



# Legislative Services Office

## Idaho State Legislature

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Eric Milstead  
Director

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Senators GUTHRIE, Den Hartog, Jordan and,  
Representatives BOYLE, Troy, Erpelding

**FROM:** Katharine Gerrity - Deputy Division Manager

**DATE:** July 10, 2019

**SUBJECT:** Temporary Rule(s)

IDAPA 02.04.14 - Rules Governing Dairy Byproduct - Adoption of Temporary Rule - Docket No. 02-0414-1901

IDAPA 02.04.15 - Rules Governing Beef Cattle Animal Feeding Operations - Adoption of Temporary Rule - Docket No. 02-0415-1901

IDAPA 02.04.16 - Rules Governing Agriculture Odor Management - Adoption of Temporary Rule - Docket No. 02-0416-1901

IDAPA 02.04.17 - Rules Governing Dead Animal Movement and Disposal - Adoption of Temporary Rule - Docket No. 02-0417-1901

We are forwarding these temporary rules to you for your information only. No analysis was done by LSO. These rules are posted on our web site. If you have any questions, please call Katharine Gerrity at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule(s)

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## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.04.14 – RULES GOVERNING DAIRY BYPRODUCT

DOCKET NO. 02-0414-1901

#### NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE AND HISTORY NOTES:** The effective date of the temporary rule is July 1, 2019. Traditionally effective dates are published for every subsection, paragraph and subparagraph of a rule. These individualized effective dates provide a rich history for legal scholars and interested members of the public to explore the broader context of each rule. This docket retains these important history notes while establishing the effective date for each chapter to ensure there is no gap with the expiring rules. Where technical corrections only have been made to any section of a rule, or subpart thereof, the historic effective date is retained.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 37-603, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This temporary rulemaking adopts and re-publishes a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. This previously approved and codified rule implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of this rule without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by this rule.

The Rules Governing Dairy Byproduct outline standards for dairy environmental management plans governing the storage, containment and land application of dairy byproduct. The rule sets limits on certain nutrient loading at land application sites and establishes prohibitions of discharges of dairy byproduct beyond property boundaries and/or into waters of the state.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Dr. Scott Leibsle (208) 332-8614.

Dated this 6th day of June, 2019.

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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 02-0414-1901**

**IDAPA 02**  
**TITLE 04**  
**CHAPTER 14**

**02.04.14 – RULES GOVERNING DAIRY BYPRODUCT**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 37, Chapters 3, 4, and 6, Idaho Code. (3-29-17)

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter of the Idaho State Department of Agriculture is IDAPA 02.04.14, “Rules Governing Dairy Byproduct.” (3-29-17)

**02. Scope.** This chapter has the following scope: These rules govern the Department’s review, approval, and enforcement of dairy environmental management plans to ensure that dairy environmental management systems are constructed, operated and maintained in a manner that protects the natural resources of the state. This section’s citation is 37-602(2), Idaho Code. Nothing in this rule affects the authority of the department of environmental quality to enforce an IPDES permit for dairy farms that discharge pollutants to waters of the United States, including without limitation, the authority to issue permits, access records, conduct inspections and take enforcement actions. The provisions of this rule do not alter the requirements, liabilities, and authorities with respect to or established by the IPDES program. (3-29-17)

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. (3-20-97)

**003. ADMINISTRATIVE APPEAL.**

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. There is no provision for administrative appeal before the Department of Agriculture under these rules. (3-20-97)

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference into this chapter. (3-29-10)

**01. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (1997 Edition) (USDA, NRCS).** This document is available online at [https://agri.idaho.gov/main/wp-content/uploads/2017/08/nrcs\\_10d\\_1997.pdf](https://agri.idaho.gov/main/wp-content/uploads/2017/08/nrcs_10d_1997.pdf). (3-29-10)

**02. Nutrient Management Standard (NMS).** The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590, available online at [https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient\\_Management\\_code\\_590.pdf](https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf). (3-29-10)

**03. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004.** This document is available online at [https://agri.idaho.gov/main/wp-content/uploads/2017/10/nrcs\\_313\\_Dec\\_2004.pdf](https://agri.idaho.gov/main/wp-content/uploads/2017/10/nrcs_313_Dec_2004.pdf). (3-29-10)

**04. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3**

**Manure Storages February 2004.** This document is part of a copyrighted publication and is available for viewing at the ISDA offices or a copy may be purchased online at <http://www.asabe.org/>. (3-29-10)

**05. Natural Resources Conservation Service (NRCS) Web Soil Survey Database.** This document is available online at <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. (3-28-18)

**06. Natural Resources Conservation Service (NRCS) Part 630, Hydrology National Engineering Handbook, Chapter 7, (Hydrologic Soil Groups), January 2009.** This document is available online at <https://www.wcc.nrcs.usda.gov/ftpref/wntsc/H&H/NEHhydrology/ch7.pdf>. (3-28-18)

**07. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2017.** This document is available online at <https://agri.idaho.gov/main/wp-content/uploads/2018/12/Phosphorus-Site-Index-reference-2017-revised.pdf>. (3-28-18)

**005. ADDRESS, OFFICE HOURS, TELEPHONE, FAX NUMBERS, WEB ADDRESS.**

The Idaho State Department of Agriculture central office is located at 2270 Old Penitentiary Road, Boise, ID 83712-8298. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is PO Box 7249, Boise, Idaho 83707. The phone number is (208) 332-8500 and the fax number is (208) 334-2170. The Department web address is <https://agri.idaho.gov/>. (4-11-15)

**006. PUBLIC RECORDS ACT COMPLIANCE.**

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture. (3-29-10)

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

The following definitions apply in the interpretation and enforcement of this chapter: (3-20-97)

**01. Agricultural Stormwater Discharge.** A precipitation-related discharge of dairy byproducts from land areas under the control of a dairy farm where the dairy byproducts have been mechanically land applied in accordance with an approved nutrient management plan. (3-29-17)

**02. Best Management Practice.** A practice, technique, or measure that is determined to be a reasonable precaution, a cost-effective and practicable means of preventing or reducing the discharge of pollutants from a point source or a nonpoint source to a level compatible with environmental goals, including water quality goals and standards. (4-11-15)

**03. Certified Planner.** A person who has completed nutrient management certification in accordance with the Nutrient Management Standard (NMS) and is approved by the Department. (3-29-10)

**04. Certified Soil Sampler.** An individual qualified and approved by the Department to collect soil samples according to the 1997 University of Idaho Soil Sampling protocols or other method as approved by the Department. (3-29-10)

**05. Dairy Animal.** Milking cows, sheep or goats. (3-29-17)

**06. Dairy Byproduct.** Solids and liquids associated with dairy animal rearing and milk production including, but not limited to, manure, manure compost, process water, bedding, spilled feed, and feed leachate. (3-29-17)

**07. Dairy Environmental Management Plan.** A plan for managing a dairy environmental management system. The dairy environmental management plan shall consist of dairy storage and containment facilities criteria and a dairy nutrient management plan that are approved by the Director. (3-29-17)

**08. Dairy Environmental Management System.** The areas and structures within a dairy farm where dairy byproducts are collected, stored, treated, or applied to land. These areas and structures may include corrals,

feeding areas, collection systems, conveyance systems, storage ponds, treatment lagoons, and evaporative ponds and land application areas, but do not include pastures as defined in these rules. (3-29-17)

**09. Dairy Farm.** The land owned or operated by a person as an integral component of a Department-permitted grade A or manufacture grade facility where one (1) or more milking cows, sheep, or goats are kept, and from which all or a portion of the milk produced thereon is delivered, sold or offered for sale for human consumption. A dairy farm does not include those lands that contain non-dairy animals provided a physical separation exists from lands owned or operated by the dairy, byproducts remain separate, and dairy animals are not comingled with non-dairy animals. (3-29-17)

**10. Dairy Nutrient Management Plan (DNMP).** A plan prepared in conformance with the NMS for managing the land application of dairy byproducts that is prepared by a certified planner and approved by the Department. (3-29-17)

**11. Dairy Storage and Containment Facilities.** The areas and structures within a dairy farm where dairy byproducts are collected, stored, or treated in conformance with engineering standards and specifications published by the USDA Natural Resources Conservation Service or by the ASABE, or other equally protective criteria approved by the Director. These areas may include corrals, feeding areas, collection systems, conveyance systems, storage ponds, treatment lagoons, evaporative ponds, and compost areas, but do not include pastures as defined in these Rules. (3-29-17)

**12. Department.** The Idaho State Department of Agriculture. (3-29-10)

**13. Director.** The Director of the Idaho State Department of Agriculture or his designee. (3-29-10)

**14. Export.** The delivery of dairy byproducts from a dairy farm to a third party for the third party's use. (3-29-17)

**15. Fieldman.** An individual qualified and approved by the Department to perform dairy farm inspections. (3-20-97)

**16. Idaho Pollutant Discharge Elimination System (IPDES).** Idaho's program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under these rules and the Clean Water Act sections 307, 402, 318, and 405. (3-29-17)

**17. Inspector.** A qualified, trained person employed by the Department to perform dairy farm inspections. (3-20-97)

**18. Land Application.** Mechanical spreading on, or incorporating into the soil mantle, dairy byproduct as a soil amendment for agricultural use of nutrients and for other beneficial purposes. Land application does not include pasturing animals as defined in these rules. (3-29-17)

**19. Modification or Modified.** Structural changes and alterations to the dairy storage and containment facility that would require increased storage or containment capacity or the function of the facility. (3-29-17)

**20. Non-Compliance.** A practice or condition that does not meet the requirements of a dairy environmental management plan. Noncompliance does not include an upset condition. (3-29-17)

**21. Nutrient Management Standard (NMS).** Criteria for managing the land application of nutrients and soil amendments published in the USDA NRCS conservation practice standard nutrient management code 590 or other equally protective criteria approved by the Director. (3-29-17)

**22. Pasture, Pasturing, and Pastured.** For purposes of these rules, a pasture is an irrigated or dryland field with forage plant growth covering a minimum of fifty percent (50%) of the field. Pasturing and pastured is dairy animals and other animals owned, leased, or otherwise under the control of the producer, grazing in the same dairy farm pasture. (3-29-17)

**23. Permit.** A permit issued by the Department allowing the sale of Grade A milk or manufacture grade milk. (3-29-17)

**24. Person.** Any individual, partnership, association, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency, or instrumentality; or any legal entity that is recognized by law as the subject of rights and duties. (4-11-15)

**25. Phosphorus Site Index.** A method to evaluate the relative potential for off-site movement of phosphorus from a field or pasture based upon risk factors relating to surface transport, phosphorus loss potential and nutrient management practices. (3-28-18)

**26. Process Water.** Water directly or indirectly used or produced in dairy animal rearing, milk production and environmental management processes including, but not limited to: (3-29-17)

**a.** Excess milk: spillage or overflow from watering, washing, spraying or cooling dairy animals; (3-29-17)

**b.** Water containing dairy manure: water used in washing, cleaning, or flushing barns, manure pits and other areas involved in the milk production and environmental management processes; (3-29-17)

**c.** Water used for dust control; and (3-29-17)

**d.** Water that comes into contact with any raw materials, products, or byproducts of the dairy production and environmental management processes. (3-29-17)

**27. Producer.** The person who owns or operates a permitted dairy farm. (3-29-17)

**28. Unauthorized Discharge.** A discharge of pollutants from a dairy farm to waters of the United States as defined in the federal clean water act that is required to be but is not authorized by an IPDES permit. Unauthorized discharge does not include an upset condition or agricultural stormwater discharge. (3-29-17)

**29. Unauthorized Release.** A release of dairy byproducts to ground water or surface waters of the state that are not waters of the United States or beyond land owned or operated by the dairy farm that results from a dairy farm's failure to comply with its environmental management plan. Unauthorized release shall not include an upset condition, an agricultural stormwater discharge or infiltration from storage and containment facilities that is within engineering standards and specifications published by the USDA, NRCS or by the ASABE, or other equally protective criteria approved by the Director. (3-29-17)

**30. Upset Condition.** Precipitation, earthquake, vandalism, or other occurrence beyond the control of the dairy farm owner or operator that exceeds criteria for storage and containments facilities and nutrient management in an approved environmental management plan. (3-29-17)

**011. ABBREVIATIONS.**

**01. ASABE.** American Society of Agricultural and Biological Engineers. (3-29-17)

**02. IPDES.** Idaho Pollutant Distribution Elimination System. (3-29-17)

**03. NMS.** Nutrient Management Standard (3-29-17)

**04. NRCS.** Natural Resources Conservation Service. (3-29-17)

**05. USDA.** United States Department of Agriculture. (3-29-17)

**012. -- 029. (RESERVED)**

**030. DAIRY ENVIRONMENTAL MANAGEMENT PLAN APPROVAL.**

The Department is authorized to approve environmental management plans, as provided in Section 37-606A, Idaho Code. (3-29-17)

**01. Dairy Storage and Containment Facility Criteria. (3-29-17)**

**a.** Dairy storage and containment facilities shall be constructed to meet a minimum of one hundred eighty (180) days of holding capacity. Process water containment structures that are utilized as the secondary or final storage for effluent shall have a minimum two (2) vertical feet of freeboard. (3-29-17)

**b.** Earthen dairy storage and containment facilities less than ten (10) vertical feet high with a maximum high water line of eight (8) vertical feet shall be required to have a top embankment width of at least eight (8) feet and a minimum of one (1) vertical foot of freeboard shall be maintained. The combined inside and outside embankment slopes must be at least five (5) horizontal to one (1) vertical, and neither slope shall be steeper than two (2) horizontal to one (1) vertical. Earthen dairy storage and containment facilities with outside embankments higher than ten (10) vertical feet from the naturally occurring ground level shall meet the NRCS Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004 embankment requirements as incorporated by reference in Subsection 004.03 of these rules. (3-29-17)

**c.** The inside bottom of the dairy storage and containment facility shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen dairy storage and containment facility, a soil liner shall be installed such that the specific discharge rate of the containment structure meet  $1 \times 10^{-6} \text{ cm}^3/\text{cm}^2/\text{sec}$  or less as described in Appendix 10D. Concrete or synthetic liners must be constructed to the American Society of Agricultural and Biological Engineers Specification ASABE EP393.3 Manure Storages February 2004 and Appendix 10D as incorporated by reference in Section 004 of these rules. (3-29-17)

**d.** Storage areas for dairy byproduct, including compost and solid manure storage areas, shall be located on approved soils and appropriately protected to prevent run on and run off. (3-29-17)

**e.** Dairy environmental management systems shall be maintained in a condition that allows the producer to regularly inspect the integrity of the systems. (3-29-17)

**02. Dairy Nutrient Management Plan (DNMP).** Except as provided below, each dairy farm shall have a dairy nutrient management plan that is approved by the Department and included in the dairy farm's environmental management plan. The DNMP shall cover the dairy farm site and other land owned and operated by the dairy farm owner or operator to which dairy byproducts are land applied. A new dairy farm governed by the IPDES program is not required to submit a DNMP to the Department. An existing dairy farm with an approved DNMP that has a discharge to waters of the U.S. that requires an IPDES permit must comply with the nutrient management plan requirements under the IPDES rules and IPDES permit, notwithstanding the Department approved DNMP. Requirements to comply with the provisions of a DNMP include the following: (3-29-17)

**a.** Producer annual soil tests shall be conducted as set forth in IDAPA 02.04.30, "Rules Governing Nutrient Management." (3-29-17)

**b.** Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with Section 031 and with IDAPA 02.04.30, "Rules Governing Nutrient Management." (3-28-18)

**c.** Accurate DNMP records shall be maintained. These records shall include at a minimum: (3-29-17)

**i.** Regulatory soil samples shall be taken by a Certified Soil Sampler and tested by a laboratory that meets the requirements and performance standards of the North American Proficiency Testing Program under the auspices of the Soil Science Society of America outlined in the NMS, as incorporated by reference in Subsection 004.02, as part of NMS 590 or other methods as approved by the Department; (3-29-10)

**ii.** Annual soil analysis; (3-29-10)

**iii.** Date and amount of dairy byproduct and commercial fertilizer applied to individual dairy owned or operated fields; (3-29-17)

- iv. Date(s) of exported dairy byproduct, number of acres applied, amount of dairy byproduct exported, and to whom dairy byproduct was exported; and (3-29-17)
  - v. Actual crop yields on dairy owned or operated fields. (3-29-10)
  - vi. A nitrogen management plan worksheet (pages 35-36 of the 2017 Idaho Phosphorus Site Index Standards) shall be completed for all fields and pastures receiving land application of nutrients. (3-28-18)
- d.** Pasturing. Pastures utilized for grazing of dairy animals, and other animals owned, leased or otherwise under the control of a producer within the same pasture, shall be incorporated in and subject to the DNMP. These pastures are also subject to the following requirements: (3-29-17)
- i. Soil testing. Soil tests shall be conducted pursuant to the NMS and Section 031 on all lands utilized as pasture. (3-28-18)
  - ii. Surface water access. If pastured animals have access to surface water within a pasture, the producer may be required to implement one (1) or more NRCS conservation practice standards to minimize adverse impact on surface water quality. (3-29-17)
  - iii. Land application. If land application occurs within a pasture, soil tests shall be conducted annually on that pasture. (3-29-17)
  - iv. Confinement areas. Confinement areas shall not be considered part of a pasture. (3-29-17)

**031. PHOSPHORUS MANAGEMENT.**

Dairy farms shall utilize either Phosphorus Indexing (Section 031.01) or the Phosphorus Threshold (Section 031.02) to manage nutrient application. After June 30, 2023, dairy farms will no longer be allowed to use the Phosphorus Threshold (Section 031.02) provision and all facilities will be required to use Phosphorus Indexing (Section 031.01). (3-28-18)

**01. Phosphorus Indexing.** The dairy farm shall utilize phosphorus site indexing (PSI) for each field where dairy byproducts and/or commercial fertilizers are land applied and for each pasture utilized for grazing, in accordance with the 2017 Idaho Phosphorus Site Index Standards. The PSI shall be calculated by a Nutrient Management Planner, certified by the Department, and be included as a component of the DNMP in the dairy farm's Environmental Management Plan. It shall be the dairy farm's responsibility to provide updated information, including annual soil test results, to the Nutrient Management Planner for calculation of the PSI on all fields and pastures on an annual basis. Failure to abide by the nutrient application and management provisions of a field or pasture's PSI risk classification in the DNMP shall constitute a non-compliance and the producer may be penalized as provided in these rules. (3-28-18)

**a.** Notwithstanding anything to the contrary in the 2017 Idaho Phosphorus Site Index Standards, no land application of phosphorus shall be permitted on any fields or pastures that possess a soil phosphorus level exceeding three hundred (300) parts per million, as determined by the required annual soil test (via Olsen method). Further, the dairy farm shall not receive BMP Coefficient credit for implementing any best management practice designed to reduce phosphorus loss on fields exceeding three hundred (300) parts per million, via Olsen method. (3-28-18)

**b.** The Department may award zero (0) or partial BMP Coefficient credit when a dairy farm implements a best management practice designed to reduce phosphorus loss from fields that does not fully conform to NRCS standards or the standards set forth in the 2017 Idaho Phosphorus Site Index Standards BMP definition section. (3-28-18)

**02. Phosphorus Threshold.** If the regulatory or producer soil tests reveal that phosphorus thresholds on fields and pastures have exceeded the levels established in the NMS, the producer shall only apply phosphorus at the appropriate phosphorus crop uptake rate. Subsequent regulatory soil test(s) on fields and pastures that were identified as exceeding the phosphorus threshold will be conducted. If two (2) out of three (3) tests reveal the



phosphorus index continues to trend upward, the producer will be penalized as provided in these rules. These tests shall be taken in the top one (1) foot of soil. (3-28-18)

**032. -- 039. (RESERVED)**

**040. INSPECTIONS.**

Each dairy farm shall be inspected by an inspector or fieldman at least annually or at intervals sufficient to determine that dairy byproducts and process water have been managed to prevent an unauthorized discharge, unauthorized release, or contamination of surface and ground water. An official inspection report form as described in Section 041 will be completed at the time of inspection. (3-29-17)

**041. INSPECTION REPORT FORMS.**

An inspection report form shall be established by the Department based on parameters established in the NMP, NMS, and Appendix 10D. Each inspection item on the form shall indicate compliance and non-compliance. (3-29-10)

**042. -- 049. (RESERVED)**

**050. COMPLIANCE SCHEDULES.**

**01. Non-Compliance or Unauthorized Release Violations Identified.** When the Director identifies items of non-compliance or unauthorized release violations, the deficiencies will be noted and discussed with the producer. Appropriate corrective actions will be identified and scheduled informally. The Director may develop a formal compliance schedule in the following cases: (3-29-17)

- a. When corrective actions cannot be completed within thirty (30) days; or (4-5-00)
- b. When corrective actions require significant capital investment; or (4-5-00)
- c. When informal schedules have not been followed. (3-29-17)

**02. Re-Inspection.** Re-inspection of the dairy farm will be conducted as appropriate, to ensure compliance. An unauthorized release violation shall be corrected immediately, when at all possible. (3-29-17)

**051. -- 059. (RESERVED)**

**060. UNAUTHORIZED DISCHARGES AND UNAUTHORIZED RELEASES -- PENALTIES.**

**01. Unauthorized Discharge.** No dairy farm shall cause an unauthorized discharge. (4-11-15)

**02. Unauthorized Release.** No dairy farm shall cause an unauthorized release. (3-29-17)

**03. Non-Compliance.** Non-compliance with requirements for dairy environmental systems, the NMS, and DNMP shall be addressed through corrective actions and compliance schedules pursuant to these rules. (3-29-17)

**04. Penalties.** For unauthorized releases and non-compliance conditions, the Director shall have the authority to assess a fine of up to ten thousand dollars (\$10,000) per occurrence. Civil penalties collected under this subsection shall be remitted to the county where the violation occurred for deposit in the county current expense fund. (3-29-17)

**05. Suspend Planners or Soil Samplers Certification.** The Director may suspend certification of Certified Planners or Certified Soil Samplers in the event such Certified Planners or Soil Samplers fail to develop DNMPs or collect soil samples as required by these rules. (3-29-17)

**061. COMPLIANCE WITH IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES.**

The department of environmental quality shall be solely responsible and authorized to determine whether the discharge of pollutants from a dairy farm to waters of the United States is required to be authorized by an IPDES

permit. The provisions of this rule do not define when a dairy farm is required to obtain a permit for a discharge, do not exempt a dairy farm from permitting requirements for such discharges or alter the authority of DEQ with respect to such discharges. (3-29-17)

**062. -- 999. (RESERVED)**

## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.04.15 – RULES GOVERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS

DOCKET NO. 02-0415-1901

#### NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE AND HISTORY NOTES:** The effective date of the temporary rule is July 1, 2019. Traditionally effective dates are published for every subsection, paragraph and subparagraph of a rule. These individualized effective dates provide a rich history for legal scholars and interested members of the public to explore the broader context of each rule. This docket retains these important history notes while establishing the effective date for each chapter to ensure there is no gap with the expiring rules. Where technical corrections only have been made to any section of a rule, or subpart thereof, the historic effective date is retained.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 22-4903, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This temporary rulemaking adopts and re-publishes a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. This previously approved and codified rule implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of this rule without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by this rule.

The Rules Governing Beef Cattle Feeding Operations establish standards for the confine storage, management and application of nutrients on Concentrated Animal Feeding Operations (CAFO) that manage over one thousand (1,000) beef cattle in Idaho. These rules also outline the construction standards for all storage containment structures that are designed to protect the environment regarding the storage and land application of manure and other nutrients produced, handled and transported by CAFOs from discharging into waters of the state.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Dr. Scott Leibsle (208) 332-8614.

Dated this 6th day of June, 2019.

Brian Oakey  
Deputy Director  
Idaho Department of Agriculture  
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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 02-0303-1901**

**IDAPA 02**  
**TITLE 04**  
**CHAPTER 15**

**02.04.15 – RULES GOVERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 22, Chapter 1 and 49, Idaho Code. (3-16-01)

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is “Rules Governing Beef Cattle Animal Feeding Operations.” (4-6-05)

**02. Scope.** These rules govern the design, function, and management practices of waste systems on beef cattle animal feeding operations. The official citation of this chapter is IDAPA 02.04.15.000 et seq. For example this section’s citation is IDAPA 02.04.15.001. Nothing in this rule affects the authority of the Department of Environmental Quality to enforce an IPDES permit for dairy farms that discharge pollutants to waters of the United States, including without limitation, the authority to issue permits, access records, conduct inspections and take enforcement actions. The provisions of this rule do not alter the requirements, liabilities, and authorities with respect to or established by the IPDES program. (3-29-17)

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. (3-16-01)

**003. ADMINISTRATIVE APPEAL.**

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (3-15-02)

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference into this chapter: (3-16-01)

**01. The 1997 United States Department of Agriculture Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10 D.** This document can be viewed online at <http://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17767.wba>. (3-16-01)

**02. Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004.** This document is part of a copyrighted publication and is available for viewing at the ISDA offices or a copy may be purchased online at <http://www.asabe.org/>. (3-29-17)

**03. The 1999 Publication by the United States Department of Agriculture, Natural Resource Conservation Service, Conservation Practice Standard, Nutrient Management Code 590.** This can be viewed online at [https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient\\_Management\\_code\\_590.pdf](https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf). (3-16-01)

**005. IDAHO PUBLIC RECORDS ACT.**

These rules are public records and are available for inspection and copying at the Department. (3-16-01)

**006. ADDRESS, OFFICE HOURS, TELEPHONE, FAX NUMBERS, WEB ADDRESS.**

The Idaho State Department of Agriculture central office is located at 2270 Old Penitentiary Road, Boise, ID 83712-8298. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is PO Box 7249, Boise, Idaho 83707. The phone number is (208) 332-8500 and the fax number is (208) 334-2170. The Department web address is <https://agri.idaho.gov/>. (4-6-05)

**010. DEFINITIONS.**

The following definitions apply in the interpretation and enforcement of this chapter. (3-16-01)

**01. Administrator.** The administrator of the Idaho State Department of Agriculture, Division of Animal Industries or his designee. (4-6-05)

**02. Animal.** Bovidae, ovidae, suidae, equidae, captive cervidae, captive antilocapridae, camelidae, and ratitidae. (3-16-01)

**03. Animal Feeding Operation.** A lot or facility where slaughter and feeder cattle or dairy heifers are confined and fed for a total of forty-five (45) days or more during any twelve-month (12) period and crops, vegetation forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (4-6-05)

**04. Beef Cattle Animal Feeding Operation.** An animal feeding operation that confines slaughter and feeder cattle or dairy heifers. (3-29-17)

**05. Best Management Practices.** As defined in Title 22, Chapter 49, Idaho Code, practices, techniques, or measures that are determined to be reasonable precautions, are a cost-effective and practicable means of preventing or reducing pollutants from point or non-point sources to a level compatible with state environmental goals, including water quality goals and standards for water of the state. Best management practices for water quality shall be adopted pursuant to the state water quality management plan, the Idaho ground water quality plan or Title 22, Chapter 49, Idaho Code. (3-29-17)

**06. Compost.** A biologically stable material derived from the biological decomposition of organic matter. (3-16-01)

**07. Concentrated Animal Feeding Operation.** An AFO that is defined as a large CAFO or as a medium CAFO by the terms of this section and designated by the Director. Two (2) or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes. (3-29-17)

**08. Director.** The Director of the Idaho State Department of Agriculture or his designee. (4-6-05)

**09. Discharge.** Release of process wastewater or manure from a beef cattle animal feeding operation to waters of the state. (3-16-01)

**10. Idaho Pollutant Discharge Elimination System (IPDES).** Idaho's program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under these rules and the Clean Water Act sections 307, 402, 318, and 405. (3-29-17)

**11. Land Application.** The spreading on, or incorporation of manure or process wastewater into the soil. (3-16-01)

**12. Large Concentrated Animal Feeding Operation.** An AFO is defined as a large CAFO if it stables or confines as many as or more than the numbers of cattle specified in any of the following categories: (3-29-17)

**a.** Seven hundred (700) mature dairy cows, whether milked or dry; (3-29-17)

**b.** One thousand (1,000) veal calves; (3-29-17)

- c. One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (3-29-17)
- 13. Manure.** Animal excrement generated on a beef cattle animal feeding operation that may also contain bedding, spilled feed, water, or soil. (3-15-02)
- 14. Medium Concentrated Animal Feeding Operation.** A medium CAFO includes any AFO that has been defined or designated as CAFO and stables or confines the number of cattle that fall within any of the following ranges: (3-29-17)
- a. Two hundred (200) to six hundred ninety-nine (699) mature dairy cows, whether milked or dry; (3-29-17)
- b. Three hundred (300) to nine hundred ninety-nine (999) veal calves; (3-29-17)
- c. Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (3-29-17)
- 15. Modified.** Structural changes and alterations to the wastewater storage containment facility, which would require increased storage or containment capacity or such changes, which would alter the function of the wastewater storage or containment facility. (3-16-01)
- 16. Non-Compliance.** A practice or condition that causes an unauthorized discharge, or a practice or condition, that if left uncorrected, will cause an unauthorized discharge. (3-16-01)
- 17. Nutrient Management Plan (NMP).** A plan prepared in conformance with the nutrient management standard, provisions required by 40 CFR 122.42(e)(1), or other equally protective standard for managing the amount, placement, form, and timing of the land application of nutrients and soil amendments. (3-29-17)
- 18. Nutrient Management Standard.** The 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. (3-16-01)
- 19. Operate.** Confining and feeding slaughter and feeder cattle in the state of Idaho. (4-6-05)
- 20. Operator.** The person who has power or authority to manage, or direct, or has financial control of a beef cattle animal feeding operation. (3-16-01)
- 21. Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state, or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties. (3-16-01)
- 22. Process Wastewater.** Liquid containing beef cattle manure, process-generated wastewater and any precipitation which comes into direct contact with livestock manure and facility products or by-products. (4-6-05)
- 23. Runoff.** Any precipitation that comes into contact with manure, compost, bedding, or feed on a beef cattle animal feeding operation. (3-15-02)
- 24. Slaughter and Feeder Cattle.** All cattle except those cattle located on a dairy farm permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste." (4-6-05)
- 25. Small Concentrated Animal Feeding Operation.** An AFO that is designated as a CAFO and is not a medium or large CAFO. (3-29-17)

**26. Unauthorized Discharge.** A discharge of process wastewater or manure from a beef cattle animal feeding operation to state surface waters that does not meet the requirements of these rules or water quality standards. (3-29-17)

**27. Wastewater Storage and Containment Facility.** That portion of a beef cattle animal feeding operation where manure or process wastewater is stored or collected. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds. (3-16-01)

**28. Waters of the State.** All accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof that are wholly or partially within, that flow through or border upon the state. (3-29-17)

**011. ABBREVIATIONS.**

- 01. AFO.** Animal Feeding Operation. (3-29-17)
- 02. CAFO.** Concentrated Animal Feeding Operation. (3-29-17)
- 03. IPDES.** Idaho Pollutant Discharge Elimination System. (3-29-17)
- 04. NMP.** Nutrient Management Plan. (4-6-05)
- 05. NRCS.** United States Department of Agriculture, Natural Resources Conservation Service. (4-6-05)

**012. PROHIBITED DISCHARGES.**

Unauthorized discharges of manure or process wastewater from beef cattle animal feeding operations or land application sites owned or controlled by a beef cattle animal feeding operation are prohibited. (4-6-05)

**013. NOTIFICATION OF DISCHARGE.**

**01. Notification Within Twenty-Four Hours of Discharge.** Within twenty-four (24) hours of learning of a discharge, the operator of a beef cattle animal feeding operation shall verbally notify the Director of such a discharge. (3-16-01)

**02. Written Notification Within Five Days.** If the Idaho Department of Agriculture has not begun a discharge investigation within five (5) days of the verbal notification to the Director, the operator shall submit a written report to the Director which includes: (3-16-01)

- a.** A description of the discharge, a description of the flow path to the receiving water body; (3-16-01)
- b.** An estimation of the flow rate and volume discharged; (3-16-01)
- c.** The period of discharge, including dates and times, and if not already corrected, the anticipated time the discharge is expected to continue; and (3-16-01)
- d.** Steps taken to reduce, eliminate and prevent recurrence of the discharge. (3-16-01)

**014. -- 019. (RESERVED)**

**020. WASTEWATER STORAGE AND CONTAINMENT FACILITIES.**

**01. Wastewater Storage and Containment Facilities.** All beef cattle animal feeding operations where process wastewater leaves the confinement area and has the potential to impact surface water or be in violation of state water quality standards shall have wastewater storage and containment facilities designed, constructed, operated, and maintained sufficient to contain: (3-16-01)

- a. All process wastewater generated on the facility during the non-land application season; and (3-16-01)
- b. The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and (3-16-01)
- c. Either three (3) inches of runoff from the accumulation of winter precipitation or the amount of runoff from the accumulation of precipitation from a one-in-five (1 in 5) year winter. (3-16-01)

**02. All Substances Entering Wastewater Storage and Containment Facilities.** All substances entering wastewater storage and containment facilities shall be composed of manure and process wastewater from the operation of the beef cattle animal feeding operation. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to, human waste, is prohibited. (3-16-01)

**021. NEW OR MODIFIED BEEF CATTLE ANIMAL FEEDING OPERATIONS.**

Each new or modified beef cattle animal feeding operation shall design and construct wastewater storage and containment facilities completed after July 1, 2000, in accordance with the engineering standards and specifications contained in the Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10D or the American Society of Agricultural Engineers Standard EP393.3, or other equally protective standards approved by the Director. (3-16-01)

**022. -- 029. (RESERVED)**

**030. NUTRIENT MANAGEMENT.**

Each beef cattle animal feeding operation shall submit a nutrient management plan for land owned or controlled by the operator, which conforms to the nutrient management standard and addresses odors generated in excess of odors normally associated with raising beef cattle in Idaho, to the Director for approval. Following department review and approval, the plan, and all copies of the plan, shall be returned to the operation and maintained on site. (4-6-05)

**01. Existing Beef Cattle Animal Feeding Operations.** Beef cattle animal feeding operations that are operating on or before July 1, 2000 shall submit a NMP to the director for approval no later than January 1, 2005. The Director shall respond to or approve such plan in writing within forty-five (45) days of submission. (4-6-05)

**02. New Beef Cattle Animal Feeding Operations.** Any new beef cattle animal feeding operation commencing operations after July 1, 2000, shall not operate prior to the Director's approval of a NMP. The Director shall respond to or approve such plan within forty-five (45) days of submission. (4-6-05)

**03. Implementation of a Nutrient Management Plan.** Failure to implement an approved NMP is a violation of these rules. (4-6-05)

**031. NUTRIENT MANAGEMENT PLAN RETENTION.**

All approved NMPs shall be maintained on site at the beef cattle animal feeding operation and available to the Administrator upon request. (4-6-05)

**032. NUTRIENT MANAGEMENT RECORDS.**

The operators of beef cattle animal feeding operations shall keep complete and accurate records of: (4-6-05)

**01. Land Application.** The dates and amounts of any manure or process wastewater applied on land owned or controlled by the operator. (4-6-05)

**02. Manure Transferred to Another Person.** The name and address of any third party that receives manure or process wastewater from the operation, including the dates of the transfer and the amount of manure or process wastewater transferred. (4-6-05)

**03. Records Retention.** All records shall be maintained for a period of five (5) years and presented to the Administrator upon request. (4-6-05)



**033. -- 039. (RESERVED)**

**040. DESIGNATION OF BEEF CATTLE ANIMAL FEEDING OPERATIONS.**

**01. Designation of Animal Feeding Operations.** The Director, on a case by case basis, may designate any animal feeding operation that confines slaughter and feeder cattle as a beef cattle animal feeding operation if, after an inspection, the Director determines that the animal feeding operation is a significant contributor of pollution to waters of the state. The designation shall be provided to the operator of the animal feeding operation in writing setting forth the basis for the Director's decision. When designated, these operations shall be considered existing beef cattle animal feeding operations. The Director shall consider the following factors when making such designation: (4-6-05)

- a.** Size of the animal feeding operation and the amount of manure, process wastewater, and runoff reaching waters of the state; (3-15-02)
- b.** Location of the animal feeding operation relative to waters of the state; (3-15-02)
- c.** Means of conveyance of manure, process wastewater, and runoff into waters of the state; and (3-15-02)
- d.** Slope, vegetation, precipitation, and other factors affecting the likelihood or frequency of discharge of manure, process wastewater, or runoff into waters of the state. (3-15-02)

**02. Redesignation of a Beef Cattle Animal Feeding Operation.** Upon request by the operator, the Director shall redesignate a facility previously designated under Section 040, if the facility is no longer a significant contributor of pollution to waters of the state. Such redesignation shall be provided to the operator in writing. (3-15-02)

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

**050. AUTHORITY TO INSPECT.**

The Director is authorized to inspect any animal feeding operation that confines slaughter or feeder cattle in accordance with Title 22, Chapter 49, Idaho Code, to ensure compliance with these rules. The Director shall comply with the operation's biosecurity protocol so long as the protocol does not inhibit reasonable access to: (4-6-05)

- 01. Entry.** Enter and inspect at reasonable times the premises or land application site(s) of a beef cattle animal feeding operation. (4-6-05)
- 02. Access to Records.** Review or copy any records that must be kept in accordance with these rules. (4-6-05)
- 03. Sample or Monitor.** Sample or monitor at reasonable times, substances or parameters directly related to compliance with these rules or an IPDES permit. (3-29-17)

**051. INSPECTIONS.**

Each beef cattle animal feeding operation shall be inspected annually or at intervals sufficient to determine that the facility is being operated and managed to prevent an unauthorized discharge. Inspections may include evaluating effectiveness of best management practices, collecting samples, taking photographs, video taping facilities or collecting other information as necessary. An official inspection report form shall be completed at the time of the inspection and a copy provided to the operator. (3-16-01)

**052. ADMINISTRATION OF IPDES PROGRAM.**

The Director of the Department of Agriculture and the Director of the Department of Environmental Quality shall, as appropriate, establish an agreement relating to the administration of an IPDES program that recognizes the expertise of the Department of Agriculture. (3-29-17)

**053. COMPLIANCE WITH IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES.**

The Department of Environmental Quality shall be solely responsible and authorized to determine whether the discharge of pollutants from a beef cattle feeding operation is required to be authorized by an IPDES permit. The provisions of this rule do not define when a beef cattle feeding operations is required to obtain a permit for a discharge, do not exempt a beef cattle feeding operation from permitting requirements for such discharges or alter the authority of DEQ with respect to such discharges. (3-29-17)

**054. -- 079. (RESERVED)**

**080. COMPLIANCE ORDERS.**

When the Director identifies items of non-compliance or unauthorized discharges, the deficiencies will be noted and discussed with the operator. Unauthorized discharges shall be corrected immediately, or as soon as possible as determined by the Director. Appropriate corrective actions will be identified and scheduled informally. Formal compliance orders shall be developed, as the Director deems necessary as provided by Section 22-4909, Idaho Code. (3-16-01)

**081. -- 089. (RESERVED)**

**090. PENALTIES.**

Failure to comply with any provision of these rules or any formal compliance order of the Director shall be a violation of these rules. Such violation may subject the operator to an administrative enforcement action or a civil enforcement action in district court and a civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one thousand dollars (\$1,000) for each day of a continuing violation as provided in Title 22, Chapter 49, Idaho Code. Civil penalties collected shall be deposited in the state treasury and credited to the State School Building Fund. (3-16-01)

**091. -- 999. (RESERVED)**

**IDAPA 02 – DEPARTMENT OF AGRICULTURE**  
**02.04.16 – RULES GOVERNING AGRICULTURE ODOR MANAGEMENT**  
**DOCKET NO. 02-0416-1901**  
**NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE AND HISTORY NOTES:** The effective date of the temporary rule is July 1, 2019. Traditionally effective dates are published for every subsection, paragraph and subparagraph of a rule. These individualized effective dates provide a rich history for legal scholars and interested members of the public to explore the broader context of each rule. This docket retains these important history notes while establishing the effective date for each chapter to ensure there is no gap with the expiring rules. Where technical corrections only have been made to any section of a rule, or subpart thereof, the historic effective date is retained.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 25-3802, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This temporary rulemaking adopts and re-publishes a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. This previously approved and codified rule implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of this rule without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by this rule.

The Rules Governing Agriculture Odor Management establishes standards for the management of odor generated on certain agricultural operations. The rule outlines best management practices designed to minimize odors that are in excess of what would be considered an accepted agricultural practice. The rule provides requirements for development and implementation of an Odor Management Plan for certain agricultural operations.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Dr. Scott Leibsle (208) 332-8614.

Dated this 6th day of June, 2019.

Brian Oakey  
Deputy Director  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 7249  
Boise, Idaho 83707  
Phone: (208) 332-8550  
Fax: (208) 334-2710

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 02-0303-1901**

**IDAPA 02**  
**TITLE 04**  
**CHAPTER 16**

**02.04.16 – RULES GOVERNING AGRICULTURE ODOR MANAGEMENT**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 25, Chapter 38, Idaho Code. (3-15-02)

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.04.16, “Rules Governing Agriculture Odor Management.” (3-15-02)

**02. Scope.** These rules govern the management of odor generated on agricultural operations, except beef cattle animal feeding operations and large swine and poultry operations. (3-15-02)

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. (3-15-02)

**003. ADMINISTRATIVE APPEAL.**

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (3-15-02)

**004. INCORPORATION BY REFERENCE.**

Copies of these documents may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, P.O. Box 7249, Boise, ID 83707. IDAPA 02.04.16 incorporates by reference: (3-15-02)

**01. Idaho NRCS Nutrient Management Standard 590, June 1999.** (3-15-02)

**02. Best Management Practices listed in the “Idaho Agricultural Pollution Abatement Plan,” August 2001.** (3-15-02)

**03. ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997.** (3-15-02)

**04. NRCS Conservation Practice Standard 317, March 2001.** (3-15-02)

**005. IDAHO PUBLIC RECORDS ACT.**

These rules are public records and are available for inspection and copying at the department. (3-15-02)

**006. ADDRESS, OFFICE HOURS, TELEPHONE AND FAX NUMBERS.**

**01. Physical Address.** The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-0790. (3-15-02)

**02. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (3-15-02)

**03. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 7249, Boise, ID 83707. (3-15-02)

**04. Telephone Number.** The telephone number of the central office is (208) 332-8500. (3-15-02)

**05. Fax Number.** The fax number of the central office is (208) 334-4062. (3-15-02)

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

The following definitions apply in the interpretation and enforcement of this chapter. (3-15-02)

**01. Accepted Agricultural Practices.** Those management practices normally associated with agriculture in Idaho, including but not limited to those practices identified in Section 100 of these rules, and which include management practices intended to control odor generated by an agricultural operation. (5-3-03)

**02. Agricultural Animals.** Those animals, including but not limited to mink, domestic cervidae, horses, and ratites raised for agricultural purposes. (3-15-02)

**03. Agricultural Operation.** Those operations where livestock or other agricultural animals are raised, or crops are grown, for commercial purposes, not to include those operations set forth within Section 25-3801(2), Idaho Code. (5-3-03)

**04. Animal.** Livestock and agricultural animals. (5-3-03)

**05. BAT.** The best application of science that is accessible and obtainable to achieve a desired objective. (5-3-03)

**06. Beef Cattle.** All cattle except those located on a dairy farm that have been permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct." (3-29-17)

**07. Beef Cattle Animal Feeding Operation.** Those operations regulated pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (3-29-17)

**08. Best Management Practices.** Practices, techniques, or measures that are determined by the Department to be a cost-effective and practicable means of managing odor generated on an agriculture operation to a level associated with accepted agriculture practices. (3-15-02)

**09. Compost.** A biologically stable material derived from the biological decomposition of organic matter. (3-15-02)

**10. Composting.** The aerobic degradation of manure and other organic material to a biologically stable form. (3-15-02)

**11. Department.** The Idaho State Department of Agriculture. (3-15-02)

**12. Director.** The Director of the Idaho State Department of Agriculture. (3-15-02)

**13. Land Application.** The spreading on, or incorporation into the soil of agricultural by-products including, but not limited to, manure, wastewater, compost, cull potatoes, cull onions, or crop residues. (3-15-02)

**14. Large Swine And Poultry Operations.** Those swine operations regulated pursuant to IDAPA 58.01.09, "Rules Regulating Swine Facilities," and those poultry operations regulated pursuant to IDAPA 02.04.32, "Rules Governing Poultry Operations." (3-29-17)

**15. Livestock.** Cattle, sheep, swine and poultry. (3-15-02)

16. **Liquid-Solid Separation.** The removal of solid manure from water through mechanical or settling means. (3-15-02)
17. **Liquid Waste System.** Wastewater storage and containment facilities and associated waste collection and conveyance systems where water is used as the primary carrier of manure and manure is added to the wastewater storage and containment facilities on a regular basis including the final distribution system. (5-3-03)
18. **Manure.** Animal excrement that may also contain bedding, spilled feed, or soil. (5-3-03)
19. **Modified.** Structural changes and alterations to agricultural operations which would require increased wastewater storage or containment capacity or such changes which would increase the amount of manure entering wastewater storage and containment facilities. (5-3-03)
20. **Nutrient Management Plan.** A plan prepared in conformance with the nutrient management standard. (3-15-02)
21. **Nutrient Management Standard.** The 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. (3-15-02)
22. **Odor.** The property or quality of a substance that stimulates or is perceived by the sense of smell, the standards for which shall be judged on criteria that shall include intensity, duration, frequency, offensiveness, and health risks. (5-3-03)
23. **Odor Management Plan.** A site-specific plan approved by the Director to manage odor generated on an agricultural operation to a level associated with accepted agricultural practices by utilizing best management practices. (3-15-02)
24. **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (3-15-02)
25. **Waste Collection and Conveyance Systems.** The areas and systems used in the collection and transfer of manure from the point of generation to the wastewater storage and containment facilities, prior to land application. (3-15-02)
26. **Wastewater.** Water containing manure, which is generated on a livestock operation. (3-15-02)
27. **Wastewater Storage and Containment Facilities.** Wastewater storage ponds, wastewater treatment lagoons, and evaporative ponds. (3-15-02)
28. **Wastewater Treatment.** A process by which wastewater is treated through aerobic or anaerobic degradation or other means. (3-15-02)
- 011. ABBREVIATIONS.**
01. **ASAE.** American Society of Agricultural Engineers. (3-15-02)
02. **BAT.** Best Available Technology. (3-15-02)
03. **BMP.** Best Management Practice. (3-15-02)
04. **DEQ.** Idaho Department of Environmental Quality. (3-15-02)
05. **NMP.** Nutrient Management Plan. (3-15-02)

- 06. NOV. Notice Of Violation. (3-15-02)
- 07. NRCS. The United States Department of Agriculture, Natural Resources Conservation Service. (3-15-02)
- 08. OMP. Odor Management Plan. (3-15-02)

**012. -- 099. (RESERVED)**

**100. ACCEPTED AGRICULTURAL PRACTICES.**

Management practices conducted in accordance with applicable laws, rules and best management practices, as referenced in Subsections 100.01 and 100.02, or in the absence of referenced best management practices, management practices conducted in a manner that demonstrates reasonable efforts to minimize odors, shall be considered accepted agricultural practices for purposes of this rule. (3-15-02)

- 01. **Applicable Rules.** The following are applicable rules for the purpose of Section 100: (3-15-02)
  - a. IDAPA 02.04.14, "Rules Governing Dairy Byproduct." (3-29-17)
  - b. IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." (3-15-02)
  - c. IDAPA 02.06.17, "Rules Concerning Disposal of Cull Onion and Potatoes." (3-15-02)
  - d. IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." (3-15-02)

02. **Applicable Best Management Practices.** The following practices, or other management practices approved by the Director that are conducted in a manner that demonstrates reasonable efforts to minimize odors shall be considered accepted agricultural practices for purposes of this rule. (3-15-02)

- a. Idaho NRCS Nutrient Management Standard 590, June 1999. (3-15-02)
- b. Best Management Practices listed in the "Idaho Agricultural Pollution Abatement Plan," August 2001. (3-15-02)
- c. "Control of Manure Odors," ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997. (3-15-02)
- d. "Composting Facility," NRCS Conservation Practice Standard 317, March 2001. (3-15-02)

03. **Excess Odors.** An agricultural operation using an accepted agricultural practice that generates odors in excess of levels normally associated with such practice, as determined by the Department on a site specific basis, shall develop and submit an odor management plan to the Director in accordance with Section 500. (3-15-02)

**101. -- 199. (RESERVED)**

**200. APPLICABILITY.**

These rules apply to all agricultural operations, except: (3-15-02)

01. **Beef Cattle.** Beef cattle animal feeding operations regulated pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (3-29-17)

02. **Swine and Poultry.** Large swine operations regulated pursuant to IDAPA 58.01.09, "Rules Regulating Swine Facilities," and large poultry operations regulated pursuant to IDAPA 02.04.32, "Rules Governing Poultry Operations." (3-29-17)

**201. -- 299. (RESERVED)**

**300. LIQUID WASTE SYSTEMS.**

No person shall begin construction of a new or modified liquid waste system prior to approval of such system by the Director. (3-15-02)

**01. Department Review.** Department engineering staff shall provide to the Director a review and assessment of all new or modified liquid waste systems for his consideration prior to final approval of such systems by the Director. The Director may order the construction to cease if the construction of a new or modified liquid waste system has commenced prior to the Director's approval. (5-3-03)

**02. Design Requirements.** All new or modified liquid waste systems shall be designed by licensed professional engineers, approved in writing by the Director, and constructed in accordance with standards and specifications approved by the Director for management of odors. (5-3-03)

**a.** If construction is commenced prior to the Director's written approval, the Director may order construction activities to be ceased. (5-3-03)

**b.** No material deviation shall be made from the approved plans and specifications without the prior written approval of the director. (5-3-03)

**c.** Within thirty (30) days of completion of construction, alteration or modification of any new or modified liquid waste system, complete and accurate plans and specifications depicting the actual construction, alteration, or modification performed must be submitted by the operator to the Director. (5-3-03)

**d.** If construction does not materially deviate from the plans approved by the Director, a statement to that effect shall be filed by the agricultural operation with the Director. (5-3-03)

**301. STANDARDS AND SPECIFICATIONS FOR LIQUID WASTE SYSTEMS.**

All new or modified liquid waste systems shall be designed and constructed in accordance with applicable laws and rules, and for the purpose of managing odors. The Director shall require techniques and management practices as standards and specifications of liquid waste systems for the management of odors. These techniques and management practices may include but are not be limited to the following: (3-15-02)

**01. Wastewater Storage and Containment Facilities:** (3-15-02)

**a.** Liquid-solid separation. (3-15-02)

**b.** Wastewater treatment. (3-15-02)

**c.** Use of chemical or biological additives. (3-15-02)

**d.** Dilution of wastewater. (3-15-02)

**e.** Impermeable or permeable storage covers. (3-15-02)

**f.** Biofilters. (3-15-02)

**g.** Enhancing dispersion. (3-15-02)

**h.** Location of wastewater discharge into storage and containment facilities. (3-15-02)

**02. Wastewater Collection and Conveyance Systems.** (3-15-02)

**a.** Wastewater Treatment. (3-15-02)

**b.** Use of chemical or biological additives. (3-15-02)

**c.** Dilution of wastewater. (3-15-02)



- d. Impermeable or permeable covers of collection areas. (3-15-02)
- e. Timing of collection and conveyance system operation. (3-15-02)
- f. Frequency and duration of collection and conveyance system operation. (3-15-02)
- g. Enhancing dispersion. (3-15-02)

**302. -- 399. (RESERVED)**

**400. INSPECTIONS.**

The Director or his designee is authorized to enter and inspect any agricultural operation, and during normal business hours have access to or copy any facility records deemed necessary to ensure compliance with these rules. (3-15-02)

**01. Notification of County Commissioners.** Prior to conducting an inspection, the Department shall notify the board of county commissioners for the county in which the agricultural operation is located and the board of county commissioners may have a designee accompany the department during the inspection. (3-15-02)

**02. Records Obtained by the Department.** All records copied or obtained by the Department as the result of an inspection under this section shall be exempt from public disclosure under Title 9, Chapter 3, Idaho Code, except the following: (3-15-02)

**a.** Records otherwise deemed to be public records not exempt from disclosure under Title 9, Chapter 3, Idaho Code. (3-15-02)

**b.** Inspection reports, determinations of compliance or noncompliance and all other records created by the department pursuant to this section. (3-15-02)

**401. -- 499. (RESERVED)**

**500. ODOR MANAGEMENT PLANS.**

OMPs shall be designed to work in conjunction with any required NMP and shall be submitted to the Director in writing. Upon approval by the Director, the Director and either the owner or operator of the agricultural operation shall sign the OMP. (3-15-02)

**01. OMP Development.** Within sixty (60) days of receiving a NOV for a first time violation, the owner or operator of the agriculture operation receiving the NOV shall submit to the Director an OMP for approval. (3-15-02)

**02. Interim Measures.** The Department shall work with the owner or operator of an agriculture operation that has received a NOV for a first time violation to identify interim measures that can be implemented in a timely manner to begin the process of reducing odors while the OMP is being developed. (3-15-02)

**03. Department Approval.** The Director shall approve, reject, or request additional information within thirty (30) days of receiving an OMP from the owner or operator of an agricultural operation deemed to have committed a first time violation. The approval, rejection, or request for additional information shall be provided to the owner or operator of the agricultural operation in writing. (3-15-02)

**a.** If the Director rejects an OMP or requests additional information, the owner or operator of the agricultural operation shall submit to the Director the additional information or a rewritten OMP that address the reasons for the rejection within thirty (30) days of receiving written notification from the Director. (3-15-02)

**b.** Within fifteen (15) days of receiving the additional information or a rewritten OMP, the Director shall approve or reject the OMP. If the OMP is rejected, the Director may issue a subsequent violation under Section 701 and assess the penalty provisions specified in Section 900 of these rules. (3-15-02)

500. c. The Director may, on a case by case basis, grant extensions to the deadlines contained in Section (3-15-02)

**04. Implementation.** OMPs shall be implemented as approved by the Director. (3-15-02)

**05. Review of OMP.** The Department shall review OMPs no less than annually for three (3) years after the Director approves the OMP. If the Department determines an approved OMP has not reduced odors to a level associated with accepted agricultural practices after a reasonable period of time, as determined by the Department, the Department shall review the OMP with the owner or operator of the agricultural operation and adjust the OMP to meet the goals of the Agriculture Odor Management Act. (3-15-02)

**501. CONTENTS OF AN ODOR MANAGEMENT PLAN.**

Contents of an OMP for an agricultural operation may include, but are not limited to the following: (3-15-02)

**01. Owner's Name.** Name and telephone number of the owner of the operation. (3-15-02)

**02. Address.** Physical address of the operation. (3-15-02)

**03. Location.** County in which the operation is located. (3-15-02)

**04. Operation Description.** A description of the operation that includes, as applicable: (3-15-02)

a. Type of operation. (3-15-02)

b. General description of operation. (3-15-02)

c. Number and type of any animals including age groups. (3-15-02)

d. Any plans for expansion. (3-15-02)

e. Type of housing used related to age groups of animals. (3-15-02)

f. General description of nearby residential areas, public use areas, and pertinent agricultural operations. (3-15-02)

g. Type of crop and number of acres grown. (3-15-02)

**05. Scaled Vicinity Map.** A map that shall include all residences, public use areas, roads, general topography of the area, and other pertinent agricultural operations within a two (2) mile radius of the facility. (3-15-02)

**06. Manure Management System.** A detailed description of the present manure handling systems including timing, frequency, duration, volumes, dimensions, and flow rates where applicable for the following: (3-15-02)

a. Manure cleaning systems. (3-15-02)

b. Manure transfer systems. (3-15-02)

c. Manure separation systems. (3-15-02)

**07. Scaled Site Plan.** A site plan showing all buildings, housing facilities, waste/manure storage areas, piping, feed storage areas, and roadways. (3-15-02)

**08. Land Application System.** A detailed description of the present management practices and methods used to make land application including: (3-15-02)

- a. Timing, frequency, and duration of practices. (3-15-02)
- b. Proximity of land application sites to residential and public use areas. (3-15-02)
- 09. Climatic Data.** A description of the typical climatic conditions for a minimum period of two (2) years that exist in the geographical area of the operation or have been recorded on-site for the operation including: (3-15-02)
  - a. Wind Speed and direction(s). (3-15-02)
  - b. Temperature range. (3-15-02)
  - c. Relative humidity range. (3-15-02)
  - d. Precipitation data. (3-15-02)
- 10. Facility Odor Sources.** A list of all primary odor sources located on the operation with a general ranking of low, moderate, or high with respect to overall odor production. Each odor source must have an explanation of why it is listed as a source and the reasoning for the overall ranking. (3-15-02)
- 11. Tiered Implementation.** A three-tier process shall be used to reduce odor production from the facility. Each tier shall contain a list of the primary BMPs and BATs that are going to be implemented by the facility. For each tier BMP and BAT listed, the plan shall include, but not be limited to: (3-15-02)
  - a. Process of how the BMP or BAT will be designed or managed. (3-15-02)
  - b. Implementation schedule that defines when the BMP or BAT will be implemented on the facility and justification for why this time frame was chosen. (3-15-02)
  - c. Monitoring program that will be implemented to evaluate the effectiveness of the BMP or BAT, with quantitative or qualitative reduction goals. (3-15-02)
- 12. Public Involvement.** This section shall describe how the public in the area of the facility will be involved in the implementation or evaluation of the OMP. (3-15-02)
- 13. Timeframe for Review of OMP.** A designated period of time when each tier of the plan will be evaluated to determine if further implementation is necessary, how each tier will be evaluated, which Department staff will conduct the review, and a period of time in which the agricultural operation will attain full compliance with the plan. (3-15-02)
- 502. -- 599. (RESERVED)**
- 600. COMPLAINTS.**  
The Department shall respond to all odor complaints lodged against agriculture operations. (3-15-02)
- 601. CONTENTS OF COMPLAINTS.**  
Complaints shall contain the name, address, and telephone number of the complainant. (3-15-02)
- 602. RESPONSE TO COMPLAINTS.**  
The response of the Department may be limited to informing the complainant that an odor management plan is being developed or implemented. (5-3-03)
- 603. -- 699. (RESERVED)**
- 700. FIRST TIME VIOLATIONS.**  
If the Department determines that an agricultural operation is generating odors in excess of levels of odors normally associated with accepted agricultural practices, the agricultural operations shall be deemed to have committed a first

time violation of IDAPA 02.04.16, "Rules Governing Agriculture Odor Management." (3-15-02)

**01. Notice of Violation.** The Department shall provide the owner or operator of the agriculture operation with written notice of the violation, and an opportunity for a hearing pursuant to Title 67, Chapter 52, Idaho Code. (3-15-02)

**02. Cooperation with the Department.** The Department shall require agricultural operations deemed to have committed a first time violation to cooperate with the Department to develop and submit to the Director for approval an OMP. (3-15-02)

**701. SUBSEQUENT VIOLATIONS.**  
Agricultural operations shall be deemed to have committed a subsequent violation if the operation is determined to have committed a subsequent violation within three (3) years, has failed to comply with a required OMP, or the Department determines that the owner or operator of the agriculture operation has not cooperated with the department by failing to submit an OMP that meets Department approval requirements. (3-15-02)

**702. ODOR EMISSIONS CAUSED BY AN ACT OF GOD.**  
Odor emissions caused by an act of God or a mechanical failure shall not constitute a violation, provided that the agricultural operation takes reasonable steps to promptly repair the cause of the emission. This provision is applicable whether or not an agricultural operation is required to have an OMP. (5-3-03)

**703. -- 899. (RESERVED)**

**900. PENALTIES.**  
Agricultural operations determined by the Department to have committed a subsequent violation of these rules shall be assessed a civil penalty by the Department or its duly authorized agent not to exceed ten thousand dollars (\$10,000) for each offense and be liable for reasonable costs and attorney's fees. (3-15-02)

**01. Assessment of Civil Penalty.** Assessment of a civil penalty may be made in conjunction with any other Department administrative action. No civil penalty may be imposed unless the person charged was given notice and opportunity for a hearing pursuant to Title 67, Chapter 52, Idaho Code. (3-15-02)

**02. Inability to Collect Civil Penalty.** If the Department is unable to collect the civil penalty or if any person fails to pay all or a set portion of a civil penalty as determined by the Department, the Department may recover such amount by action in the appropriate district court. (3-15-02)

**03. Appeal of Civil Penalty.** Any person against whom the Department has assessed a civil penalty may, within thirty (30) days of the final action 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. (3-15-02)

**04. Computation of Monetary Penalties.** The imposition or computation of monetary penalties shall take into account the seriousness of the violation and such other matters as justice requires. (5-3-03)

**05. Reports for Basis of Penalty.** The Director shall prepare a written report setting forth the basis upon which any monetary penalty is imposed or computed and shall retain the report on file with the Department. (5-3-03)

**06. Moneys Collected from Violations.** Moneys collected for violations of these rules shall be deposited in the state treasury and credited to the General Fund. (3-15-02)

**901. -- 999. (RESERVED)**

## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.04.17 – RULES GOVERNING DEAD ANIMAL MOVEMENT AND DISPOSAL

DOCKET NO. 02-0417-1901

#### NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE AND HISTORY NOTES:** The effective date of the temporary rule is July 1, 2019. Traditionally effective dates are published for every subsection, paragraph and subparagraph of a rule. These individualized effective dates provide a rich history for legal scholars and interested members of the public to explore the broader context of each rule. This docket retains these important history notes while establishing the effective date for each chapter to ensure there is no gap with the expiring rules. Where technical corrections only have been made to any section of a rule, or subpart thereof, the historic effective date is retained.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 25-203, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This temporary rulemaking adopts and re-publishes a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. This previously approved and codified rule implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of this rule without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by this rule.

The Rules Governing Dead Animal Movement and Disposal establish standards for the management and disposal of livestock carcasses to best protect the environment and human health. The rule outlines the acceptable methods for properly disposing of livestock carcasses and establishes setbacks, where applicable, to minimize the potential for the spread of disease and degradation of the environment.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Dr. Scott Leibsle (208) 332-8614.

Dated this 6th day of June, 2019.

Brian Oakey  
Deputy Director  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 7249  
Boise, Idaho 83707  
Phone: (208) 332-8550  
Fax: (208) 334-2710

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 02-0417-1901**

**IDAPA 02**  
**TITLE 04**  
**CHAPTER 17**

**02.04.17 – RULES GOVERNING DEAD ANIMAL MOVEMENT AND DISPOSAL**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 25, Chapter 2, Idaho Code. (3-15-02)

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is “Rules Governing Dead Animal Movement and Disposal.” (3-15-02)

**02. Scope.** These rules govern the management, movement and disposal of dead animals. (3-15-02)

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. (3-15-02)

**003. ADMINISTRATIVE APPEAL.**

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. There is no provision for administrative appeal before the State Department of Agriculture under these rules. (3-15-02)

**004. INCORPORATION BY REFERENCE.**

IDAPA 02.04.17 does not incorporate any materials by reference. (3-15-02)

**005. ADDRESS, OFFICE HOURS, TELEPHONE, FAX NUMBERS, WEB ADDRESS.**

The Idaho State Department of Agriculture central office is located at 2270 Old Penitentiary Road, Boise, ID 83712-8298. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is PO Box 7249, Boise, Idaho 83707. The phone number is (208) 332-8500 and the fax number is (208) 334-2170. The Department web address is <https://agri.idaho.gov/>. (3-15-02)

**006. PUBLIC RECORDS ACT COMPLIANCE.**

These rules are public records and are available for inspection at the State Department of Agriculture and on the internet. Official copies may be obtained from the Department of Administration, Office of Administrative Rules. (3-15-02)

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Abandon.** To desert or intentionally leave a dead animal without proper disposal as provided in these rules. (3-15-02)

**02. Administrator.** The administrator of the Idaho State Department of Agriculture, Division of Animal Industries. (3-15-02)

- 03. Air Curtain Incineration.** A mechanical process of incineration by which super-heated air is continuously circulated to enhance combustion. (3-15-02)
- 04. Burial.** Interment of a dead animal below the natural surface of the ground. (3-15-02)
- 05. Burning.** The act of consuming or destroying by fire with or without the use of an accelerant. (3-15-02)
- 06. Composting.** The biological decomposition of organic matter under controlled conditions. (3-15-02)
- 07. Dead Animals.** Carcasses and parts of carcasses from dead animals including domesticated livestock, sheep, goats, poultry, pets, and commercial fish. (3-15-02)
- 08. Dead Animal Emergencies.** Those situations involving dead animals that may require extenuating disposal measures as determined by the Administrator. (3-15-02)
- 09. Decomposition.** The decay of dead animals under natural conditions. (3-15-02)
- 10. Digestion.** A process by which organic matter is hydrolyzed. (3-15-02)
- 11. Director.** The director of the Idaho State Department of Agriculture. (3-15-02)
- 12. Disposal.** The management of a dead animal. (3-15-02)
- 13. Domesticated Livestock.** Bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds and captive waterfowl. (4-2-08)
- 14. Harvested.** Domesticated livestock killed by a person if any portion of the carcass is salvaged. (4-2-08)
- 15. Incineration.** The controlled and monitored combustion of dead animals for the purposes of volume reduction and pathogen control. (3-15-02)
- 16. Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal government department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties. (3-15-02)
- 17. Pets.** Cats, dogs, and other non-human species of animals that are kept as household companions. (3-15-02)
- 18. Rendering.** The process or business of recycling dead animals and animal by-products. (3-15-02)
- 19. Sanitary Landfill.** A solid waste disposal site permitted or approved by the Idaho Department of Environmental Quality. (3-15-02)
- 011. EXCLUSIONS.**  
The following establishments and animals shall be excluded from the provisions of these rules. (3-15-02)
- 01. Slaughter Establishments.** Establishments that slaughter livestock for human consumption. (3-15-02)
- 02. Free-Ranging Wildlife.** Non-captive wildlife or wild fish. (3-15-02)
- 03. House Pets.** House pets less than one hundred (100) pounds in weight. (3-15-02)
- 04. Pets Buried in a Licensed Pet Cemetery.** Pets of any weight buried in a licensed pet cemetery.

(3-15-02)

**012. -- 019. (RESERVED)**

**020. ABANDONMENT OF DEAD ANIMALS.**

No person who owns or is caring for an animal that has died shall abandon the dead animal. Animals that are being disposed of by decomposition in accordance with these rules shall not be considered abandoned. (3-15-02)

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

**030. DISPOSAL OF DEAD ANIMALS.**

Dead animals shall be disposed of within seventy-two (72) hours after knowledge of the death of the animal or as provided by the Administrator. No person shall dispose of a dead animal on the land of another without the permission of the property owner. Disposal shall be by one (1) of the following methods: (3-15-02)

**01. Dead Animals on Federally Managed Land.** Animals that die on federally managed rangeland from causes other than significant infectious or contagious diseases or agents shall be disposed of as provided by the rules and regulations of the responsible land management agency. (3-15-02)

**02. Disposal Methods Determined by the Administrator.** The Administrator may determine the appropriate method of disposal for animals that die of significant infectious or contagious diseases or agents. (3-15-02)

**03. Rendering.** If a licensed and approved rendering facility accepts the dead animal, rendering is an approved method of disposal. (3-15-02)

**a.** When carcasses are held for pickup, the site shall be screened from public view, in a dry area and not in a water runoff or drainage area. (3-15-02)

**b.** Run-off from the holding area must be contained. (3-15-02)

**04. Burial.** Dead animals shall be buried to such a depth that no part of the dead animal shall be nearer than three (3) feet to the natural surface of the ground. Every part of the dead animal shall be covered with at least three (3) feet of earth. The location of a burial site shall be: (3-15-02)

**a.** At least three hundred (300) feet from any wells, surface water intake structures, and public or private drinking water supply lakes or springs. (3-15-02)

**b.** At least three hundred (300) feet from any existing residences. (3-15-02)

**c.** At least fifty (50) feet from property lines. (3-15-02)

**d.** At least one hundred (100) feet from public roadways. (3-15-02)

**e.** At least two hundred (200) feet from any body of surface water such as a river, stream, lake, pond, intermittent stream, or sinkhole. (3-15-02)

**f.** Burial sites shall not be located in low-lying areas subject to flooding, or in areas with a high water table where the seasonal high water level may contact the burial pit. (3-15-02)

**05. Disposal in an Approved Sanitary Landfill.** Arrangements shall be made with a city, county, regional, or private landfill official in order to dispose of a dead animal in a city, county, regional, or private landfill. (3-15-02)

**06. Composting.** (3-15-02)

**a.** Composting of dead animals shall be accomplished in a manner approved by the Administrator.



(3-15-02)

**b.** No composters that have been approved by other agencies shall begin composting dead animals without the approval of the Administrator. (3-15-02)

**07. Digestion.** Digestion of dead animals shall be accomplished in a properly designed and sized dead animal digester approved by the Administrator. (3-15-02)

**08. Incineration.** (3-15-02)

**a.** Incineration of dead animals shall be accomplished in an approved incineration facility, or by a mobile air curtain incinerator at a site approved by the Administrator. (3-15-02)

**b.** The incineration shall be thorough and complete, reducing the carcass to mineral residue. (3-15-02)

**09. Burning.** Open burning of dead animals is not allowed, except as authorized by the Administrator, in coordination with the Department of Environmental Quality. (3-15-02)

**10. Decomposition.** Animals that die on private or state rangeland, except domesticated livestock that are harvested, from causes other than significant infectious or contagious diseases or agents may be left to decompose naturally provided that: (4-2-08)

**a.** They are at least one thousand three hundred twenty (1,320) feet from any wells, lakes, ponds, streams, surface water intake structures, public or private drinking water supply lakes, springs or sinkholes. (3-15-02)

**b.** They are at least one thousand three hundred twenty (1,320) feet from any public roadways. (3-15-02)

**c.** They are at least one thousand three hundred twenty (1,320) feet from any residence not owned by the owner of the dead animal. (3-15-02)

**11. Allowance for Variances by the Administrator.** The Administrator may grant written variances to the requirements of Section 030 on a case-by-case basis. (4-2-08)

**031. -- 039. (RESERVED)**

**040. MOVEMENT OF DEAD ANIMALS.**

No dead animals shall be loaded into the same vehicle with live animals. (3-15-02)

**01. Vehicles Used for Transporting Dead Animals.** Vehicles used for transporting dead animals shall be constructed and maintained, or be prepared prior to receiving dead animals into the vehicle, so that no liquid or fluid from the dead animals is allowed to drip or seep from the vehicle during transport. (3-15-02)

**02. Dead Animals Concealed from View.** Dead animals shall be concealed from public view during transportation. (3-15-02)

**03. Direct to Destination.** Vehicles hauling dead animals shall travel to their destination directly. (3-15-02)

**04. Disinfection.** Vehicles that have hauled dead animals off an owner's property shall not be used to haul live animals, feeds or similar commodities to the property of another person until they have been thoroughly cleaned and disinfected. (3-15-02)

**05. Transport of Dead Animals.** No person shall transport a dead animal across or through the property of another person without the landowner's permission. (3-15-02)

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

**050. DEAD ANIMAL EMERGENCIES.**

Dead animal emergencies are those situations involving dead animals that have been determined by the Administrator to require extraordinary disposal measures. (3-15-02)

**01. Situations Requiring Extraordinary Disposal Measures.** These situations include, but are not limited to, the following: (3-15-02)

**a.** Situations where one (1) or more animals die of an infectious or contagious disease or agent that may pose a significant threat to humans or animals; (3-15-02)

**b.** Situations wherein the number of dead animals is large enough to require extraordinary disposal measures. (3-15-02)

**02. Administrator to Determine Disposal Methods.** The Administrator may employ exceptional or extraordinary methods of dead animal disposal as necessary to protect the health and welfare of the human and animal populations of the state of Idaho. Such methods may include, but shall not be limited to: (3-15-02)

**a.** Open burning; (3-15-02)

**b.** Pit burning; (3-15-02)

**c.** Burning with accelerants; (3-15-02)

**d.** Pyre burning; (3-15-02)

**e.** Air curtain incineration; (3-15-02)

**f.** Mass burial; or (3-15-02)

**g.** Natural decomposition. (3-15-02)

**051. -- 089. (RESERVED)**

**090. PENALTIES.**

Pursuant to 25-237, Idaho Code. (3-15-02)

**01. Civil Penalty.** Any person violating any of the provisions of these rules may be assessed a civil penalty by the department or its agent of not more than five thousand dollars (\$5,000) for each offense. Persons against whom civil penalties are assessed are liable for reasonable attorney's fees. (3-15-02)

**a.** Civil penalties may be assessed in conjunction with any other department administrative action. Civil penalties may not be assessed unless the person charged has been given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, Chapter 52, Title 67, Idaho Code. If the department is unable to collect an assessed civil penalty or if any person fails to pay all or a set portion of a civil penalty as determined by the department, the department may recover such amount by action in the appropriate district court. (3-15-02)

**b.** Any person against whom the department has assessed a civil penalty under these rules may, within twenty-eight (28) days of the final agency action making the assessment, seek judicial review of the assessment in accordance with the provisions of Chapter 52, Title 67, Idaho Code. (3-15-02)

**c.** Moneys collected for violations of these rules shall be deposited in the state treasury and credited to the Livestock Disease Control and T.B. Indemnity Fund. (3-15-02)

**d.** If the Director determines that a person has not complied with these rules, the director shall identify appropriate corrective actions. The Director may develop a formal compliance schedule to correct deficiencies caused by noncompliance. The Director may, through a formal compliance schedule, allow all or part of the value of

the assessed civil penalties to apply toward correction of the deficiencies. (3-15-02)

**02. Criminal Penalty.** Any person violating any of the provisions of these rules shall be guilty of a misdemeanor. Upon conviction, violators are subject to a fine of not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000) for each offense, or by imprisonment in the county jail not exceeding six (6) months. (3-15-02)

**03. Minor Violations.** Nothing in this section requires 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. (3-15-02)

**091. -- 999. (RESERVED)**