

TITLE 37
FOOD, DRUGS, AND OIL

CHAPTER 3
DAIRIES AND DAIRY PRODUCTS

37-301. STATEMENT OF PURPOSE. It is hereby declared to be the policy of the legislature of the state of Idaho that the public interest requires that all dairy products produced, distributed, offered for sale or sold in Idaho meet minimum standards of sanitary condition, quality, identity, classification and grade. To accomplish this purpose, the director of the department of agriculture shall inspect dairy products, dairy farms, production facilities and processing facilities, issue permits and enforce minimum standards in accordance with the provisions of this chapter.

[(37-301) 1911, ch. 190, sec. 1, p. 627; reen. C.L. 65:38; C.S., sec. 1705; I.C.A., sec. 36-401; am. 1967, ch. 54, sec. 1, p. 104; am. 2014, ch. 275, sec. 1, p. 685.]

37-302. INSPECTIONS. (1) It shall be the duty of the director of the department of agriculture to cause to be visited as frequently as it may deem necessary all dairies supplying dealers and consumers with milk, and inspect the same to ascertain and certify sanitary conditions and milk quality. A copy of the inspection report shall be left with the owner and such information given as will assist the producer to improve the sanitary conditions or remedy such defects as the inspection report indicates. A copy of the inspection report shall be kept on file in the office of the director.

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

(3) Whenever an inspection of any dairy product is made by the department of agriculture, or whenever permanent or temporary inspectors or employees are used by the department for the purpose of enforcing or promulgating an inspection or sanitary program for any dairy product, the department is authorized to fix, assess and collect or cause to be collected from the dairy processors, fees or assessments for services when they are performed by employees or agents of the department, the fees to be on a uniform basis in an amount reasonably necessary to cover the cost of such inspection and the administration of the department of agriculture dairy inspection program; provided however, that the department shall so adjust the fees to be col-

lected under this section as to meet the expenses necessary for this inspection service only, all of the fees to be used for this purpose alone; and provided further, that in no event shall the fees or assessments exceed four (4) 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.

[37-302, as reen. 1967, ch. 54, sec. 2, p. 104; am. 1974, ch. 23, sec. 24, p. 633; am. 1992, ch. 93, sec. 1, p. 295; am. 2014, ch. 275, sec. 2, p. 685.]

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 accept-

able. Each processor shall retain for at least one (1) year at the place where milk or cream is received, a record of such tests in the form and of the content that shall be prescribed by the department of agriculture and shall exhibit the record at the place where the same is kept whenever requested to do so by the producer or the department and shall permit copies thereof to be taken.

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

(e) Any milk, cream or dairy product that is unclean, unwholesome or unfit for human consumption, as determined by the department, shall be rejected as unacceptable.

[37-303, added 2014, ch. 275, sec. 3, p. 686.]

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

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

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

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

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

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

(3) As used in this section:

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

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

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

(4) Whenever, under any law of this state or rule, the director of the department of agriculture or his agent is required to inspect dairy farms for compliance with rules prescribed by the department, or determine the sanitary condition of anything referred to in section [37-303](#), Idaho Code, or the purity of milk, cream, butter or other dairy products intended for human consumption, the director shall make or cause to be made an examination and inspection and shall report his findings and conclusions. When the issuance or the revoking of any license or permit by the department of agriculture is required to be made after an inspection involving milk quality, sanitary conditions and purity for human consumption of any milk, cream, butter or other dairy products, the issuance or revocation of license or permit shall be based upon the report or reports so made by the director.

[37-304, added 2014, ch. 275, sec. 4, p. 687.]

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

[37-305, added 2014, ch. 275, sec. 5, p. 688.]

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

[37-306, added 2014, ch. 275, sec. 7, p. 688.]

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

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

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

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

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

[37-307, added 2014, ch. 275, sec. 8, p. 688.]

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

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

(2) Suitable facilities, including hot and cold running water, detergent, brushes, sanitizers and sanitizing equipment, a concrete floor with proper drainage and waste disposal, shall be provided for washing and sanitizing of transportation tanks. Unless the truck is to be used within a few hours of the washing operation the sanitizing of the tank shall be omitted until just before the tank truck is to be used. During the interim, the tank truck shall be protected from contamination by closing port holes, etc. Since the tank truck may be sanitized on a different date and at a different time from the cleaning and washing operation, a tag shall provide space for recording this information. The washing, sanitizing and maintenance of the transportation tank and accessories shall be the responsibility of the processor or milk hauler. The department of agriculture shall be informed in writing designating the person responsible for the cleaning, sanitizing and maintenance of the transportation tank.

(3) The transportation tank and all accessories shall be thoroughly rinsed after each usage, and shall be thoroughly cleaned and sanitized daily and the tank tagged and sealed with a tag attached indicating that the tank

has been washed, sanitized or washed and sanitized. This tag shall also contain the name of the person doing the work and the date on which the work was done. The tag shall be removed by the hauler at his first pickup and retained at the receiving plant for a minimum of thirty (30) days.

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

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

[37-308, added 2014, ch. 275, sec. 10, p. 689.]

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

(1) All milk haulers must possess a permit issued by the state department of agriculture. All milk haulers shall be subject to such examination and abilities as the department of agriculture may prescribe by rule or regulation in order to receive and retain such permit. The fee for the permit shall be twenty-five dollars (\$25.00). The permit shall be valid for three (3) years and must be renewed by December 31 of the third year.

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

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

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

(5) The milk shall be observed and checked for abnormalities or adulterations, and all abnormal or adulterated milk shall be rejected.

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

(7) The milk in the farm tank shall be thoroughly agitated. Milk samples for analysis shall be taken in a sanitary manner into properly identified sterile containers. All sampling shall follow standard methods.

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

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

(10) The milk hauler shall be responsible for proper use of the transportation tank and accessories.

[37-309, added 2014, ch. 275, sec. 11, p. 689.]

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

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

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

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

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

[37-310, added 2014, ch. 275, sec. 13, p. 690.]

37-311. REPORTS OF VOLUMES PURCHASED. All milk processors, cooperatives and organizations that procure milk from Idaho dairy farms or process milk received from other states shall, by the twentieth day of the following month in which the milk was produced or processed, provide a full and accurate account of the amount of milk purchased and the volume of dairy products processed to the department of agriculture pursuant to procedures established by the department.

[(37-311) 37-325 1905, p. 54, sec. 12; reen. R.C., sec. 1146; am. 1909, p. 231, sec. 1, subd. 1146; reen. C.L. 65:62; C.S., sec. 1729; I.C.A., sec. 36-425; am. 1955, ch. 147, sec. 1, p. 289; am. and redesign. 2014, ch. 275, sec. 21, p. 691.]

37-312. BUTTER AND WHEY BUTTER -- DEFINITIONS AND QUALITIES. Butter is the product made by gathering the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of other milk constituents, with or without salt or a harmless coloring matter. Butter shall be clean and non-rancid and shall contain not less than eighty percent (80%) of butterfat. Whey butter or whey cream butter is the food product made by gathering the fat of fresh or ripened whey cream separated from cheese whey and formed into a mass, which also contains a small portion of other milk constituents, with or without salt or a harmless coloring matter. Whey butter shall be clean and non-rancid and shall contain not less than eighty percent (80%) butterfat. The term butter includes whey butter and whey cream butter.

[(37-312) 37-332, added 1905, p. 54, sec. 19; reen. R.C., sec. 1131; reen. C.L. 65:68; C.S., sec. 1735; S.L. 1929, ch. 65, sec. 1, p. 95; I.C.A., sec. 36-432; am. 1937, ch. 107, sec. 2, p. 160; am. 1988, ch. 161, sec. 1, p. 291; am. and redesign. 2014, ch. 275, sec. 24, p. 691.]

37-313. BUTTER GRADES. The grades of butter shall comply with the United States department of agriculture's 1989 "Standards for Grades of Butter." "Undergrade" butter is butter scoring less than 90 under this standard. It is hereby declared to be unlawful to sell, or offer for sale any butter within the state of Idaho unless the wrappers and containers in which said butter is packaged are conspicuously labeled as to grades. Any butter that scores less than 90 and is sold or offered for sale within the state of Idaho must be conspicuously labeled with the words "undergrade butter" upon the wrappers and container in which said butter is packaged.

[(37-313) 37-332a, added 1955, ch. 258, sec. 1, p. 598; am. 1957, ch. 75, sec. 1, p. 122; am. 1959, ch. 54, sec. 1, p. 112; am. 1988, ch. 161, sec. 2, p. 291; am. and redesisg. 2014, ch. 275, sec. 25, p. 692.]

37-314. IMPROPERLY GRADED BUTTER. 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.

[(37-314) 37-332b, added 1955, ch. 258, sec. 2, p. 598; am. 1959, ch. 54, sec. 2, p. 112; am. and redesisg. 2014, ch. 275, sec. 26, p. 692.]

37-315. 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.

[(37-315) 37-334, added 1921, ch. 149, sec. 1, p. 341; I.C.A., sec. 36-434; am. and redesisg. 2014, ch. 275, sec. 34, p. 693.]

37-316. FOOD PRODUCTS MADE TO RESEMBLE DAIRY PRODUCTS -- DEFINITIONS. As used in sections [37-315](#) and [37-318](#), 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, scamorza, 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 [37-312](#), 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 lowfat and nonfat yogurt dessert, dietetic or dietary frozen dessert, lowfat 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 or any other manufactured food which has a federal or state of Idaho standard of identity as a food product. Food products made to resemble those food products other than dairy products in this subsection, are exempt from the labeling requirements of this chapter.

[(37-316) 37-334a, added 1985, ch. 61, sec. 1, p. 122; am. 1987, ch. 7, sec. 1, p. 8; am. 1992, ch. 93, sec. 10, p. 298; am. and redsig. 2014, ch. 275, sec. 35, p. 693.]

37-317. QUALITY STANDARDS FOR FOOD PRODUCTS MADE TO RESEMBLE DAIRY PRODUCTS. Quality standards (e.g., bacteria, coliform, etc.) for food products made to resemble dairy products shall be at least the equivalent of the established quality standards of the dairy product resembled.

[(37-317) 37-334d, added 1987, ch. 7, sec. 5, p. 10; am. and redsig. 2014, ch. 275, sec. 36, p. 694.]

37-318. 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 [37-315](#) through [37-318](#), Idaho Code, and rules or regulations adopted pursuant thereto, shall be grounds for revocation or suspension of such license.

[(37-318) 37-334e, added 1987, ch. 7, sec. 6, p. 11; am. and redesign. 2014, ch. 275, sec. 37, p. 694.]

37-319. PENALTY -- ENFORCEMENT. (1) Any person, firm or corporation, violating the provisions of sections [37-315](#) through [37-318](#), 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 [37-315](#) through [37-318](#), 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.

[(37-319) 37-335, added 1921, ch. 149, sec. 2, p. 341; I.C.A., sec. 36-435; am. 1937, ch. 107, sec. 3, p. 160; am. 1985, ch. 61, sec. 4, p. 124; am. 1987, ch. 7, sec. 8, p. 12; am. and redesign. 2014, ch. 275, sec. 38, p. 694.]