

TITLE 37
FOOD, DRUGS, AND OIL

CHAPTER 5
INSPECTION AND LICENSING OF DAIRY PRODUCT DEALERS AND ESTABLISHMENTS --
MILK COMPONENTS AND QUALITY TESTING

37-502. INSPECTIONS OF DAIRY PRODUCT ESTABLISHMENTS . It shall be the duty of the director of the department of agriculture, to make inspections or cause inspections to be made in this state of all places required to be licensed by the provisions of this act, where dairy products are sold, offered for sale, or manufactured in the enforcement of the present dairy laws and all future dairy legislation hereinafter enacted, and to collect statistics on the manufacture and sale of dairy products in Idaho.

[(37-502) 1925, ch. 224, sec. 2, p. 435; I.C.A., sec. 36-702; am. 1974, ch. 18, sec. 255, p. 364.]

37-503. LICENSES -- RETAIL VENDOR EXCEPTED -- FEES -- POSTING -- DEFINITIONS. Every creamery, milk plant, shipping or cream buying station, milk condensing plant, cheese factory, mix making plant, ice cream factory, reprocessing plant, casein plant, powdered milk plant, or factory of milk products, or other person receiving or purchasing milk or cream in bulk other than a retail vendor of milk on the basis of volume, milk components or milk quality therein, shall annually obtain a license therefor. Such license shall be issued by the department upon being satisfied that the building, places, or premises where such milk or dairy products are to be received or purchased are maintained in a sanitary manner, and that a laboratory or enclosed test room is provided in which to test milk and cream, that ample light is provided therein, and that at all times the room is kept in a clean and sanitary condition, and upon payment of such license fee to the department according to the following schedule:

Milk condensery, one hundred dollars (\$100), reprocessing plant, one hundred dollars (\$100), creamery, fifty dollars (\$50.00), cheese factory, twenty dollars (\$20.00), ice cream factory, twenty dollars (\$20.00), mix making plant, twenty dollars (\$20.00), casein plant, twenty dollars (\$20.00), milk powder plant, thirty dollars (\$30.00), cream buying or shipping station, fifteen dollars (\$15.00). When one (1) or more kinds of dairy products are being manufactured by the same firm on the same premises, this shall be construed to require that a separate license be procured for each kind of product manufactured and sold. The license, when issued, shall be posted in a conspicuous place in the plant for which issued.

The term "creamery" shall mean any place, building or structure wherein milk or cream is manufactured into butter for sale.

The term "milk plant" shall mean any place, building or structure wherein milk is received for bottling, pasteurizing, clarifying or otherwise processing.

The term "shipping or cream buying station" shall mean any place where milk or cream is delivered by the producers to a buyer, not a manufacturer, or to the agent or representative of a manufacturer or processor of dairy products for shipment or transportation to such manufacturer or processor.

The term "milk condensing plant" shall mean any place, building or structure wherein milk is condensed or processed by removing a considerable portion of the water or other milk constituents normally contained therein.

The term "cheese factory" shall mean any place, building or structure wherein milk is manufactured into cheese.

The term "ice cream factory" shall mean any place, building or structure wherein milk or cream, regardless of butterfat content, and with or without other constituents, shall be manufactured into a frozen or semifrozen product for human consumption and for sale at wholesale or retail. This term shall not include "frozen dessert machines."

The term "frozen dessert machine" shall mean the freezer or other device by which the liquid ingredients for frozen dessert are frozen to a solid or semisolid consistency and are discharged, expelled or drawn off for sale at retail.

The term "mix making plant" shall mean any place, building or structure wherein milk or cream, with or without other constituents, shall be mixed or processed for resale to ice cream factories; provided, that any duly licensed ice cream factory may carry on, as a part of its business, the business of mix making plant without being required to pay therefor, additional license for so doing.

The term "reprocessing plant" shall mean any place, building or structure wherein a dairy product is mixed, dried, shredded, packaged or further processed into a dairy product. A reprocessing plant does not include retail stores, restaurants or similar institutions.

The term "casein plant" shall mean any place, building or structure wherein casein is manufactured for sale.

The term "powdered milk plant" shall mean any place, building or structure wherein milk or any product of milk is processed by evaporating or removing therefrom the water or moisture contained therein to a point where the product may be handled as a dry product. A powdered milk plant also includes a facility wherein dry milk products are blended or processed into other milk products.

[(37-503) 1925, ch. 224, sec. 8, p. 435; am. 1927, ch. 98, sec. 1, p. 127; am. 1929, ch. 233, sec. 1, p. 455; I.C.A., sec. 36-703; am. 1937, ch. 147, sec. 1, p. 240; am. 1941, ch. 134, sec. 1, p. 266; am. 1947, ch. 160, sec. 1, p. 412; am. 1967, ch. 124, sec. 1, p. 282; am. 1982, ch. 6, sec. 1, p. 9; am. 1992, ch. 93, sec. 15, p. 300; am. 2011, ch. 115, sec. 2, p. 315.]

37-504. LICENSES -- DURATION AND REVOCATION. Licenses shall be issued by the department for the period of one (1) year, fees for which shall be prorated for the appropriate number of months until renewal, and shall expire on December thirty-first of each year issued, and may be revoked by the department after a hearing on ten (10) days' notice to the licensee, if such licensee shall fail to comply with the provisions of this act. No such license shall be issued, and if issued may be revoked, in the following cases:

(1) If there shall be permitted to exist any other cause or thing calculated or tending to render the milk or cream, or any product thereof, used or produced in such manufacturing or processing operations, unclean, impure and unhealthy.

(2) If the licensee does not meet rules adopted by the department of agriculture for the processing of grade A and manufacturing grade milk and milk products.

[(37-504) 1925, ch. 224, sec. 9, p. 435; I.C.A., sec. 36-704; am. 1937, ch. 147, sec. 2, p. 240; am. 2011, ch. 115, sec. 3, p. 316.]

37-505. REPORTS OF LICENSEES. All buyers of butterfat, cream, milk or other dairy products, required to be licensed by the provisions of this act, shall report to the director of the department of agriculture monthly the number of pounds of each grade of cream, butterfat or other dairy products purchased or manufactured and prices paid.

[(37-505) 1925, ch. 224, sec. 4, p. 435; I.C.A., sec. 36-705; am. 1939, ch. 89, sec. 1, p. 148; am. 1974, ch. 18, sec. 256, p. 364; am. 2011, ch. 115, sec. 4, p. 317.]

37-506. METHOD OF TESTING MILK AND CREAM. All milk and cream purchased or sold in the state of Idaho at a price based upon or determined by the milk-fat, protein, lactose, solids nonfat or somatic cell counts thereof, shall be tested by methods approved by the director of the department of agriculture of the state of Idaho. Samples must be taken from every shipment of milk and cream. Accurate thermometers must be provided at all times. Milk and cream samples must be protected and in a tamper-proof place between thirty-three (33) and forty-five (45) degrees Fahrenheit. Such samples may be examined and tested by the department of agriculture at any time. The department of agriculture is authorized to conduct audits of a person's, corporation's, cooperative's or company's payments for milk or cream to determine if such payments comply with established requirements.

[(37-506) 1913, ch. 132, sec. 1, p. 482; am. 1915, ch. 100, sec. 1, p. 238; reen. C.L. 65:71; C.S., sec. 1738; I.C.A., sec. 36-706; am. 1947, ch. 160, sec. 2, p. 412; am. 1963, ch. 49, sec. 1, p. 201; am. 1974, ch. 18, sec. 257, p. 364; am. 1986, ch. 101, sec. 7, p. 287; am. 2011, ch. 115, sec. 5, p. 317.]

37-507. STATEMENT OF MILK OR CREAM PURCHASED. Every person, corporation, cooperative or company that determines the value of any milk or cream received or bought by such person, corporation, cooperative or company on a milk volume, component or somatic cell count basis shall, when paying for such milk or cream, include in every statement or check issued to any patron in payment therefor a statement of the number of pounds of milk, milk components and the average somatic cell counts, if applicable, for which payment is made. Records for such transactions shall be retained by the purchaser of the milk or cream for at least one (1) year from the date the tests were conducted.

[(37-507) 1913, ch. 132, sec. 3, p. 482; reen. C.L., 65:73; C.S., sec. 1740; I.C.A., sec. 36-707; am. 1947, ch. 160, sec. 3, p. 412; am. 1970, ch. 34, sec. 1, p. 72; am. 2011, ch. 115, sec. 6, p. 318.]

37-509. PENALTY FOR VIOLATIONS. (1) Whoever shall violate any of the provisions of this chapter or the rules promulgated hereunder for carrying out any requirements herein specified may be assessed a civil penalty by the department or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each offense.

(2) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(3) No civil penalty may be assessed unless the person, corporation, cooperative or company charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act.

(4) If the department is unable to collect such penalty or if any person, corporation, cooperative or company fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court.

(5) Any person, corporation, cooperative or company against whom the department has assessed a civil penalty under the provisions of this section may, within twenty-eight (28) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(6) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action.

[(37-509) 1913, ch. 132, sec. 6, p. 483; reen. C.L. 65:77; C.S., sec. 1744; I.C.A., sec. 36-709; am. 1992, ch. 93, sec. 16, p. 302; am. 2011, ch. 115, sec. 7, p. 318.]

37-510. RETENTION OF TESTED SAMPLES. Every operator testing components in milk or cream for the purpose of determining their commercial value when purchased or sold shall keep for the period of forty-eight (48) hours after completing a test a portion sufficient for two (2) tests of each and every sample tested. These samples shall be accessible to the director or his representative at any and all times and legible record of all tests made by the operator of said tests shall be accessible to the department for a period of thirty (30) days following such tests.

[(37-510) 1925, ch. 224, sec. 5, p. 435; I.C.A., sec. 36-710; am. 1974, ch. 18, sec. 258, p. 364; am. 2011, ch. 115, sec. 8, p. 319.]

37-511. TESTER'S AND GRADER'S LICENSE -- EXAMINATION -- LICENSEE'S SUBSTITUTE. Every person testing or grading milk or cream to determine the milk fat as a basis of fixing the purchase price or to determine the acceptability of such milk or cream shall secure a tester's license from the department and shall make such tests and grading only by such process as has been approved by the department, and no person shall make such test and grading without such license, and other than by such process. Each applicant for such license shall be required to submit to examination or by actual demonstration show competency in testing and grading cream and milk according to the regulations prescribed by the department. The fee for each licensee shall be twenty-five dollars (\$25.00). The license shall be valid for three (3) years and must be renewed by December 31 of the third year. With the approval of the department any licensee may appoint a substitute to act for a period not to exceed fourteen (14) days.

[(37-511) 1925, ch. 224, sec. 6, p. 435; I.C.A., sec. 36-711; am. 1947, ch. 160, sec. 4, p. 412; am. 1990, ch. 411, sec. 3, p. 1140.]

37-512. TESTING AND GRADING WHEN PURCHASE-PRICE BASED ON MILK FAT OR BUTTER FAT CONTENT. All buyers of cream or milk, who purchase milk or cream at a purchase price based upon or determined by the milk fat or butter fat content thereof, shall maintain at the plant, creamery, station or factory where such milk or cream is being received, a person licensed by the department of agriculture to test and grade milk and cream.

[(37-512) I.C.A., sec. 36-711A, as added by 1947, ch. 160, sec. 5, p. 412.]

37-513. FALSE TESTS -- EVIDENCE. No person shall falsely manipulate or misread milk or cream testing apparatus. The writing of a check or payment of money by such person, corporation, cooperative or company for cream or milk shall constitute prima facie evidence that such test was made.

[(37-513) 1925, ch. 224, sec. 7, p. 435; I.C.A., sec. 36-712; am. 2011, ch. 115, sec. 9, p. 319.]

37-514. TESTING WITHOUT LICENSE -- SEPARATE OFFENSES. The testing of each lot of milk or cream by an unlicensed person shall constitute a separate offense.

[(37-514) 1925, ch. 224, sec. 12, p. 435; I.C.A., sec. 36-713.]

37-515. FEES AND FINES -- DISPOSITION. Fees and fines collected under the provisions of this act shall be credited and paid into the dairy industry and inspection fund [account]. The department is authorized by rule to set forth parameters relating to payments, refunds or other adjustments whenever the department determines milk or cream component testing fails to meet requirements. The payments or refunds shall be made to the aggrieved party within thirty (30) days.

[(37-515) 1925, ch. 224, sec. 10, p. 435; I.C.A., sec. 36-714; am. 1933, ch. 47, sec. 3, p. 75; am. 1950 (E.S.), ch. 76, sec. 2, p. 101; am. 2011, ch. 115, sec. 10, p. 319.]

37-516. RULES FOR ADMINISTRATION -- "DEPARTMENT" DEFINED. The director of the department of agriculture is empowered to prescribe rules and regulations in the administration of this act not inconsistent with its provisions. The term "department," as used in this act, means the department of agriculture.

[(37-516) 1925, ch. 224, sec. 11, p. 435; I.C.A., sec. 36-715; am. 1974, ch. 18, sec. 259, p. 364.]