

Dear Senators CORDER, Winder & Malepeai, and
Representatives TRAIL, Andrus & Pence:

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

IDAPA 02.04.13 – Rules Governing Raw Milk – Docket No. 02-0413-1001.

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by
the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice
to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis
from Legislative Services. The final date to call a meeting on the enclosed rules is no later than
9-23-10. If a meeting is called, the subcommittee must hold the meeting within forty-two (42)
days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting
on the enclosed rules is 10-22-10.

The germane joint subcommittee may request a statement of economic impact with
respect to a proposed rule by notifying Research and Legislation. There is no time limit on
requesting this statement, and it may be requested whether or not a meeting on the proposed rule
is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the
address or FAX number indicated on the memorandum attached.



Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Agricultural Affairs Committee and the House Agricultural Affairs Committee

FROM: Principal Legislative Research Analyst - Katharine Gerrity *KAG*

DATE: September 3, 2010

SUBJECT: Idaho State Department of Agriculture

IDAPA 02.04.13 – Rules Governing Raw Milk – Docket No. 02-0413-1001

The Idaho State Department of Agriculture submits notice of a proposed rule at IDAPA 02.04.13 – Rules Governing Raw Milk. According to the Department, the proposed rule changes will bring the rule into conformance with Chapter 11, Title 37, Idaho Code, passed during the 2010 legislative session. The Department notes that the proposed rule establishes quality standards for raw milk and raw milk products produced under a herd share, as well as quality standards for cultured raw milk products for permitted raw milk facilities.

The Department also states that negotiated rulemaking did not occur although the Department held rulemaking meetings with stakeholders and e-mailed a draft proposed rule to stakeholders to obtain their input. The Department states that it received a few comments, some of which were included in the proposed rule.

We contacted the Department for some clarification regarding the various types of permits and herd share program provisions. According to Department personnel, the rule provides for essentially three types of authorizations and requirements. Raw milk permit provisions are intended for larger operations where there are sanitary requirements and construction requirements, as well as various quality standards that must be met. Small herd raw milk permits are intended for those operations that meet the definition of “small herd” which are those facilities with no more than three lactating cows, seven lactating goats or seven lactating sheep. The requirements for these facilities include defined quality standards, but not the stricter sanitary requirements for raw milk permits. Herd share program registration requirements are intended for those operations where raw milk is not sold and only those people participating in a herd share program as provided in Chapter 11, Title 37, Idaho Code, have access to the milk. Various quality standards are required, but not the stricter sanitary requirements for raw milk permits.

The action appears to be authorized pursuant to Sections 37-332f, 37-405, 37-516, 37-708, 37-803 and 37-1101, Idaho Code.

cc: Idaho State Department of Agriculture
Brian J. Oakey & Marv Patten

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.13 - RULES GOVERNING RAW MILK

DOCKET NO. 02-0413-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-332f, 37-405, 37-516, 37-708, 37-803, and 37-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule will amend the existing IDAPA 02.04.13, "Rules Governing Raw Milk," to conform to a new law, Chapter 11, Title 37, Idaho Code, passed by the 2010 Legislature. The proposed rule establishes quality standards for raw milk and raw milk products produced under a herd share, as well as quality standards for cultured raw milk products for permitted raw milk facilities.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, a Notice of Intent to Promulgate Rules was not published, however, ISDA held rulemaking meetings with stake holders and emailed a draft proposed rule to stake holders to obtain their input. ISDA received a few comments, some of which were included into the proposed rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Marv Patten, Bureau Chief, Dairy and CAFO Programs, 208-332-8550 or marv.patten@agri.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 23rd day of July 2010.

Brian J. Oakey
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
Boise, ID 83712
P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 322-8500
Facsimile: (208) 332-4062

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0413-1001

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapters 3, 4, 7, and ~~8~~11, Idaho Code. ~~(3-29-10)~~(____)

001. TITLE AND SCOPE.

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

02. Scope. These rules will govern the production, processing, distribution, and sale of raw milk for human consumption, but not intended for pasteurization. The official citation of this chapter is IDAPA 02.04.13.000 et seq. For example, this section's citation is IDAPA 02.04.13.001. ~~(3-29-10)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The following document is incorporated by reference, and copies of the document may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712: The Grade A Pasteurized Milk Ordinance 2009 Revision, U.S. Department of Health and Human Services Public Health Service Food and Drug Administration ("2009 Pasteurized Milk Ordinance"), except those provisions establishing raw milk standards for raw milk for pasteurization. This document is available at <http://www.fda.gov/downloads/Food/FoodSafety/Product-SpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSModelDocuments/UCM209789.pdf>. ~~(3-29-10)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

007. DEFINITIONS.

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

01. Adulterated. The meaning of adulterated includes the following: (____)

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

b. ~~¶~~The production, ~~and~~ 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 ~~(3-29-10)~~(____)

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

~~**02. Cow Share.** The investment of monetary value into the ownership or care of cows, goats, or sheep in exchange for raw milk or raw milk products.~~ ~~(3-29-10)~~

~~**032. Dairy Farm.** Any place or premises where one (1) or more cows, goats or sheep are milked and ~~from which~~ where a part or all of the raw milk or raw milk products are produced ~~and~~ that are not intended for pasteurization, or are intended for human consumption without pasteurization, ~~but~~ and are distributed, sold or offered for sale ~~for human consumption without pasteurization~~ to persons other than members of the dairy farm's immediate household. ~~(3-29-10)~~(____)~~

- 043. Denatured.** To change the usual or normal nature of a material or substance by either chemical or physical means. (3-29-10)
- 054. Department.** The Idaho State Department of Agriculture. (3-29-10)
- 065. Director.** The Director of the Idaho State Department of Agriculture or his designee. (3-29-10)
- 06. 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. ()
- 087. Official Laboratory.** A biological, chemical, or physical laboratory that is ~~under the direct supervision of the State or~~ approved by the Department. ~~(3-29-10)~~()
- 08. 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. ()
- 09. Person.** An individual, plant operator, partnership, corporation, company, firm, trustee, association or institution. (3-29-10)
- 10. 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 ~~sold or offered for sale intended~~ for human consumption. ~~(3-29-10)~~()
- 11. Raw Milk Permit.** 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. ()
- 0712. 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. ~~(3-29-10)~~()
- 143. 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. ~~(3-29-10)~~()
- 14. 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. ()
- 125. 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 shall not adversely affect the equipment, the raw milk or raw milk products or the health of consumers, and shall be acceptable to the Department. (3-29-10)
- 136. 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, ~~or 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. ~~(3-29-10)~~()
- 17. 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. ()

148. 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)

~~008. 010. (RESERVED).~~

008. REGULATORY FRAMEWORK.

These rules set forth procedural requirements for the following types of raw milk dairy farm operations: dairy farm with a Raw Milk Permit; dairy farm with a Small Herd Raw Milk Permit; and dairy farm participating in a Herd Share. ()

0109. 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. ~~Any adulterated or misbranded raw milk or raw milk product may be impounded and disposed of as directed by the Department.~~ (3-29-10)()

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. ()

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. ()

[Codified Section 060 is being moved and renumbered to proposed Section 010]

0610. 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 ~~Table 1 below~~ Subsection 010.02 of this rule. ~~Raw milk and raw milk products shall~~ Permitted dairy farms and raw milk plants must meet the sanitation requirements of the 2009 Pasteurized Milk Ordinance, unless the ~~facility~~ dairy farm has a ~~Small Herd exemption~~ Raw Milk Permit or has registered a herd share arrangement with the Department. (3-29-10)()

02. Chemical, Bacteriological, and Temperature Standards.

RAW MILK	
Temperature	Cooled to forty degrees Fahrenheit (40F or 5C) or less within two (2) hour after milking provided that the blend temperature after the first and subsequent milking does not exceed forty-five degrees Fahrenheit (45F or 7C).
Bacterial Limits	Raw milk and raw milk products except cultured raw milk products shall not exceed fifteen thousand (15,000) per ml.
Coliform Limits	Raw milk and raw milk products shall 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 shall must not exceed five hundred thousand (500,000) per ml. Goat; or Sheep Raw Milk shall must not exceed seven hundred and fifty thousand (750,000) per ml.

RAW MILK	
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.</u>
Tuberculosis Test	<u>All Raw Milk shall must be from animals that have been accredited as tuberculosis free or shall must have passed an annual tuberculosis test.</u>

(3-29-10)()

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

[Codified Section 030 is being moved and renumbered to proposed Section 011]

03011. LABELING.

01. Applicability. Section 011 applies to holders of Raw Milk Permits and holders of Small Herd Raw Milk Permits. ()

042. 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 ~~shall~~ must be conspicuously marked with the following: ()

a. The words “raw,” “not pasteurized,” or “unpasteurized” preceding the name of the product; ()

b. ~~The~~ quantity of contents; ~~and~~ ()

c. ~~The~~ identity name and address or permit number of the ~~packaging facility~~; permit holder; and ()

d. When applicable, ~~The~~ word “goat” or “sheep;” ~~if applicable, shall~~ must precede the name of the raw milk or raw milk products. (3-29-10)()

03. 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. ()

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. ()

025. 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)

012. -- 019. (RESERVED).

020. RAW MILK PERMITS.

01. Requirements. It ~~shall be~~ 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. ~~Raw milk shall not be sold or offered for sale through restaurant type establishments or establishments where the consumer may not know that raw milk or raw~~

~~milk products are from a raw milk source. Grocery stores and similar establishments where raw milk or raw milk products are sold at retail, but not processed, are exempt from the requirements of these rules, provided those stores and establishments receive raw milk or raw milk products from Department approved facilities. (3-29-10)(____)~~

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 shall~~ Raw Milk Permits shall are not ~~be~~ 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: (3-29-10)(____)

- a.** Submit to and pass a qualifying inspection conducted by the Department; (____)
- b.** Meet the applicable sanitation, construction, and procedural requirements of the 2009 Pasteurized Milk Ordinance; (____)
- c.** Meet the raw milk and raw milk products quality standards in Section 010 of these rules; (____)
- d.** Meet the tuberculosis and brucellosis standards in Section 010 of these rules; and (____)
- e.** Produce and process all raw milk and raw milk products on the same premises. (____)

~~**03. 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. (3-29-10)~~

~~**a.** Prior to suspending a permit the Department will serve a written notice of intent to suspend 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. The reasonable opportunity to correct 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. (3-29-10)~~

~~**b.** In cases in which the raw milk or raw milk products create or appear to create an imminent hazard to the public health, or in case 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. (3-29-10)~~

~~**c.** Upon written request by any person whose permit has been suspended, or 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. (3-29-10)~~

~~**d.** The Department may forego permit suspension, provided the raw milk or raw milk products in violation are not sold or offered for sale or distributed for human consumption. (3-29-10)~~

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. (____)

~~**04. Permit Revocation.** Upon repeated violations, the Department may revoke a permit following reasonable notice to the permit holder and an opportunity for a hearing. This Section is not intended to preclude the institution of court action. (3-29-10)~~

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 2009 Pasteurized Milk Ordinance and Section 010 of these rules if the raw milk or raw milk products are for use by persons other than the dairy farm's immediate household. (____)

05. Permit Reinstatement. Any raw milk producer whose permit has been suspended or revoked may

~~make written application for the reinstatement of his permit. (3-29-10)~~

~~**a.** When the permit has been suspended due to a violation of any of the bacterial, coliform, 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. (3-29-10)~~

~~**b.** When the permit has been suspended due to a violation of the somatic cell count standard, the Department may issue a temporary permit if resampling of the herd milk supply indicates that the milk supply is within the somatic cell count standard. (3-29-10)~~

~~**e.** 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. (3-29-10)~~

021. -- 029. (RESERVED).

[Codified Section 030 has been moved and renumbered to proposed Section 011]

030. SMALL HERD RAW MILK PERMITS.

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

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

a. Meet the raw milk and raw milk products quality standards as set forth in Section 010 of these rules; ()

b. Meet the tuberculosis and brucellosis standards as set forth in Section 010 of these rules; ()

c. Meet the applicable drug testing requirements as determined by the Department based on dairy farm drug therapy and milk quality history; and ()

d. All raw milk and raw milk products must be produced and processed on the same premises. ()

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. ()

03. Product Quality. Whenever three (3) out of five (5) consecutive bacteria, coliform, or somatic cell counts exceed milk quality standards, the milk may not be offered for human consumption until subsequent product testing shows that the raw milk or raw milk products comply with Section 010 of these rules. ()

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 2009 Pasteurized Milk Ordinance. ()

031. -- 039. (RESERVED).

040. INSPECTION OF RAW MILK PRODUCERS.

Each dairy farm whose raw milk or raw milk products are intended for human consumption within the state of Idaho shall be inspected and approved by the Department prior to the issuance of a permit. (3-29-10)

01. Inspection Frequency. *Following the issuance of a permit, the Department will inspect each raw milk producer and raw milk processor at least once every three (3) months. (3-29-10)*

02. Sanitation Requirements. *All raw milk dairy farms and milk plants that process raw milk or raw milk products for human consumption into final containers, for use other than for members or their immediate household or non-paying guests, shall meet the requirements of the 2009 Pasteurized Milk Ordinance, in addition to Section 060 of these rules. (3-29-10)*

03. Processing Location. *All raw milk and raw milk products must be produced and processed on the same premises. (3-29-10)*

04. Cow Share Programs. *Cow Share programs are allowed, provided that the raw milk and raw milk products are produced and processed in facilities with raw milk dairy farm and raw milk plant permits issued by the Department. (3-29-10)*

05. Applicability. *Persons or a person with more than three (3) lactating cows or seven (7) lactating goats or sheep may sell raw milk and raw milk products for human consumption, provided that the raw milk and raw milk products are produced and processed in facilities with raw milk dairy farm and raw milk plant permits issued by the Department. (3-29-10)*

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. Registration may be upon a form provided by the Department or may be a written statement containing, at a minimum, the following information: ()

- a.** The name of the farmer, farm, or dairy; ()
- b.** A valid, current address for the farmer, farm, or dairy; and ()
- c.** A statement that raw milk or raw milk products are being produced at the farm or dairy. ()

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: ()

- a.** A bill of sale, stock certificate, or other written evidence satisfactory to the Department; ()
- b.** A boarding and care plan for the livestock; ()
- c.** A conspicuous notice that the milk or milk products received under the contract will be raw; and ()
- 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. ()

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. ()

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 010 of these rules. ()

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. ()

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. ()

041. -- 049. (RESERVED).

050. SMALL HERD EXEMPTION.

~~The production of raw milk and raw milk products for human consumption by a person or by individuals participating in a Cow Share program is exempt from the sanitary construction and operation standards of the 2009 Pasteurized Milk Ordinance, provided the following conditions are met: (3-29-10)~~

~~**01. Testing Frequency.** The raw milk and raw milk products comply with the testing frequency set forth in the 2009 Pasteurized Milk Ordinance and quality standards set forth in Section 060 of these rules. (3-29-10)~~

~~**02. Applicability.** The number of animals in lactation does not exceed three (3) cows or seven (7) goats or sheep. (3-29-10)~~

~~**03. Permit.** The person or the Cow Share owners obtain a small herd exemption permit from the Department. The permit will indicate the physical location of the facility; the mailing address of the owner or operator in charge of the herd's care and milk quality. (3-29-10)~~

~~**04. Test Results Made Available.** Milk quality test results shall be available from the permit holder to all individuals who purchase raw milk or raw milk products. (3-29-10)~~

~~**05. Restriction for Sale.** The raw milk or raw milk products may not be sold or offered for sale through restaurant type establishments or other establishments where the consumer may not know that raw milk or raw milk products are from a raw milk source. (3-29-10)~~

~~**06. Labeling.** All raw milk and raw milk products must have approved labeling by the Department if sales take place at locations other than the point of production. (3-29-10)~~

050. PERMIT ENFORCEMENT.

Section 050 applies to the enforcement of Raw Milk Permits and Small Herd Raw Milk Permits. ()

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. ()

a. Prior to suspending a permit, the Department will serve a written notice of intent to suspend 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. The reasonable opportunity to comply 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. ()

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. ()

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. ()

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. ()

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. ()

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

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. ()

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 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. ()

051. -- 059. (RESERVED).

[Codified Section 060 has been moved and renumbered to proposed Section 010]

0760. PENALTY.

Any person who violates any of the provisions of these rules ~~shall be~~ is subject to the penalties provided in Sections 37-408 and 37-1101(3), Idaho Code, or may have their permit to sell raw milk or raw milk products for human consumption revoked or suspended. (3-29-10)()

~~061. -- 069. (RESERVED).~~

[Codified Section 070 has been moved and renumbered to proposed Section 060]

~~0761. -- 999. (RESERVED).~~