

IN THE SENATE

SENATE BILL NO. 1299

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

RELATING TO DAIRY PRODUCTS; AMENDING SECTION 37-301, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO THE MAINTENANCE OF NAMES OF CERTAIN DAIRYMEN AND TO PROVIDE A STATEMENT OF PURPOSE; AMENDING SECTION 37-302, IDAHO CODE, TO PROVIDE FOR INSPECTIONS, TO PROVIDE THAT INSPECTIONS SHALL ASCERTAIN AND CERTIFY SANITARY CONDITIONS AND MILK QUALITY, TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE TO DESIGNATE AGENTS TO PERFORM CERTAIN DUTIES, TO PROVIDE FOR SANITARY INSPECTIONS, TO PROVIDE THAT INSPECTIONS, EXAMINATIONS AND TESTS SHALL MEET REQUIREMENTS OF STATE AND FEDERAL LAW, TO PROVIDE THAT DESIGNATED AGENTS MAY ENTER PREMISES AND BUILDINGS FOR INSPECTIONS, TO PROVIDE FOR FEES OR ASSESSMENTS ASSOCIATED WITH INSPECTIONS AND TO PROVIDE FOR THE DAIRY INDUSTRY AND INSPECTION FUND; AMENDING CHAPTER 3, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-303, IDAHO CODE, TO AUTHORIZE RULEMAKING AND ENFORCEMENT BY THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE, TO PROVIDE THAT CERTAIN MILK, CREAM AND MANUFACTURED DAIRY PRODUCTS SHALL COMPLY WITH SPECIFIED LAW AND TO PROVIDE STANDARDS RELATING TO THE SANITATION OF MILK AND CREAM; AMENDING CHAPTER 3, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-304, IDAHO CODE, TO PROVIDE FOR THE ISSUANCE OF PERMITS, TO SPECIFY REQUIREMENTS FOR THE ISSUANCE OF PERMITS TO NEW OR EXPANDING DAIRY FARMS, TO DEFINE TERMS, TO PROVIDE FOR EXAMINATION, INSPECTION AND REPORTS OF FINDINGS AND CONCLUSIONS BY THE DIRECTOR AND TO PROVIDE THAT THE ISSUANCE OR REVOCATION OF LICENSES OR PERMITS SHALL BE BASED UPON THE REPORT OR REPORTS OF THE DIRECTOR; AMENDING CHAPTER 3, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-305, IDAHO CODE, TO AUTHORIZE THE DIRECTOR TO BRING CIVIL ACTIONS FOR ENFORCEMENT OF SPECIFIED LAW; REPEALING SECTION 37-306, IDAHO CODE, RELATING TO MILK-BOTTLING PLACES; AMENDING CHAPTER 3, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-306, IDAHO CODE, TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO ADVISE, ASSIST AND COOPERATE WITH THE FEDERAL GOVERNMENT, AGENCIES AND OTHER ENTITIES IN THE EXERCISE OF ITS POWERS AND DUTIES UNDER SPECIFIED LAW; AMENDING CHAPTER 3, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-307, IDAHO CODE, TO DEFINE TERMS RELATING TO MILK HAULERS AND TANKS; REPEALING SECTION 37-308, IDAHO CODE, RELATING TO THE BOTTLING AND PACKAGING OF MILK; AMENDING CHAPTER 3, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-308, IDAHO CODE, TO PROVIDE STANDARDS FOR TRANSPORTATION TANKS; AMENDING CHAPTER 3, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-309, IDAHO CODE, TO PROVIDE STANDARDS RELATING TO MILK HAULERS AND THE OPERATION OF TRANSPORTATION TANKS; REPEALING SECTION 37-310, IDAHO CODE, RELATING TO EMPTY BOTTLES FROM QUARANTINED PREMISES; AMENDING CHAPTER 3, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-310, IDAHO CODE, TO PROVIDE STANDARDS RELATING TO QUALITY CONTROL OF MILK SAMPLES TAKEN FROM TANKS; REPEALING SECTION 37-313, IDAHO CODE, RELATING TO THE PROHIBITION OF THE SALE OF DILUTED MILK;

1 REPEALING SECTION 37-314, IDAHO CODE, RELATING TO ADULTERATED MILK; RE-  
 2 PEALING SECTION 37-315, IDAHO CODE, RELATING TO MILKMEN AFFLICTED WITH  
 3 DISEASE; REPEALING SECTION 37-316, IDAHO CODE, RELATING TO THE SALE  
 4 OF MILK FROM INFECTED PREMISES; REPEALING SECTION 37-317, IDAHO CODE,  
 5 RELATING TO THE REQUIREMENT THAT MILK BE COOLED; REPEALING SECTION  
 6 37-322, IDAHO CODE, RELATING TO STANDARDS FOR CREAM; REPEALING SECTION  
 7 37-324, IDAHO CODE, RELATING TO PENALTIES FOR VIOLATIONS; AMENDING  
 8 SECTION 37-325, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REMOVE CER-  
 9 TAIN REPORTING PROVISIONS RELATING TO CREAMERIES, CHEESE FACTORIES AND  
 10 MILK DAIRIES, TO REMOVE PROVISIONS RELATING TO THE ATTACHMENT OF TAGS  
 11 REFLECTING CAPACITY, TO REMOVE CERTAIN VIOLATION PROVISIONS AND TO  
 12 PROVIDE THAT CERTAIN MILK PROCESSORS, COOPERATIVES AND ORGANIZATIONS  
 13 SHALL PROVIDE FULL AND ACCURATE ACCOUNTS OF AMOUNTS OF MILK PURCHASED  
 14 AND VOLUME OF DAIRY PRODUCTS PROCESSED; REPEALING SECTION 37-326,  
 15 IDAHO CODE, RELATING TO STANDARDS FOR DAIRY PRODUCTS; REPEALING SECTION  
 16 37-330, IDAHO CODE, RELATING TO PENALTIES FOR VIOLATIONS OF SPECIFIED  
 17 LAW; AMENDING SECTION 37-332, IDAHO CODE, TO REDESIGNATE THE SECTION,  
 18 TO MAKE TECHNICAL CORRECTIONS AND TO MAKE A CODIFIER CORRECTION; AMEND-  
 19 ING SECTION 37-332a, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REMOVE  
 20 CERTAIN GRADING PROVISIONS AND TO PROVIDE THAT GRADES OF BUTTER SHALL  
 21 COMPLY WITH SPECIFIED STANDARDS; AMENDING SECTION 37-332b, IDAHO CODE,  
 22 TO REDESIGNATE THE SECTION, TO REMOVE CERTAIN VIOLATIONS, GRADE AND  
 23 EXCEPTION PROVISIONS RELATING TO BUTTER, TO PROVIDE FOR THE REJECTION  
 24 OF CERTAIN BUTTER AND TO PROVIDE FOR THE RELABELING, REGRADING AND  
 25 REPROCESSING OF CERTAIN REJECTED BUTTER; REPEALING SECTION 37-332c,  
 26 IDAHO CODE, RELATING TO BUTTER GRADERS, WRAPPERS AND GRADE EMBLEMS;  
 27 REPEALING SECTION 37-332d, IDAHO CODE, RELATING TO THE LICENSING OF  
 28 BUTTER GRADERS; REPEALING SECTION 37-332e, IDAHO CODE, RELATING TO  
 29 THE REVOCATION OR SUSPENSION OF LICENSES; REPEALING SECTION 37-332f,  
 30 IDAHO CODE, RELATING TO ENFORCEMENT; REPEALING SECTION 37-332g, IDAHO  
 31 CODE, RELATING TO VIOLATIONS; REPEALING SECTION 37-332h, IDAHO CODE,  
 32 RELATING TO THE DEPOSIT OF FEES AND FINES INTO THE DAIRY INDUSTRY AND  
 33 INSPECTION FUND; REPEALING SECTION 37-333, IDAHO CODE, RELATING TO  
 34 THE DISPLAY OF THE WEIGHT OF BUTTER; AMENDING SECTION 37-334, IDAHO  
 35 CODE, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORRECTION;  
 36 AMENDING SECTION 37-334a, IDAHO CODE, TO REDESIGNATE THE SECTION, TO  
 37 REVISE CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SEC-  
 38 TION 37-334d, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION  
 39 37-334e, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REVISE CODE REF-  
 40 ERENCES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 37-335,  
 41 IDAHO CODE, TO REDESIGNATE THE SECTION AND TO REVISE CODE REFERENCES;  
 42 REPEALING SECTION 37-338, IDAHO CODE, RELATING TO ADMINISTRATION BY  
 43 THE DEPARTMENT OF AGRICULTURE; REPEALING SECTION 37-339, IDAHO CODE,  
 44 RELATING TO THE DESIGNATION OF BREED NAME OF DAIRY CATTLE ON LABELS;  
 45 REPEALING SECTION 37-340, IDAHO CODE, RELATING TO THE UNLAWFUL USE OF  
 46 BREED NAMES ON LABELS; REPEALING SECTION 37-341, IDAHO CODE, RELATING  
 47 TO ADMINISTRATION AND ENFORCEMENT; REPEALING SECTION 37-342, IDAHO  
 48 CODE, RELATING TO VIOLATIONS; REPEALING SECTION 37-343, IDAHO CODE,  
 49 RELATING TO INJUNCTION PROCEEDINGS; REPEALING CHAPTER 4, TITLE 37,  
 50 IDAHO CODE, RELATING TO SANITARY INSPECTION OF DAIRY PRODUCTS; AMENDING

TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 4, TITLE 37, IDAHO CODE, TO PROVIDE FOR THE DAIRY ENVIRONMENTAL CONTROL ACT, TO PROVIDE A SHORT TITLE, TO DECLARE POLICY AND TO PROVIDE FOR LEGISLATIVE INTENT AND RECOGNITION OF SPECIFIED FACTORS, TO PROVIDE THAT SUCCESSFUL IMPLEMENTATION OF SPECIFIED PROVISIONS OF LAW IS DEPENDENT ON CERTAIN FACTORS, TO AUTHORIZE REGULATION OF DAIRY WASTE SYSTEMS BY THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE, TO AUTHORIZE ADMINISTRATION OF ALL STATE LAWS TO PROTECT WATER QUALITY APPLICABLE TO DAIRY OPERATIONS, TO PROVIDE THAT DEPARTMENT RESOURCES WILL PRIORITIZE CERTAIN OPERATIONS AND TO ENSURE REQUIREMENTS ARE COST-EFFECTIVE AND FEASIBLE, TO PROVIDE THAT THE DEPARTMENT SHALL BE RESPONSIBLE TO PREVENT GROUND WATER CONTAMINATION FROM DAIRY FARMS UNDER SPECIFIED LAW, TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE TO EXERCISE CERTAIN AUTHORITY DELEGATED BY THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY RELATING TO DAIRY FARMS, TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO DELEGATE CERTAIN AUTHORITY TO THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY WILL CONSULT WITH THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE BEFORE CERTIFYING DISCHARGES FROM DAIRY FARMS, TO DEFINE TERMS, TO PROVIDE FOR THE DESIGN AND CONSTRUCTION OF NEW AND MODIFIED WASTE SYSTEMS, TO PROVIDE FOR NUTRIENT MANAGEMENT PLANS, TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE OR HIS DESIGNEE TO ENTER AND INSPECT DAIRY FARMS, TO AUTHORIZE ACCESS TO AND COPYING OF FACILITY RECORDS, TO PROVIDE FOR COMPLIANCE WITH CERTAIN BIOSECURITY PROTOCOL, TO PROVIDE FOR CONSTITUTIONAL CONFORMANCE AND TO PROHIBIT CERTAIN WARRANTLESS SEARCHES, TO PROHIBIT UNAUTHORIZED DISCHARGES, TO PROVIDE THAT CERTAIN NONCOMPLIANCE SHALL BE ADDRESSED THROUGH CORRECTIVE ACTIONS AND COMPLIANCE SCHEDULES, TO PROVIDE FOR FINES FOR CERTAIN VIOLATIONS AND TO PROVIDE THAT CIVIL PENALTIES SHALL BE REMITTED TO THE COUNTY WHERE THE VIOLATION OCCURRED, TO PROVIDE THAT DAIRY FARMS OPERATING IN COMPLIANCE WITH SPECIFIED LAW SHALL NOT BE SUBJECT TO CERTAIN STATE ENFORCEMENT ACTIONS EXCEPT UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT UNDER CERTAIN CONDITIONS PENDING ADMINISTRATIVE OR CIVIL ENFORCEMENT ACTIONS SHALL BE DEEMED VOID AND TO PROVIDE THAT CERTAIN ORDERS SHALL REMAIN IN EFFECT; REPEALING CHAPTER 7, TITLE 37, IDAHO CODE, RELATING TO PASTEURIZATION; REPEALING CHAPTER 8, TITLE 37, IDAHO CODE, RELATING TO GRADES OF QUALITY FOR MILK AND MILK PRODUCTS; REPEALING CHAPTER 10, TITLE 37, IDAHO CODE, RELATING TO DISCRIMINATION AND UNFAIR COMPETITION IN BUYING AND SELLING DAIRY PRODUCTS; AND AMENDING SECTION 39-118, IDAHO CODE, TO REVISE A CODE REFERENCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-301, Idaho Code, be, and the same is hereby amended to read as follows:

37-301. NAMES OF DAIRYMEN STATEMENT OF PURPOSE. All wholesale dairy-  
men and other persons having stationary places of business, keeping and  
offering for sale milk, shall at all times keep the name or names of the  
dairyman or dairymen, from whom the milk on sale shall have been obtained  
It is hereby declared to be the policy of the legislature of the state of

1 Idaho that the public interest requires that all dairy products produced,  
2 distributed, offered for sale or sold in Idaho meet minimum standards of  
3 sanitary condition, quality, identity, classification and grade. To ac-  
4 complish this purpose, the director of the department of agriculture shall  
5 inspect dairy products, dairy farms, production facilities and processing  
6 facilities, issue permits and enforce minimum standards in accordance with  
7 the provisions of this chapter.

8 SECTION 2. That Section 37-302, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 37-302. ~~DAIRIES TO BE INSPECTED~~ INSPECTIONS. (1) It shall be the duty  
11 of the director of the department of agriculture to cause to be visited as  
12 frequently as it may deem necessary all dairies supplying dealers and con-  
13 sumers with milk, and inspect the same to ascertain and certify sanitary con-  
14 ditions and milk quality. A copy of the inspection report shall be left with  
15 the owner and such information given as will assist the producer to improve  
16 the sanitary conditions or remedy such defects as the inspection report in-  
17 dicates. A copy of the inspection report shall be kept on file in the office  
18 of the director.

19 (2) The director of the department of agriculture is hereby authorized  
20 and directed to designate any agent to inspect, examine and test any or all  
21 dairy products in accordance with rules as the department may prescribe;  
22 and to ascertain and certify the grade, classification, quality or sanitary  
23 condition thereof and other pertinent facts as the department may require.  
24 The director or agent of the department of agriculture of the state of Idaho  
25 shall make sanitary inspection of milk, cream, butter and dairy products  
26 of any kind whatsoever, intended for human consumption, and of containers,  
27 utensils, equipment, buildings, premises or anything whatsoever employed  
28 in the production, handling, storing, processing or manufacturing of dairy  
29 products or that would affect the purity of the products. Inspections, exam-  
30 inations and tests shall be made to meet the requirements of the laws of the  
31 state and of the United States for the sale of the products or their trans-  
32 portation in both intrastate and interstate commerce. Any agent designated  
33 by the director to make inspections shall have the right for that purpose to  
34 enter any premises and buildings where milk, cream, butter or dairy products  
35 shall be produced, stored, processed or manufactured.

36 (3) Whenever an inspection of any dairy product is made by the depart-  
37 ment of agriculture, or whenever permanent or temporary inspectors or em-  
38 ployees are used by the department for the purpose of enforcing or promulgat-  
39 ing an inspection or sanitary program for any dairy product, the department  
40 is authorized to fix, assess and collect or cause to be collected from the  
41 dairy processors, fees or assessments for services when they are performed  
42 by employees or agents of the department, the fees to be on a uniform basis in  
43 an amount reasonably necessary to cover the cost of such inspection and the  
44 administration of the department of agriculture dairy inspection program;  
45 provided however, that the department shall so adjust the fees to be col-  
46 lected under this section as to meet the expenses necessary for this inspec-  
47 tion service only, all of the fees to be used for this purpose alone; and pro-  
48 vided further, that in no event shall the fees or assessments exceed four (4)  
49 mills per pound of butterfat produced by any dairyman in Idaho or received

by processors. All such fees and moneys collected or received by the department, its employees or agents under this act shall be deposited in the dairy industry and inspection fund, which fund is hereby created. All moneys coming into the fund are hereby appropriated to the department of agriculture to be used in the inspection required by law to be made of the dairy industry and dairy products. The fees and assessments accrued in any given month are due and payable no later than the twentieth day of the following month.

SECTION 3. That Chapter 3, Title 37, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 37-303, Idaho Code, and to read as follows:

37-303. STANDARDS AND RULES. (1) The director of the department of agriculture is hereby authorized to promulgate and enforce reasonable rules as may be necessary or desirable to establish standards and to carry out its functions and the intent and purposes of this chapter.

(2) All milk or cream utilized in the manufacture of dairy products and all manufactured dairy products produced, distributed, offered for sale, or sold in Idaho shall meet the requirements established by this chapter, of federal law, and rules or regulations promulgated or adopted pursuant to state or federal law.

(3) The following standards concerning the sanitation of milk and cream are hereby established:

(a) The term "processor" means any individual, partnership, association or corporation doing business in the state of Idaho that produces, purchases, obtains or uses in the state of Idaho any milk or cream for use in the manufacture of butter, cheese, evaporated milk, frozen desserts, frozen novelties, edible dry milk or other dairy products. The term "processor" shall not include any individual, partnership, association or corporation that produces, purchases, obtains or uses milk or cream for his or its own consumption. The term "producer" means any person, firm or corporation who owns or controls one (1) or more cows, goats, sheep or water buffalo, a part or all of the milk from which is sold or offered for sale to a processor.

(b) No processor shall purchase or obtain in any manner, or use in any manner, for the sale or manufacture of any dairy products as provided in paragraph (a) of this subsection, any unacceptable milk or cream as herein defined.

(c) The processor shall, for the purpose of determining the acceptability or unacceptability of milk or cream, cause all milk or cream to be tested and graded according to the standards herein defined before purchase, acquisition or use in any manner. Provided however, that where the processor customarily purchases the milk or cream of any person regularly engaged in the production thereof, the processor is required to test milk and cream of such producer not less than once each month by the approved bacteria tests and approved mastitic tests, or other tests as may be prescribed by the director of the department of agriculture. When milk or cream from any producer is found unacceptable as a result of required testing, the processor shall thereafter test the milk or cream of the producer daily by the same test until it is found to be acceptable. Each processor shall retain for at least one (1) year at the place

1 where milk or cream is received, a record of such tests in the form and  
 2 of the content that shall be prescribed by the department of agriculture  
 3 and shall exhibit the record at the place where the same is kept when-  
 4 ever requested to do so by the producer or the department and shall per-  
 5 mit copies thereof to be taken.

6 (d) Milk and dairy product quality standards and standards of identity  
 7 will be established by rules promulgated by the department.

8 (e) Any milk, cream or dairy product that is unclean, unwholesome or un-  
 9 fit for human consumption, as determined by the department, shall be re-  
 10 jected as unacceptable.

11 SECTION 4. That Chapter 3, Title 37, Idaho Code, be, and the same is  
 12 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 13 ignated as Section 37-304, Idaho Code, and to read as follows:

14 37-304. PERMIT ISSUANCE AND REVOCATION. (1) The director or the direc-  
 15 tor's authorized agent shall issue a permit authorizing the sale of milk for  
 16 human consumption to all dairy farms that meet the standards and require-  
 17 ments of this chapter, and rules promulgated pursuant to this chapter.

18 (2) The director or his agent may issue a permit to sell milk for human  
 19 consumption to a new or expanding dairy farm only upon presentation to the  
 20 director by the new or expanding dairy farm of the following:

21 (a) A certified letter, supplied by the board of county commissioners,  
 22 certifying the new or expanding dairy farm's compliance with applicable  
 23 county livestock ordinances; and

24 (b) Evidence that a valid water right exists to supply adequate water  
 25 for the new or expanding dairy farm; or

26 (c) A copy of an application for a permit to appropriate water that has  
 27 been filed with the Idaho department of water resources and which, if  
 28 approved, will supply adequate water for the dairy farm; or

29 (d) A copy of an application to change the point of diversion, place,  
 30 period and nature of use of an existing water right that has been filed  
 31 with the Idaho department of water resources and which, if approved,  
 32 will supply adequate water for the dairy farm.

33 (3) As used in this section:

34 (a) "Animal units" shall be as defined in rule by the director.

35 (b) "Expanding dairy farm" means an existing, legally permitted dairy  
 36 farm that increases, or applies to increase, its existing animal units  
 37 beyond the number for which it is permitted under applicable county  
 38 livestock ordinances or increases, or applies to increase, the waste  
 39 containment system.

40 (c) "New dairy farm" means a dairy farm constructed after the effective  
 41 date of this act.

42 (4) Whenever, under any law of this state or rule, the director of the  
 43 department of agriculture or his agent is required to inspect dairy farms for  
 44 compliance with rules prescribed by the department, or determine the sani-  
 45 tary condition of anything referred to in section 37-303, Idaho Code, or the  
 46 purity of milk, cream, butter or other dairy products intended for human con-  
 47 sumption, the director shall make or cause to be made an examination and in-  
 48 spection and shall report his findings and conclusions. When the issuance  
 49 or the revoking of any license or permit by the department of agriculture

1 is required to be made after an inspection involving milk quality, sanitary  
 2 conditions and purity for human consumption of any milk, cream, butter or  
 3 other dairy products, the issuance or revocation of license or permit shall  
 4 be based upon the report or reports so made by the director.

5 SECTION 5. That Chapter 3, Title 37, Idaho Code, be, and the same is  
 6 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 7 ignated as Section 37-305, Idaho Code, and to read as follows:

8 37-305. ENFORCEMENT. The director of the department of agriculture  
 9 may bring civil actions to enjoin violations of this chapter or rules promul-  
 10 gated to implement the provisions of this chapter.

11 SECTION 6. That Section 37-306, Idaho Code, be, and the same is hereby  
 12 repealed.

13 SECTION 7. That Chapter 3, Title 37, Idaho Code, be, and the same is  
 14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 15 ignated as Section 37-306, Idaho Code, and to read as follows:

16 37-306. DEPARTMENT TO COOPERATE WITH OTHER AGENCIES. The department  
 17 of agriculture is hereby authorized to advise and assist and to cooperate  
 18 with the federal government or any of its agencies, other departments, agen-  
 19 cies and institutions of this state, counties, school districts, and munic-  
 20 ipalities and other public and private welfare agencies, in the exercise of  
 21 any of the powers and duties of the department under this chapter.

22 SECTION 8. That Chapter 3, Title 37, Idaho Code, be, and the same is  
 23 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 24 ignated as Section 37-307, Idaho Code, and to read as follows:

25 37-307. MILK HAULERS AND TANKS -- DEFINITIONS. As used in this act, un-  
 26 less the context clearly requires otherwise, the following definitions are  
 27 adopted:

28 (1) "Milk hauler" means the operator of a transportation tank and may be  
 29 an employee or the owner of the equipment.

30 (2) "Farm tank" means a tank used to cool, store or cool and store milk  
 31 prior to transportation to the processing plant.

32 (3) "Transportation tank," "bulk tank" and "feeder tank" mean tanks  
 33 used to transport milk from a farm to a processing plant.

34 (4) "Chlorine" means chlorine, or other type of sanitizer approved by  
 35 the director of the department of agriculture.

36 SECTION 9. That Section 37-308, Idaho Code, be, and the same is hereby  
 37 repealed.

38 SECTION 10. That Chapter 3, Title 37, Idaho Code, be, and the same is  
 39 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 40 ignated as Section 37-308, Idaho Code, and to read as follows:

41 37-308. STANDARDS FOR TRANSPORTATION TANKS. The following standards  
 42 are hereby adopted relating to transportation tanks:

1 (1) The transportation tank and accessories in the milk handling oper-  
 2 ation shall comply with the requirements of the 3A sanitary standards symbol  
 3 administrative council, 3A standards for transportation tanks existing at  
 4 the time of the passage of this act.

5 (2) Suitable facilities, including hot and cold running water, deter-  
 6 gent, brushes, sanitizers and sanitizing equipment, a concrete floor with  
 7 proper drainage and waste disposal, shall be provided for washing and san-  
 8 itizing of transportation tanks. Unless the truck is to be used within a  
 9 few hours of the washing operation the sanitizing of the tank shall be omit-  
 10 ted until just before the tank truck is to be used. During the interim, the  
 11 tank truck shall be protected from contamination by closing port holes, etc.  
 12 Since the tank truck may be sanitized on a different date and at a different  
 13 time from the cleaning and washing operation, a tag shall provide space for  
 14 recording this information. The washing, sanitizing and maintenance of the  
 15 transportation tank and accessories shall be the responsibility of the pro-  
 16 cessor or milk hauler. The department of agriculture shall be informed in  
 17 writing designating the person responsible for the cleaning, sanitizing and  
 18 maintenance of the transportation tank.

19 (3) The transportation tank and all accessories shall be thoroughly  
 20 rinsed after each usage, and shall be thoroughly cleaned and sanitized daily  
 21 and the tank tagged and sealed with a tag attached indicating that the tank  
 22 has been washed, sanitized or washed and sanitized. This tag shall also con-  
 23 tain the name of the person doing the work and the date on which the work was  
 24 done. The tag shall be removed by the hauler at his first pickup and retained  
 25 at the receiving plant for a minimum of thirty (30) days.

26 (4) Single length, durable, nontoxic, flexible milk conductor tubing  
 27 shall be used for conveying milk from the farm tank to the transportation  
 28 tank. The inside diameter of milk conductor tubing shall not be less than one  
 29 and three-eighths (1 3/8) inches. If two (2) lengths of tubing are used, they  
 30 shall be connected either by the use of sanitary couplings or a piece of 3A  
 31 sanitary tubing with clamps which can be removed without tools. The connec-  
 32 tions between the pump and the vehicle tank, and between the pump and the milk  
 33 conductor tubing shall remain assembled, except when dismantled for clean-  
 34 ing. The open end of the milk tubing shall be capped with an approved protec-  
 35 tive cap at all times, except when loading or unloading. The outlet valve,  
 36 milk pump and the milk conductor tubing and samples shall be enclosed in a  
 37 properly drained, insulated, dust-tight cabinet.

38 (5) The transportation tank and the accessories shall be used for no  
 39 other purpose than the handling of milk unless such other use is approved by  
 40 the department of agriculture.

41 SECTION 11. That Chapter 3, Title 37, Idaho Code, be, and the same is  
 42 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 43 ignated as Section 37-309, Idaho Code, and to read as follows:

44 37-309. STANDARDS FOR MILK HAULERS. The following standards are  
 45 hereby adopted relating to milk haulers and to the operation of transporta-  
 46 tion tanks:

47 (1) All milk haulers must possess a permit issued by the state depart-  
 48 ment of agriculture. All milk haulers shall be subject to such examination  
 49 and abilities as the department of agriculture may prescribe by rule or reg-



1     ulation in order to receive and retain such permit. The fee for the permit  
 2     shall be twenty-five dollars (\$25.00). The permit shall be valid for three  
 3     (3) years and must be renewed by December 31 of the third year.

4     (2) The milk line shall be passed through a special port opening through  
 5     the milk house wall with care to prevent contact with the ground or floor of  
 6     the milk house. The port opening shall be closed when not in use.

7     (3) It shall be the responsibility of the milk hauler to assure that in  
 8     the event the processor washes and sanitizes the truck the operation has been  
 9     adequately performed, and that prior to use the tank truck has been properly  
 10    sanitized. In the event it is the milk hauler's responsibility to sanitize  
 11    the tank truck, it shall be done with a chlorine solution of proper strength.

12    (4) The milk hauler's hands shall be washed immediately before gauging  
 13    the milk.

14    (5) The milk shall be observed and checked for abnormalities or adul-  
 15    terations, and all abnormal or adulterated milk shall be rejected.

16    (6) The milk volume in the farm tank shall be determined in a sanitary  
 17    manner.

18    (7) The milk in the farm tank shall be thoroughly agitated. Milk sam-  
 19    ples for analysis shall be taken in a sanitary manner into properly identi-  
 20    fied sterile containers. All sampling shall follow standard methods.

21    (8) After the milk is pumped to the transportation tank the milk conduc-  
 22    tor tubing shall be capped and returned to the vehicle storage cabinet. Care  
 23    shall be taken to prevent soiling of the milk line by contact with the milk  
 24    house floor, operator's hands or the ground.

25    (9) The milk hauler shall rinse the farm tank and accessories free of  
 26    milk with clean water immediately after emptying.

27    (10) The milk hauler shall be responsible for proper use of the trans-  
 28    portation tank and accessories.

29    SECTION 12. That Section [37-310](#), Idaho Code, be, and the same is hereby  
 30    repealed.

31    SECTION 13. That Chapter 3, Title 37, Idaho Code, be, and the same is  
 32    hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 33    ignated as Section 37-310, Idaho Code, and to read as follows:

34    37-310. STANDARDS FOR QUALITY CONTROL OF MILK SAMPLES. The following  
 35    standards are hereby adopted relating to quality control of milk samples  
 36    taken from tanks:

37    (1) As often as is deemed necessary, the department of agriculture may  
 38    take samples for analysis from each farm tank or each transportation tank.

39    (2) All milk samples taken from farm tanks or transportation tanks  
 40    shall be taken in a sanitary manner in accordance with standard methods.  
 41    Samples for bacteriological analysis shall be properly iced and transported  
 42    in accordance with standard methods, thirty-two (32) to forty (40) degrees  
 43    Fahrenheit.

44    (3) The department of agriculture shall have access to all records  
 45    maintained by the receiving plant relating to butterfat, temperature and  
 46    bacteriological sampling and any other samples of bulk farm tank milk.

1 (4) Milk samples for analysis shall be available on the farm tank pickup  
 2 truck at all times during the collection period and delivery to the plant, as  
 3 required by the department of agriculture.

4 SECTION 14. That Section [37-313](#), Idaho Code, be, and the same is hereby  
 5 repealed.

6 SECTION 15. That Section [37-314](#), Idaho Code, be, and the same is hereby  
 7 repealed.

8 SECTION 16. That Section [37-315](#), Idaho Code, be, and the same is hereby  
 9 repealed.

10 SECTION 17. That Section [37-316](#), Idaho Code, be, and the same is hereby  
 11 repealed.

12 SECTION 18. That Section [37-317](#), Idaho Code, be, and the same is hereby  
 13 repealed.

14 SECTION 19. That Section [37-322](#), Idaho Code, be, and the same is hereby  
 15 repealed.

16 SECTION 20. That Section [37-324](#), Idaho Code, be, and the same is hereby  
 17 repealed.

18 SECTION 21. That Section 37-325, Idaho Code, be, and the same is hereby  
 19 amended to read as follows:

20 37-32511. REPORTS BY DAIRIES, CREAMERIES AND CHEESE FACTORIES OF VOL-  
 21 UMES PURCHASED. ~~The department of agriculture shall furnish blanks to all~~  
 22 ~~proprietors or managers of creameries, cheese factories or milk dairies that~~  
 23 ~~ship milk, and all vendors and peddlers of milk and dairy goods handled, and~~  
 24 ~~all owners or managers of such creameries and cheese factories, and all milk~~  
 25 ~~dairies and all milk vendors, or milk peddlers shall fill out the blanks,~~  
 26 ~~giving a full and accurate report of the business done during the year, and~~  
 27 ~~send them to the department of agriculture before the first day of November~~  
 28 ~~of each year. Every person or corporation who shall engage in the business of~~  
 29 ~~purchasing or dealing in milk shall attach in a permanent manner to each can~~  
 30 ~~furnished by him or the producer, a tag containing in plain figures a correct~~  
 31 ~~statement of the capacity thereof. Any neglect or failure or false state-~~  
 32 ~~ment on the part of the proprietor or manager of such creamery, cheese fac-~~  
 33 ~~tory, dairy or milk vendor or milk peddler, shall be considered a misdemeanor~~  
 34 All milk processors, cooperatives and organizations that procure milk from  
 35 Idaho dairy farms or process milk received from other states shall, by the  
 36 twentieth day of the following month in which the milk was produced or pro-  
 37 cessed, provide a full and accurate account of the amount of milk purchased  
 38 and the volume of dairy products processed to the department of agriculture  
 39 pursuant to procedures established by the department.

40 SECTION 22. That Section [37-326](#), Idaho Code, be, and the same is hereby  
 41 repealed.

1       SECTION 23. That Section 37-330, Idaho Code, be, and the same is hereby  
2 repealed.

3       SECTION 24. That Section 37-332, Idaho Code, be, and the same is hereby  
4 amended to read as follows:

5       ~~37-332~~12. BUTTER AND WHEY BUTTER -- DEFINITIONS AND QUALITIES. Butter  
6 is the product made by gathering the fat of fresh or ripened milk or cream  
7 into a mass, which also contains a small portion of other milk constituents,  
8 with or without salt or a harmless coloring matter. Butter shall be clean  
9 and non-rancid and shall contain not less than eighty ~~per cent~~ percent (80%)  
10 of ~~butter fat~~ butterfat. Whey butter or whey cream butter is the food prod-  
11 uct made by gathering the fat of fresh or ripened whey cream separated from  
12 cheese whey and formed into a mass, which also contains a small portion of  
13 other milk constituents, with or without salt or a harmless coloring mat-  
14 ter. Whey butter shall be clean and ~~nonrancid~~ non-rancid and shall contain  
15 not less than eighty ~~per cent~~ percent (80%) ~~butter fat~~ butterfat. The term  
16 butter includes whey butter and whey cream butter.

17       SECTION 25. That Section 37-332a, Idaho Code, be, and the same is hereby  
18 amended to read as follows:

19       ~~37-332a~~13. BUTTER GRADES. ~~The official state consumer grades for but-~~  
20 ~~ter sold or distributed within this state shall be "grade AA," "grade A,"~~  
21 ~~"grade B" and "undergrade". "Grade AA" butter is butter scoring not less~~  
22 ~~than 93. "Grade A" butter is butter scoring 92. "Grade B" butter is butter~~  
23 ~~scoring 90 or 91. The grades of butter shall comply with the United States~~  
24 ~~department of agriculture's 1989 "Standards for Grades of Butter." "Under-~~  
25 ~~grade" butter is butter scoring less than 90 under this standard. United~~  
26 ~~States AA, A, and B grades and emblems of butter shall be accepted in lieu~~  
27 ~~of the corresponding Idaho AA, A, and B grades and emblems of butter, but all~~  
28 ~~United States grades of butter below B shall, for the purpose of this sec-~~  
29 ~~tion, correspond to Idaho "undergrade" butter. It is hereby declared to be~~  
30 ~~unlawful to sell, or offer for sale any butter within the state of Idaho un-~~  
31 ~~less the wrappers and containers in which said butter is packaged are con-~~  
32 ~~spicuously labeled as to grades. Any butter that scores less than 90 and is~~  
33 ~~sold or offered for sale within the state of Idaho must be conspicuously la-~~  
34 ~~beled with the words "undergrade butter" upon the wrappers and container in~~  
35 ~~which said butter is packaged.~~

36       SECTION 26. That Section 37-332b, Idaho Code, be, and the same is hereby  
37 amended to read as follows:

38       ~~37-332b~~14. IMPROPERLY GRADED BUTTER -- SALE UNLAWFUL -- GRADE EMBLEM  
39 ~~-- EXCEPTION. It shall be unlawful for any person to sell, offer or expose~~  
40 ~~for sale, or to distribute, within this state to any consumer, or to any~~  
41 ~~retailer, including among others hotels and restaurants, any butter not~~  
42 ~~properly graded by a butter grader licensed under this act and labeled ac-~~  
43 ~~cording to section 37-332a, Idaho Code. The official state consumer grades~~  
44 ~~shall be designated by an official grade emblem the design of which shall be~~  
45 ~~prescribed by the state department of agriculture, and said emblem shall be~~

~~used in designating butter grades only in accordance with regulations of the state department of agriculture governing the manner of such use. Graded butter imported into this state, and otherwise meeting all of the requirements of section 37-332a, Idaho Code, is not required to be designated with said grade emblem. Nothing contained in this act shall be construed to prevent a producer of cream from manufacturing into butter any cream produced by his own herd, provided it shall not exceed eighty (80) pounds in any calendar month, or from selling the same to consumers or retailers or to prevent the resale of such butter by such retailers. Butter that fails to meet the grade labeled on the butter container may be rejected. Butter that has been rejected due to failure to meet the standard may be relabeled, regraded or reprocessed if authorized by the department of agriculture.~~

SECTION 27. That Section [37-332c](#), Idaho Code, be, and the same is hereby repealed.

SECTION 28. That Section [37-332d](#), Idaho Code, be, and the same is hereby repealed.

SECTION 29. That Section [37-332e](#), Idaho Code, be, and the same is hereby repealed.

SECTION 30. That Section [37-332f](#), Idaho Code, be, and the same is hereby repealed.

SECTION 31. That Section [37-332g](#), Idaho Code, be, and the same is hereby repealed.

SECTION 32. That Section [37-332h](#), Idaho Code, be, and the same is hereby repealed.

SECTION 33. That Section [37-333](#), Idaho Code, be, and the same is hereby repealed.

SECTION 34. That Section 37-334, Idaho Code, be, and the same is hereby amended to read as follows:

~~37-334~~<sup>15</sup>. ADVERTISING SUBSTITUTES FOR DAIRY PRODUCTS. It shall be unlawful for any person, firm or corporation to make use of the words, milk, cream, butter, cheese, creamery, dairy, churn, cow, the name of any dairy breed or any pictorial representation of any of these terms in connection with the sale, offering for sale or advertisement of any substance designed to be used as a so-called substitute for milk, cheese, butter or any other dairy products.

SECTION 35. That Section 37-334a, Idaho Code, be, and the same is hereby amended to read as follows:

~~37-334a~~<sup>16</sup>. FOOD PRODUCTS MADE TO RESEMBLE DAIRY PRODUCTS -- DEFINITIONS. As used in sections 37-334<sup>15</sup>, ~~37-334a~~, ~~37-334b~~, ~~37-334c~~, ~~37-334d~~, ~~37-334e~~ and ~~37-334f~~<sup>18</sup>, Idaho Code:

(1) "Dairy product" includes:

(a) Milk, skim milk, milk fat, cream, sour cream, lowfat milk and nonfat milk used in fluid, concentrated or dry form.

(b) Cheese. All varieties including asiago, blue, brick, caciocavallo, cheddar, colby, cook cheese, cottage, cream, washed curd, edam, gammelost, gorgonzola, gouda, granular and grated, gruyere, hard, limburger, monterey, monterey jack, mozzarella, scamorze, muenster, neufchatel, nuworld, parmesan, reggiano, pasteurized, blended and processed cheeses, pasteurized cheese spreads, provolone, pasta filata, romano, roquefort, samsoe, sapsago, semi-soft and skim milk, spiced, swiss and emmentaler as described in 21 CFR, part 133.

(c) Butter as defined in section 37-3312, Idaho Code.

(d) Ice cream, frozen custard, ice milk, sherbet as defined in 21 CFR, part 135, frozen yogurt dessert mix, frozen yogurt dessert, frozen low-fat and nonfat yogurt dessert, dietetic or dietary frozen dessert, low-fat or nonfat frozen dairy dessert, and milk shake base as defined in state department of agriculture dairy rules or regulations.

(e) Any manufactured food which:

1. Uses milk or a milk ingredient as the principal or characterizing constituent of the food product;
2. Does not contain ingredients added for the purpose of replacing milk or milk ingredients;
3. Does not contain milk-derived ingredients at levels in excess of those permitted in similar standardized dairy products;
4. Does not contain any vegetable-derived ingredients unless the ingredients are used as carriers or function as stabilizers or emulsifiers; and
5. Has no standard of identity recognized by any federal or state of Idaho law, rule or regulation as a dairy product.

(2) "Milk ingredient" includes milk, skim milk, milk fat, cream, sour cream, lowfat milk and nonfat milk used in fluid, concentrated or dry form.

(3) "Milk derived ingredient" includes buttermilk, whey, modified whey products, casein, lactose, lactalbumins and lactoglobulins used in fluid, concentrated or dry forms.

(4) "Artificial dairy product" means any food manufactured or labeled so as to purport to resemble the identity, intended use, composition, physical and sensory properties of a dairy product as defined in subsection (1) of this section.

(5) For the purpose and within the meaning of this act, an "artificial dairy product" shall not include a "dairy product" as defined in this section 37-334a(1), Idaho Code, or any other manufactured food which has a federal or state of Idaho standard of identity as a food product.

~~(a) Food products made to resemble those food products other than dairy products in section 37-334a(5), Idaho Code this subsection, are exempt from the labeling requirements in sections 37-334b and 37-334c, Idaho Code, and regulations adopted pursuant thereto of this chapter.~~

SECTION 36. That Section 37-334d, Idaho Code, be, and the same is hereby amended to read as follows:

~~37-334d~~17. QUALITY STANDARDS FOR FOOD PRODUCTS MADE TO RESEMBLE DAIRY PRODUCTS. Quality standards (e.g., bacteria, coliform, etc.) for food prod-

ucts made to resemble dairy products shall be at least the equivalent of the established quality standards of the dairy product resembled.

SECTION 37. That Section 37-334e, Idaho Code, be, and the same is hereby amended to read as follows:

37-334e18. LICENSE REQUIREMENTS FOR MANUFACTURERS OF FOOD PRODUCTS MADE TO RESEMBLE DAIRY PRODUCTS. (1) It is unlawful to engage in the manufacture of food products resembling dairy products, unless a license for the current calendar year for each separate plant or place used for such business is issued by the director of the Idaho department of agriculture.

(2) Applications for a license shall be in the form which shall be prescribed by the director of the Idaho department of agriculture.

(3) The application shall be accompanied by a fee of one hundred dollars (\$100). The fee shall be prorated on a monthly basis for any licensee that commences operations after the first quarter in any calendar year whether or not such plant was licensed during the preceding calendar year.

(4) Plant licenses are not required if the plant is located in a state other than Idaho.

(5) The director of the Idaho department of agriculture shall issue to each applicant that meets the requirements of this section, a license which entitles the applicant to manufacture, sell, or distribute food products resembling dairy products for the then current calendar year for which the license is issued, unless the license is sooner revoked or suspended.

(6) The license shall expire at the end of each calendar year.

(7) It is unlawful for any person to sell any food product resembling dairy products which has been produced in a plant that is in an unsanitary condition.

(8) The manufacture of food products resembling dairy products under unhealthful or unsanitary conditions or which violate the provisions of sections 37-33415 through 37-33518, Idaho Code, and rules or regulations adopted pursuant thereto, shall be grounds for revocation or suspension of such license.

SECTION 38. That Section 37-335, Idaho Code, be, and the same is hereby amended to read as follows:

37-33519. PENALTY -- ENFORCEMENT. (1) Any person, firm or corporation, violating the provisions of sections 37-33415 through 37-33418, Idaho Code, or any part or provision of any of said sections, shall be guilty of a misdemeanor and punishable by a fine not exceeding two hundred dollars (\$200) or imprisonment in the county jail not exceeding six (6) months or by both such fine and imprisonment.

(2) In addition, any products not in compliance with the provisions of sections 37-33415 through 37-33418, Idaho Code, shall be subject to seizure and disposition in accordance with an appropriate court order or rule adopted by the director of the department of agriculture.

SECTION 39. That Section 37-338, Idaho Code, be, and the same is hereby repealed.

1       SECTION 40. That Section [37-339](#), Idaho Code, be, and the same is hereby  
2 repealed.

3       SECTION 41. That Section [37-340](#), Idaho Code, be, and the same is hereby  
4 repealed.

5       SECTION 42. That Section [37-341](#), Idaho Code, be, and the same is hereby  
6 repealed.

7       SECTION 43. That Section [37-342](#), Idaho Code, be, and the same is hereby  
8 repealed.

9       SECTION 44. That Section [37-343](#), Idaho Code, be, and the same is hereby  
10 repealed.

11       SECTION 45. That Chapter 4, Title 37, Idaho Code, be, and the same is  
12 hereby repealed.

13       SECTION 46. That Title 37, Idaho Code, be, and the same is hereby  
14 amended by the addition thereto of a NEW CHAPTER, to be known and designated  
15 as Chapter 4, Title 37, Idaho Code, and to read as follows:

16                                   CHAPTER 4  
17                                   DAIRY ENVIRONMENTAL CONTROL ACT

18       37-401. SHORT TITLE. This chapter shall be known and cited as the  
19 "Dairy Environmental Control Act."

20       37-402. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE IN-  
21 TENT. (1) The legislature recognizes the importance of protecting state  
22 natural resources including surface water and ground water. It is the intent  
23 of the legislature to protect the quality of these natural resources while  
24 maintaining an ecologically sound, economically viable and socially respon-  
25 sible dairy industry in the state. This chapter is intended to ensure that  
26 dairy waste systems are constructed, operated and maintained in a manner  
27 that protects the natural resources of the state.

28       (2) Further, the legislature recognizes that the dairy industry is  
29 potentially subject to various state and federal laws designed to protect  
30 state natural resources and that the Idaho department of agriculture is in  
31 the best position to administer and implement these various laws. It is  
32 therefore the intent of the legislature that the administration of this  
33 chapter by the department of agriculture fully meets the goals and require-  
34 ments of the federal clean water act and state laws designed to further  
35 protect state waters.

36       (3) Successful implementation of this chapter is dependent upon the de-  
37 partment receiving adequate funding from the legislature and upon effective  
38 coordination between the department of agriculture, the department of en-  
39 vironmental quality and the Idaho dairymen's association to ensure compli-  
40 ance with this chapter and applicable state and federal laws, including the  
41 federal clean water act. Moreover, the legislature recognizes that it is  
42 important for the state to obtain a delegated national pollutant discharge  
43 elimination system (NPDES) permit program from the environmental protection

1 agency under the clean water act. If such delegation is obtained, the di-  
 2 rector of the department of environmental quality and the director of the  
 3 department of agriculture shall establish an agreement that is consistent  
 4 with the provisions of this chapter for the administration of any NPDES per-  
 5 mit program that applies to dairy waste systems.

6 37-403. AUTHORITY AND DUTIES OF DIRECTOR. (1) The director of the  
 7 department of agriculture is authorized to regulate dairy waste systems to  
 8 protect state natural resources, including surface water and ground water.

9 (2) The department shall have authority to administer all state laws to  
 10 protect the quality of water applicable to a dairy operation that is not un-  
 11 der permit issued by the federal environmental protection agency. In carry-  
 12 ing out this chapter the department shall prioritize its resources on opera-  
 13 tions that have the greatest potential to significantly impact the environ-  
 14 ment and ensure that any requirements imposed under this chapter upon dairy  
 15 farms are cost-effective and economically, environmentally and technologi-  
 16 cally feasible.

17 (3) In order to carry out its duties under this chapter, the department  
 18 shall be the responsible state department to prevent any ground water con-  
 19 tamination from dairy farms as provided under section 39-120, Idaho Code.

20 (4) The director shall have the authority to exercise any other author-  
 21 ities delegated by the director of the department of environmental quality  
 22 regarding the protection of ground water, surface water and other natural  
 23 resources associated with dairy farms, and this shall be the authority for  
 24 the director of the department of environmental quality to so delegate.

25 (5) The director of the department of environmental quality shall con-  
 26 sult with the director of the department of agriculture before certifying  
 27 discharges from dairy farms as provided under 33 U.S.C. section 1341.

28 37-404. DEFINITIONS. When used in this chapter:

29 (1) "Best management practice" means a practice, technique or measure  
 30 that is determined to be a reasonable precaution, a cost-effective and prac-  
 31 ticable means of preventing or reducing the discharge of pollutants from a  
 32 point source or a nonpoint source to a level compatible with environmental  
 33 goals, including water quality goals and standards.

34 (2) "Dairy farm" means a place or premises where one (1) or more milking  
 35 cows, sheep or goats are kept, and from which all or a portion of the milk pro-  
 36 duced thereon is delivered, sold or offered for sale for human consumption.

37 (3) "Dairy waste" means manure and process wastewater that may also  
 38 contain bedding, spilled feed, compost, water or soil. It also includes  
 39 wastes not particularly associated with manure, such as milking center  
 40 or washing wastes, milk, feed leachate, or livestock carcasses or parts  
 41 thereof.

42 (4) "Dairy waste system" or "waste system" means the portion of a dairy  
 43 farm where dairy waste is stored, collected or treated. This may include  
 44 corrals, feeding areas, waste collection systems, waste conveyance systems,  
 45 waste storage ponds, waste treatment lagoons and evaporative ponds.

46 (5) "Department" means the Idaho department of agriculture.

47 (6) "Director" means the director of the Idaho department of agricul-  
 48 ture or his designee.



1 (7) "Modification" or "modified" means structural changes and alter-  
 2 ations to the dairy waste system that would require increased storage or con-  
 3 tainment capacity or such changes that would alter the function of the waste  
 4 system.

5 (8) "National pollutant discharge elimination system (NPDES)" means  
 6 the point source permitting program established pursuant to section 402 of  
 7 the federal clean water act.

8 (9) "Noncompliance" means a practice or condition that: causes an  
 9 unauthorized discharge; or, if left uncorrected, will cause an unauthorized  
 10 discharge, or does not meet nutrient management standards and comply with a  
 11 nutrient management plan.

12 (10) "Nutrient management plan" means a plan prepared in conformance  
 13 with the nutrient management standard, provisions required by 40 CFR  
 14 122.42(e) (1), or other equally protective standard for managing the amount,  
 15 placement, form and timing of the land application of nutrients and soil  
 16 amendments.

17 (11) "Person" means any individual, association, partnership, firm,  
 18 joint stock company, joint venture, trust, estate, political subdivision,  
 19 public or private corporation, state or federal governmental department,  
 20 agency or instrumentality, or any legal entity that is recognized by law as  
 21 the subject of rights and duties.

22 (12) "Process wastewater" means liquid containing dairy manure.

23 (13) "Unauthorized discharge" means a discharge of dairy waste to state  
 24 surface waters, ground waters, or beyond a dairy farm's property boundaries,  
 25 that is not authorized by an NPDES permit or the release of dairy waste to wa-  
 26 ters of the state that does not meet the requirements of this chapter or water  
 27 quality standards.

28 37-405. DESIGN AND CONSTRUCTION. Each new dairy farm and each modified  
 29 dairy farm shall design and construct all new and modified waste systems in  
 30 accordance with rules adopted by the director pursuant to this chapter. The  
 31 department's review and approval of plans under this section shall super-  
 32 sede the Idaho department of environmental quality's implementation of plan  
 33 and specification review and approval provided under section 39-118, Idaho  
 34 Code. Such design and construction shall be considered a best management  
 35 practice.

36 37-406. NUTRIENT MANAGEMENT PLAN. (1) All dairy farms shall have a nu-  
 37 trient management plan approved by the department. The nutrient management  
 38 plan shall cover the dairy farm site and other land owned and operated by the  
 39 dairy farm owner or operator. Nutrient management plans submitted to the de-  
 40 partment by the dairy farm shall include the names and addresses of each re-  
 41 cipient of that dairy farm's livestock waste, the number of acres to which  
 42 the livestock waste is applied and the amount of such livestock waste re-  
 43 ceived by each recipient. The information provided in this subsection shall  
 44 be available to the county in which the dairy farm, or the land upon which the  
 45 livestock waste is applied, is located. If livestock waste is converted to  
 46 compost before it leaves the dairy farm, only the first recipient of the com-  
 47 post must be listed in the nutrient management plan as a recipient of live-

1 stock waste from the dairy farm. Existing dairy farms shall submit a nutri-  
2 ent management plan to the department.

3 (2) Any new dairy farms or dairy farms that change owners or operators  
4 shall have an approved nutrient management plan on file with the department  
5 prior to the issuance of the milk permit for that dairy. The nutrient manage-  
6 ment plan shall be implemented upon approval of the plan by the department.

7 (3) The nutrient management plan, and all information generated by the  
8 dairy as a result of such plan, shall be deemed to be trade secrets. Produc-  
9 tion records or other proprietary information shall be kept confidential and  
10 shall be exempt from disclosure pursuant to section 9-340D, Idaho Code.

11 37-407. INSPECTIONS. (1) The director or his designee is authorized to  
12 enter and inspect any dairy farm to determine that dairy waste has been man-  
13 aged to prevent an unauthorized discharge or contamination of surface and  
14 ground water and to determine compliance with a nutrient management plan.  
15 The director shall have access to or copy any facility records deemed neces-  
16 sary to ensure compliance with this chapter and the federal clean water act.  
17 The director shall comply with the biosecurity protocol of the operation so  
18 long as the protocol does not inhibit reasonable access to:

19 (a) Enter and inspect at reasonable times the premises or land applica-  
20 tion site or sites of a dairy farm;

21 (b) Review, copy or review and copy, at reasonable times, any records  
22 that must be kept under conditions of this chapter;

23 (c) Sample or monitor at reasonable times, substances or parameters di-  
24 rectly related to compliance with an NPDES permit or this chapter.

25 (2) All inspections and investigations conducted under the authority  
26 of this chapter shall be performed in conformity with section 17, article I  
27 of the constitution of the state of Idaho. The state shall not, under the  
28 authority granted by this chapter, conduct warrantless searches of private  
29 property in the absence of either consent from the property owner or other  
30 authorized person.

31 37-408. UNAUTHORIZED DISCHARGES -- COMPLIANCE SCHEDULES -- PENAL-  
32 TIES. (1) No dairy farm shall cause an unauthorized discharge.

33 (2) Noncompliance with requirements for dairy waste systems, with nu-  
34 trient management standards, and with nutrient management plans shall be  
35 addressed through corrective actions and compliance schedules pursuant to  
36 rules adopted by the director.

37 (3) For unauthorized discharges and noncompliance conditions the di-  
38 rector or his designee shall have the authority to assess a fine of up to ten  
39 thousand dollars (\$10,000) per occurrence. Civil penalties collected under  
40 this subsection shall be remitted to the county where the violation occurred  
41 for deposit in the county current expense fund.

42 37-409. SAFE HARBOR. (1) Dairy farms and discharges in compliance with  
43 this chapter shall not be subject to state enforcement action due to viola-  
44 tions of state water quality standards or state ground water quality stan-  
45 dards except in the event of imminent and substantial danger as provided in  
46 chapter 1, title 39, Idaho Code.

(2) In any case in which the United States environmental protection agency initiates an enforcement action regarding an alleged noncompliance at a dairy farm, any pending administrative or civil enforcement action initiated by the director regarding the same alleged noncompliance shall be deemed void. If a compliance order addressing the alleged noncompliance has already been issued by the director, that order shall remain in full force and effect.

SECTION 47. That Chapter 7, Title 37, Idaho Code, be, and the same is hereby repealed.

SECTION 48. That Chapter 8, Title 37, Idaho Code, be, and the same is hereby repealed.

SECTION 49. That Chapter 10, Title 37, Idaho Code, be, and the same is hereby repealed.

SECTION 50. That Section 39-118, Idaho Code, be, and the same is hereby amended to read as follows:

39-118. REVIEW OF PLANS. (1) Except as provided by subsection (2) of this section, all plans and specifications for the construction of new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities, public water supply systems or public water treatment systems or for material modification or expansion to existing sewage treatment plants or systems, waste treatment or disposal facilities, public water supply systems or public water treatment systems, shall be submitted to and approved by the director before construction may begin, and all construction shall be in substantial compliance therewith. Material modifications are those that are intended to increase system capacity or to alter the methods or processes employed. The director shall review plans and specifications and endeavor to resolve design issues within forty-two (42) days of submittal such that approval can be granted. If the director and applicant have not resolved design issues within forty-two (42) days or at any time thereafter, the applicant may file a written demand to the director for a decision. Upon receipt of such written demand, the director shall deliver a written decision to the applicant within no more than seven (7) days explaining any reasons for disapproval. The director shall maintain records of all written demands for decision made pursuant to this subsection with such records including the final decision rendered and the timeliness thereof. No material deviation shall be made from the approved plans and specifications without the prior approval of the director.

(2) Plans meeting the following standards shall not require preconstruction approval by the director:

(a) Plans for dairy systems pursuant to section 37-401~~5~~, Idaho Code.

(b) Plans developed to evidence compliance with storm water best management practices.

(c) Plans developed for routine maintenance or equipment replacement activities.

(d) Plans for sanitary sewer extensions, water main extensions, and storm drain extensions, when such facilities will be owned and op-

erated by a city, county, quasi-municipal corporation or regulated public utility where such city, county, quasi-municipal corporation or regulated public utility provides for the review of such plans and specifications by a qualified licensed professional engineer to verify compliance with facility standards and approves construction plans prior to initiation of construction. Any plans approved pursuant to this subsection shall be transmitted to the director at the time construction is authorized along with a statement that the plans comply with the facility standards and that construction has been authorized by the public agency or public utility. At the discretion of any city, county, quasi-municipal corporation or regulated public utility, the plans addressed by this subsection may be referred to the director for review and approval prior to initiation of construction.

(3) Within thirty (30) days of the completion of construction of facilities for which plans are required to be reviewed pursuant to subsection (1) or subsection (2) (d) of this section, record plans and specifications based on information provided by the construction contractor and field observations made by the engineer or the engineer's designee depicting the actual construction of facilities performed must be submitted to the director by the engineer representing the public agency or regulated public utility, if the resultant facilities will be owned and operated by a public agency or regulated public utility, or by the design engineer or owner-designated substitute engineer if the constructed facilities will not be owned and operated by a public agency or regulated public utility. Such submittal by the professional engineer must confirm material compliance with the approved plans or disclose any material deviations therefrom. If construction does not materially deviate from the original plans and specifications previously provided to the department, the owner may have a statement to that effect prepared by a licensed professional engineer and filed with the department in lieu of submitting a complete and accurate set of record drawings.

(4) All plans and specifications submitted to satisfy the requirements of subsection (1) of this section and all plans approved pursuant to subsection (2) (d) of this section shall be in compliance with applicable facility and design standards and conform in style and quality to regularly accepted engineering standards. The department shall review plans to determine compliance with applicable facility standards and engineering standards of care. As long as the plans and specifications comply with applicable facility and design standards, the department shall not substitute its judgment for that of the owner's design engineer concerning the manner of compliance with design standards. Except with respect to plans and specifications for facilities addressed in subsection (5) of this section, and confined animal feeding operations, the board may require that certain types of plans and specifications must be stamped by registered professional engineers. If the director determines that any particular facility or category of facilities will produce no significant impact on the environment or on the public health, the director shall be authorized to waive the submittal or approval requirement for that facility or category of facilities.

(5) All plans and specifications for the construction, modification, expansion, or alteration of waste treatment or disposal facilities for aquaculture facilities licensed by the department of agriculture for both

1 commercial fish propagation facilities as defined in section 22-4601, Idaho  
2 Code, and sport fish propagation facilities whether private or operated or  
3 licensed by the department of fish and game and other aquaculture facilities  
4 as defined in the Idaho waste management guidelines for aquaculture opera-  
5 tions, shall be submitted to and approved by the director of the department  
6 of environmental quality before construction may begin and all construction  
7 shall be in compliance therewith. The director shall review plans and spec-  
8 ifications within forty-five (45) days of submittal and notify the owner or  
9 responsible party of approval or disapproval. In the event of disapproval  
10 the director shall provide reasons for disapproval in writing to the owner  
11 or responsible party. Plans and specifications shall conform in style and  
12 quality to standard industry practices and guidelines developed pursuant to  
13 this subsection. The director shall establish industry guidelines or best  
14 management practices subcommittees composed of members of the department,  
15 specific regulatory agencies for the industry, general public, and persons  
16 involved in the industry to develop and update guidelines or best management  
17 practices as needed. Within thirty (30) days of the completion of the con-  
18 struction, modification, expansion or alteration of facilities subject to  
19 this subsection, the owner or responsible party shall submit a statement to  
20 the director that the construction has been completed and is in substantial  
21 compliance with the plans and specifications as submitted and approved. The  
22 director shall conduct an inspection within sixty (60) days of the date of  
23 submission of the statement and shall inform the owner or responsible party  
24 of its approval of the construction or in the event of nonapproval, the rea-  
25 sons for nonapproval.