho Code. A copy of all test results, the name of the tests performed, and an explanation of the tests and test results must be provided to each owner. Proof that the information has been provided to the owners must be sent to the Department. (4-7-11)~~

~~04. 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 013 of these rules. (4-7-11)~~

~~05. Restriction on Sale. No person who obtains raw milk or raw milk products under a herd share arrangement may sell, offer for sale, advertise for sale, or distribute such raw milk or raw milk products to any person, restaurant, food establishment, grocery store, or farmers' market. (4-7-11)~~

~~06. Procurement of Raw Milk or Raw Milk Products. Raw milk or raw milk products may only be received directly from the dairy farm by the owners of a herd share or by an owner on behalf of another herd share owner participating in the same herd share program. (4-7-11)~~

041. -- 049. (RESERVED)

**050. PERMIT ENFORCEMENT.**

Section 050 applies to the enforcement of ~~Raw Milk Permits and Small Herd~~ Raw Milk Permits. (4-7-11)

**01. Permit Suspension.** The Department may suspend a permit whenever it has reason to believe that a public health hazard exists, whenever the permit holder has violated any of the requirements of these rules, or whenever the permit holder has interfered with the Department in the performance of its duties. (4-7-11)

**a.** Prior to suspending a permit, the Department will serve a written notice of intent to suspend ~~the permit on the permit holder. The notice will that~~ specifies the alleged violation(s) and afford the permit holder a reasonable opportunity to correct such violation(s) in a manner agreed to by the parties. In the absence of such agreement, the corrective actions may be designated by the Department. ~~The r~~Reasonable opportunity to ~~correct the violation(s)~~ correct the violation(s) will be given before the permit suspension order becomes effective. A permit suspension will remain in effect until the violation has been corrected to the satisfaction of the Department. (4-7-11)

**b.** Whenever the raw milk or raw milk products create or appear to create an imminent hazard to the public health, ~~or in the event of a willful refusal to permit an authorized inspection,~~ the Department may immediately suspend the permit without the prior notice procedure set forth in these rules. The Department will provide notice and opportunity for hearing after the suspension, in accordance with Title 67, Chapter 52, Idaho Code. (4-7-11)

**c.** Upon written request by any person whose permit has been suspended, or by any person who has been served with a notice of intent to suspend, the Department will proceed to a hearing and, upon evidence presented at such hearing, may affirm, modify, or rescind the suspension or intention to suspend. (4-7-11)

**d.** The Department may forego permit suspension provided the raw milk or raw milk products in violation are not sold, offered for sale, or distributed for human consumption. (4-7-11)

**02. Permit Revocation.** If repeated violations occur, the Department may revoke a permit after reasonable notice and an opportunity for a hearing have been given to the permit holder. This section is not intended to preclude the institution of court action. (4-7-11)

**03. Permit Reinstatement.** Any raw milk producer whose permit has been suspended or revoked may make written application for the reinstatement of the permit. (4-7-11)

**a.** ~~When the permit has been suspended due to a violation of any of the bacterial, somatic cell, coliform, drug, or cooling temperature standards, the Department may issue a temporary permit after raw milk samples show that the conditions responsible for the violation have been corrected. (4-7-11)~~

**ba.** Whenever the permit has been suspended due to a violation of a requirement ~~other than bacteriological, coliform, somatic cell count, or cooling temperature standards~~, the application for reinstatement must show that the violation has been corrected for the permit to be reinstated. ~~Within one (1) week of the receipt of such application, the Department will make an inspection of the applicant's establishment and may make additional subsequent inspections as deemed necessary. If the inspection shows that the raw milk or raw milk products meet the applicable standards and are in compliance with these rules, the permit will be reinstated.~~ (4-7-11)

**051. -- 999. (RESERVED)**



**From:** [Dr. Scott Leiblsle](#)  
**To:** [Dr. Scott Leiblsle](#)  
**Subject:** FW: ISDA Raw Milk Rules  
**Date:** Friday, June 4, 2021 5:01:02 PM  
**Attachments:** [image003.png](#)

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Raw Milk stakeholders –

Thank you to everyone who has participated, thus far, in ISDA's negotiated rulemaking meetings for Rules Governing Raw Milk. Regarding the remaining issues left to reach a consensus (i.e. – herd size, product testing and labeling), ISDA has thoroughly reviewed all submitted comments in the rulemaking record as well as testimony provided in the previous 2 meetings. Proposed changes to the rule that address each of these issues, based upon stakeholder input, have been posted to the ISDA rulemaking website. Please go to <https://agri.idaho.gov/main/i-need-to/see-lawsrules/rulemaking/isda-rulemaking-2021-2022/> to review the current version of the raw milk strawman in advance of the final rulemaking meeting, scheduled for June 15<sup>th</sup> @ 130pm. Please keep in mind all written comments must be submitted to ISDA no later than June 20 to be included in the rulemaking record.

A summary of the proposed changes is as follows:

Section 013. Raw Milk Testing Requirements. All raw milk testing requirements are being removed from the rule. Milk samples will no longer be collected monthly to be tested for bacteria, coliform, drugs or somatic cell counts. Annual brucellosis and tuberculosis testing on all animals in the raw milk program will remain in place.

Section 014. Labelling. All raw milk product labels must now include the warning statement listed below.

**03. Product Warning. All raw milk dairy product labels must contain the following language:**

- a. "WARNING: This product has not been pasteurized and may contain harmful bacteria. Raw milk, no matter how carefully produced, may be unsafe."**
- b. The warning shall appear within a heavy borderline in a color sharply contrasting to that of the background. The signal word "WARNING" shall appear in capital letters of ten point type or greater. The remaining text of the warning shall be printed in capital letters of six point type or greater.**

Sections .020 and .030. Herd Sizes. There will no longer be any limitations on the size of a raw milk herd or the number of animals that can be milked for sale of their raw milk products. The "small herd exempt" and "unlimited raw" permits are being combined into a single "raw milk permit". No sanitation inspections will be performed on any facility, regardless of the size of the herd.

These changes are being proposed after consideration of stakeholder feedback. The amendments would provide producers greater operational flexibility. If there are any questions on the proposed changes to the raw milk rule, please submit additional written comments to the rulemaking record or participate in the final rulemaking meeting on June 15<sup>th</sup>. Thank you.

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## 02.04.13 – RULES GOVERNING RAW MILK

### 000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 37-1101(5), Idaho Code. (4-7-11)

### 001. ~~TITLE AND SCOPE.~~

~~01. Title. The title of this chapter is “Rules Governing Raw Milk.” (3-29-10)~~

~~02. Scope. These rules govern the production, processing, distribution, and sale of raw milk for human consumption, but not intended for pasteurization. (4-7-11)~~

### 002. -- 003. (RESERVED)

### 004. INCORPORATION BY REFERENCE.

The following document is incorporated by reference: The Grade A Pasteurized Milk Ordinance 2017 Revision, U.S. Department of Health and Human Services Public Health Service Food and Drug Administration (“2017 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>. (3-20-20)

### 005. -- 009. (RESERVED)

### 010. DEFINITIONS.

The following definitions apply in the interpretation and the enforcement of this chapter: (3-29-10)

01. **Adulterated.** The meaning of adulterated includes the following: (4-7-11)

a. The addition or inclusion of unclean, unwholesome, inferior, impure or foreign material into a food product; or (4-7-11)

b. The production, distribution, or sale of raw milk or raw milk products from a facility that does not possess a valid permit from the Department or is not registered with the Department as a Herd Share program; or (4-7-11)

c. Any raw milk product or facility that fails to meet any of the requirements of these rules. (4-7-11)

02. **Dairy Farm.** Any place or premises where one (1) or more cows, goats or sheep are milked and where a part or all of the raw milk or raw milk products are produced that are not intended for pasteurization, or are intended for human consumption without pasteurization, and are distributed, sold or offered for sale to persons other than members of the dairy farm’s immediate household. (4-7-11)

~~03. Denatured. To change the usual or normal nature of a material or substance by either chemical or physical means. (3-29-10)~~

~~0403. Herd Share. The undivided ownership interest in no more than seven (7) cows, fifteen (15) goats, or fifteen (15) sheep resulting from an investment of monetary value through a written contractual agreement between an owner and a farmer in exchange for raw milk or raw milk products. (4-7-11)~~

~~05. Official Laboratory. A biological, chemical, or physical laboratory that is approved by the Department. (4-7-11)~~

~~0604. Owner. A person who has made an investment of monetary value in the ownership or care of cows,~~

goats, or sheep and participates in a Herd Share program pursuant to a written contractual agreement. (4-7-11)

**0705. Raw Milk.** The lacteal secretion, practically free from colostrum, obtained by the complete milking of one (1) or more healthy cows, goats, or sheep, and that has not been pasteurized and is intended for human consumption. (4-7-11)

**0806. Raw Milk Permit.** ~~Written A~~authorization from the Department allowing raw milk and raw milk products to be sold for human consumption by a dairy farm ~~or raw milk plant~~ that complies with the requirements of these rules. (4-7-11)

~~09. — Raw Milk Plant. Any place, premises, or establishment where raw milk is collected, handled, stored, bottled, or processed into raw milk or raw milk products for sale or offered for sale for human consumption. (4-7-11)~~

~~1007. Raw Milk Products.~~ Raw milk products include any milk product processed from raw milk that has not been pasteurized and is intended for human consumption by persons other than members of the dairy farm's immediate household. ~~Cheese made from raw milk that has been processed and aged for a minimum of sixty (60) days at a temperature greater than thirty-five degrees Fahrenheit (35°F) in a licensed dairy processing plant is exempt from these rules. (4-7-11)~~

~~1108. Registration.~~ A requirement by the Department for the authorization of a Herd Share to provide raw milk and raw milk products for human consumption to owners of that Herd Share as provided in Section ~~040~~ 37-1101 (2), Idaho Code of these rules. (4-7-11)

~~12. — Sanitization.~~ The application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable. Such treatment may not adversely affect the equipment, the raw milk or raw milk products or the health of consumers, and be acceptable to the Department. (3-29-10)

~~13. — Small Herd.~~ The production of raw milk or raw milk products for human consumption, for use by people other than members of their immediate household or non-paying guests, in a facility with no more than three (3) lactating cows, seven (7) lactating goats, or seven (7) lactating sheep. The dairy farm herd may include other cows, goats, or sheep that are dry or are producing milk for purposes other than human consumption. (4-7-11)

~~14. — Small Herd Raw Milk Permit.~~ Written authorization from the Department to a small herd dairy farm allowing raw milk and raw milk products to be sold for human consumption as provided in Section 030 of these rules. (4-7-11)

~~15. — Sterilized.~~ The condition achieved by application of heat, chemical sterilant or other appropriate treatment that renders the piping, equipment and containers used for raw milk and raw milk products free of viable microorganisms. (3-29-10)

## 011. (RESERVED)

## 012. ADULTERATED OR MISBRANDED RAW MILK OR RAW MILK PRODUCTS.

**01. Prohibited Acts.** No person shall produce, provide, sell, offer, or expose for sale, or possess with intent to sell, within the State or its jurisdiction, any adulterated or misbranded raw milk or raw milk products for human consumption. (4-7-11)

**02. Restriction on Sale.** Raw milk or raw milk products may not be sold or offered for sale through restaurants or other food service establishments. Grocery stores and similar establishments where raw milk or raw milk products are sold at retail, but not processed there, are exempt from the requirements of these rules, provided

those stores and establishments receive raw milk or raw milk products from Department-authorized facilities. The sale of raw milk and raw milk products, produced under the authority of this Rule, shall be limited to locations within the state of Idaho. The sale of raw milk and raw milk products outside the state of Idaho is prohibited.

(4-7-11)

**03. Disposition of Adulterated or Misbranded Product.** Any adulterated or misbranded raw milk or raw milk product may be impounded and disposed of as directed by the Department. The Department may issue a hold order when it is deemed necessary to protect human health.

(4-7-11)

**013. 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 013.02 of this rule. ~~Permitted dairy farms and raw milk plants must meet the sanitation requirements of the 2017 Pasteurized Milk Ordinance, unless the dairy farm has a Small Herd Raw Milk Permit or has registered a herd share arrangement with the Department.~~

(4-11-19)

**02. ~~Chemical, Bacteriological, and Temperature Testing Standards.~~ Test results must be submitted to ISDA no later than the last day of the calendar month in which the test was conducted.**

RAW MILK	
<b>Temperature</b>	<del>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).</del>
<b>Bacterial Limits</b>	<del>Raw milk and raw milk products except cultured raw milk products shall not exceed fifteen thousand (15,000) per ml.</del>
<b>Coliform Limits</b>	<del>Raw milk and raw milk products may not exceed twenty five (25) per ml.</del>
<b>Drugs</b>	<del>Raw milk must test negative by a test method approved by the Department.</del>
<b>Somatic Cell Counts</b>	<del>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.</del>
<b>Brucellosis Test</b>	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. All animals in the raw milk program must receive one of the following tests: Bovine – Negative Brucellosis Test – no less than every twelve (12) months Goats – Negative Brucellosis Card Test – no less than every twelve (12) months Sheep – Negative Brucella Ovis Test – no less than every twelve (12) months
<b>Tuberculosis Test</b>	All raw milk must be from animals that have been accredited as tuberculosis free or must have passed a <del>annual</del> tuberculosis test <u>within the last twelve (12) months.</u>

(4-7-11)

**03. ~~Commingled Milk.~~** Milk from commingled species must meet the somatic cell count of the most restrictive species.

(4-7-11)

**014. LABELING.**

**01. Applicability.** Section 014 applies to holders of Raw Milk Permits and holders of Small Herd Raw Milk Permits.

(4-7-11)

**02. Requirements.** All raw milk and raw milk products must have Department-approved labeling. All bottles, containers, and packages enclosing raw milk or raw milk products must be conspicuously marked with the following: (4-7-11)

- a. The words “not pasteurized,” or “unpasteurized” in addition to “raw” must precede the name of the product; (4-7-11)
- b. The quantity of contents; (4-7-11)
- c. The name and address or permit number of the permit holder; and (4-7-11)
- d. When applicable, the word “goat” or “sheep” must precede the name of the raw milk or raw milk products. (4-7-11)

**03. Product Warning.** All raw milk dairy product labels must contain the following language:

- a. “WARNING: This product has not been pasteurized and may contain harmful bacteria. Raw milk, no matter how carefully produced, may be unsafe.”
- b. The warning shall appear within a heavy borderline in a color sharply contrasting to that of the background. The signal word “WARNING” shall appear in capital letters of ten point type or greater. The remaining text of the warning shall be printed in capital letters of six point type or greater.

**0304. Commingled Milk Label.** The label of raw milk or raw milk products containing milk from commingled species must identify the species from which the raw milk was obtained. (4-7-11)

**0405. Small Herds.** Department-approved labels are not required for the holders of Small Herd Exemption Raw Milk Permits if the raw milk or raw milk products are sold at the point of production. (4-7-11)

**0506. Misleading Labels.** It is a violation of these rules to use any misleading marks, words, or endorsements on the label. Registered trade designs or similar terms on the bottle cap or label may be used if the Department determines that the designs or terms are not misleading and do not obscure the labeling required by these rules. Any misleading labeling on the final container will cause the product to be considered misbranded. (3-29-10)

**015. -- 019. (RESERVED)**

**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 2017 Pasteurized Milk Ordinance; (4-11-19)~~
- ~~c. Meet the raw milk and raw milk products quality standards in Section 013 of these rules; (4-7-11)~~

~~d. Meet the tuberculosis and brucellosis standards in Section 013 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 2017 Pasteurized Milk Ordinance and Section 013 of these rules if the raw milk or raw milk products are for use by persons other than the dairy farm's immediate household. (4-11-19)~~

~~021. 029. (RESERVED)~~

### ~~0230. SMALL HERD RAW MILK PERMITS.~~

~~01. **Legal Sale.** It is unlawful for any person who does not possess a with a small herd 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, 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)~~

~~0102. **Obtaining a Small Herd Raw Milk Permit Requirements.** Only a person who complies with these rules may receive and retain a Small Herd Raw Milk Permit. Prior to the issuance of a raw milk permit, each dairy farm must comply with the following requirements: 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. Submit an application to the Department indicating the physical location of the small herd and the mailing address of the responsible party;~~

~~Meet the raw milk and raw milk products quality standards as set forth in Section 013 of these rules; (4-7-11)~~

~~b. Meet the tuberculosis and brucellosis standards as set forth in Section 013 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)~~

~~dc. 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 013 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.~~

~~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 2017 Pasteurized Milk Ordinance. (4-11-19)~~

~~03. Transfer of Permits. Small Herd Exemption Raw Milk Permits are not transferable to another person or location.~~

~~0321. -- 039. (RESERVED)~~

**040. HERD SHARE PROGRAMS.**

~~01. Registration. The dairy farm or farmer responsible for a herd participating in a herd share program must register the farm or dairy with the Department and is subject to all the provisions of Section 37-1101, Idaho Code. Registration may be upon a form provided by the Department or may be a written statement containing, at a minimum, the following information: (4-7-11)~~

~~a. The name of the farmer, farm, or dairy; (4-7-11)~~

~~b. A valid, current address for the farmer, farm, or dairy; and (4-7-11)~~

~~c. A statement that raw milk or raw milk products are being produced at the farm or dairy. (4-7-11)~~

~~02. Proof of Ownership Interest. The farmer and each owner of the herd share must enter into a written contract evidencing the herd share arrangement. The contractual documents must include, at a minimum, the following: (4-7-11)~~

~~a. A bill of sale, stock certificate, or other written evidence satisfactory to the Department; (4-7-11)~~

~~b. A boarding and care plan for the livestock; (4-7-11)~~

~~c. A conspicuous notice that the milk or milk products received under the contract will be raw; and (4-7-11)~~

~~d. Proof that written information regarding the herd health and production standards used by the dairy or farm have been provided to each herd share owner. (4-7-11)~~

~~03. Testing and Results. The farm or dairy must comply with the testing frequency and standards set forth in Section 37-1101, Idaho Code. A copy of all test results, the name of the tests performed, and an explanation of the tests and test results must be provided to each owner. Proof that the information has been provided to the owners must be sent to the Department. (4-7-11)~~

~~04. 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 013 of these rules. (4-7-11)~~

~~05. Restriction on Sale. No person who obtains raw milk or raw milk products under a herd share arrangement may sell, offer for sale, advertise for sale, or distribute such raw milk or raw milk products to any person, restaurant, food establishment, grocery store, or farmers' market. (4-7-11)~~

~~06. Procurement of Raw Milk or Raw Milk Products. Raw milk or raw milk products may only be received directly from the dairy farm by the owners of a herd share or by an owner on behalf of another herd share owner participating in the same herd share program. (4-7-11)~~



**041. -- 049. (RESERVED)**

**050. PERMIT ENFORCEMENT.**

Section 050 applies to the enforcement of ~~Raw Milk Permits and Small Herd~~ Raw Milk Permits. (4-7-11)

**01. Permit Suspension.** The Department may suspend a permit whenever it has reason to believe that a public health hazard exists, whenever the permit holder has violated any of the requirements of these rules, or whenever the permit holder has interfered with the Department in the performance of its duties. (4-7-11)

**a.** Prior to suspending a permit, the Department will serve a written notice of intent to suspend ~~the permit on the permit holder. The notice will that~~ specifies the alleged violation(s). ~~and afford the permit holder a reasonable opportunity to correct such violation(s) in a manner agreed to by the parties. In the absence of such agreement, the corrective actions may be designated by the Department. The r~~Reasonable opportunity to ~~comply correct the violation(s)~~ will be given before the permit suspension order becomes effective. A permit suspension will remain in effect until the violation has been corrected to the satisfaction of the Department. (4-7-11)

**b.** Whenever the raw milk or raw milk products create or appear to create an imminent hazard to the public health, or in the event of a willful refusal to permit an authorized inspection, the Department may immediately suspend the permit without the prior notice procedure set forth in these rules. The Department will provide notice and opportunity for hearing after the suspension, in accordance with Title 67, Chapter 52, Idaho Code. (4-7-11)

**c.** Upon written request by any person whose permit has been suspended, or by any person who has been served with a notice of intent to suspend, the Department will proceed to a hearing and, upon evidence presented at such hearing, may affirm, modify, or rescind the suspension or intention to suspend. (4-7-11)

**d.** The Department may forego permit suspension provided the raw milk or raw milk products in violation are not sold, offered for sale, or distributed for human consumption. (4-7-11)

**02. Permit Revocation.** If repeated violations occur, the Department may revoke a permit after reasonable notice and an opportunity for a hearing have been given to the permit holder. This section is not intended to preclude the institution of court action. (4-7-11)

**03. Permit Reinstatement.** Any raw milk producer whose permit has been suspended or revoked may make written application for the reinstatement of the permit. (4-7-11)

**a.** ~~When the permit has been suspended due to a violation of any of the bacterial, somatic cell, coliform, drug, or cooling temperature standards, the Department may issue a temporary permit after raw milk samples show that the conditions responsible for the violation have been corrected.~~ (4-7-11)

**ba.** ~~Whenever the permit has been suspended due to a violation of a requirement other than bacteriological, coliform, somatic cell count, or cooling temperature standards, the application for reinstatement must show that the violation has been corrected. Within one (1) week of the receipt of such application, the Department will make an inspection of the applicant's establishment and may make additional subsequent inspections as deemed necessary. If the inspection shows that the raw milk or raw milk products meet the applicable standards and are in compliance with these rules, the permit will be reinstated.~~ (4-7-11)

**051. -- 999. (RESERVED)**