

Dear Senators HARTGEN, Nichols, Semmelroth, and
Representatives ANDRUS, Raymond, Mathias:

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

IDAPA 02.04.23 - Rules Governing Commercial Livestock Truck Washing Facilities (ZBR Chapter
Rewrite) - Proposed Rule (Docket No. 02-0423-2301).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 12/07/2023. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 01/04/2024.

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

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondoff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Agricultural Affairs Committee and the House Agricultural Affairs Committee
FROM: Deputy Division Manager - Katharine Gerrity
DATE: November 14, 2023
SUBJECT: Department of Agriculture

IDAPA 02.04.23 - Rules Governing Commercial Livestock Truck Washing Facilities (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 02-0423-2301)

Summary and Stated Reasons for the Rule

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.23 - Rules Governing Commercial Livestock Truck Washing Facilities. According to the department, this rule is being rewritten in compliance with the Governor's Zero-Based Regulation Executive Order. The department states that redundant language that is verbatim in statute has been removed. The rules govern the permitting, construction, and management of commercial livestock truck washing facilities. The department notes that there are no fees in this rule. In compliance with Section 22-101A, Idaho Code, the department states that the rule regulates activity and provides requirements beyond those required by the federal government.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted and the department states that there is no fiscal impact as a result of the rulemaking.

Statutory Authority

The rulemaking appears to be authorized pursuant to Section 22-110, Idaho Code.

cc: Department of Agriculture
Lloyd Knight

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Paul Headlee, Deputy Director Matt Drake, Manager Keith Bybee, Manager April Renfro, Manager Norma Clark, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

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IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

DOCKET NO. 02-0423-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-110, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

This rule is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the permitting, construction, and management of commercial livestock truck washing facilities.

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

There are no fees included in this rule.

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

There is no fiscal impact as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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

Idaho NRCS Nutrient Management Standard 590. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590.

This document is necessary to ensure consistency with standards for nutrient management when required.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates activity and provides requirements beyond those required by the federal government, per the direction and authorization of Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0423-2301
(ZBR Chapter Rewrite)

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of Sections 22-103(15) and 22-110, Idaho Code. (3-31-22)()~~

001. ~~TITLE AND SCOPE.~~

~~**01. Title.** The title of this chapter is IDAPA 02.04.23, “Rules Governing Commercial Livestock Truck Washing Facilities.” (3-31-22)~~

~~**02. Scope.** These rules govern the permitting, construction, and management of commercial livestock truck washing facilities. (3-31-22)()~~

002. ~~WRITTEN INTERPRETATIONS.~~

~~There are no written interpretations of these rules. (3-31-22)~~

003. ~~ADMINISTRATIVE APPEAL.~~

~~Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (3-31-22)~~

004. INCORPORATION BY REFERENCE.

Copies of these documents may be obtained from the Idaho State Department of Agriculture central office and the State Law Library. ()

~~01. The 1997 United States Department of Agriculture Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10 D. (3-31-22)~~

~~02. The 2000 American Society of Agricultural Engineers Standard EP393.3. (3-31-22)~~

~~03. The 1999 Publication by the United States Department Of Agriculture, Natural Resource Conservation Service, Conservation Practice Standard, Nutrient Management Code 590. **Idaho NRCS Nutrient Management Standard 590.** 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. (3-31-22)()~~

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/>. (3-31-22)

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records available for inspection and copying at the central office of ISDA and the State Law Library. (3-31-22)

~~007.3.~~ -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of this chapter. ()

01. Commercial Livestock Truck Washing Facilities. Livestock truck washing facilities that charge a fee to wash livestock trucks and trailers, or those facilities where the process wastewater is not regulated pursuant IDAPA 02.04.14 “Rules Governing Dairy ~~Waste~~ **Byproduct**,” or 02.04.15 “Rules ~~of the Department of Agriculture~~ Governing Beef Cattle Animal Feeding Operations.” (3-31-22)()

~~02. **Compost.** A biologically stable material derived from the biological decomposition of organic matter. (3-31-22)~~

~~03. **Discharge.** Release of process wastewater or manure from a commercial livestock truck washing facility to waters of the state. (3-31-22)~~

~~04. **Land Application.** The spreading on, or incorporation of manure or process wastewater into the soil. (3-31-22)~~

05. Livestock. Bovidae, ovidae, suidae, and equidae. ()

06.3. Livestock Truck Washing Facilities. Those facilities utilized primarily for washing and cleaning trucks and trailers that haul livestock. ()

~~07. **Modified.** Structural or management changes, or alterations to the livestock truck washing facility which would require increased storage or containment capacity or such changes, which would alter the function of the wastewater storage or containment facility. (3-31-22)~~

~~08. **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. (3-31-22)~~

~~09. **Non-Land Application Season.** The portion of the year during which land application is not allowed pursuant to an approved NMP. (3-31-22)~~

~~10. Nutrient Management Plan. A plan prepared in conformance with the nutrient management standard or other equally protective standard for managing the amount, source, placement, form, and timing of the land application of nutrients or soil amendments. (3-31-22)~~

~~11. Operate. Washing or cleaning livestock trucks. (3-31-22)~~

~~12. Operator. The person who has power or authority to manage, or direct, or has financial control of a commercial livestock truck washing facility. (3-31-22)~~

~~1304. Process Wastewater. Any water generated on a commercial livestock truck washing facility that comes into contact with manure, compost, bedding, or feed. ()~~

~~1405. Runoff. Any precipitation that comes into contact with manure, compost, bedding, or feed on a commercial livestock truck washing facility. ()~~

~~1506. Unauthorized Discharge. A discharge of process wastewater or manure from a commercial livestock truck washing facility to surface waters of the state that is not authorized by under an National IPollutant Discharge Elimination System permit issued by the United States Environmental Protection Agency. (3-31-22)()~~

~~16. Wastewater Storage and Containment Facility. That portion of a CLTWF where manure or process wastewater is stored or collected. This includes, but is not limited to, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds. (3-31-22)~~

~~1707. Waters of the State. All surface and ground water located within the boundaries of the state or boundary streams, rivers and lakes except for private waters as defined in Title 42, Chapter 2, Idaho Code. ()~~

011. ABBREVIATIONS.

01. CLTWF. Commercial Livestock Truck Washing Facility. ()

~~02. FEMA. Federal Emergency Management Agency. (3-31-22)~~

~~032. ISDA. Idaho State Department of Agriculture. ()~~

~~043. NMP. Nutrient Management Plan. ()~~

~~054. NIPDES. National Idaho Pollutant Discharge Elimination System. (3-31-22)()~~

~~065. NRCS. Natural Resources Conservation Service. ()~~

~~076. USDA. United States Department of Agriculture. ()~~

~~012. APPLICABILITY.~~

~~These rules apply to all CLTWF. (3-31-22)~~

~~0132. -- 049. (RESERVED)~~

050. INSPECTIONS.

~~In order to ascertain compliance with this chapter, t~~The Director shall have reasonable access to all CLTWF facilities or records: (3-31-22)()

~~01. Inspect Facilities. Inspect any facility or land application site listed in the CLTWF's NMP. (3-31-22)~~

~~02. Inspect Records. Inspect, review, or copy any CLTWF's records deemed necessary, during normal business hours. (3-31-22)~~

051. -- 099. (RESERVED)

100. PERMIT REQUIRED.

No person shall construct or operate a CLTWF without first obtaining a permit to do so from the Director. ()

101. APPLICATION FOR PERMIT.

Applications for permits submitted to ~~the Director shall contain the following:~~ ISDA on a form approved by the Administrator. (3-31-22)()

~~**01. Name, Telephone Number, and Address.** The name, telephone number, and address of the owner and operator of the CLTWF. (3-31-22)~~

~~**02. Physical Address.** The physical address of the CLTWF. (3-31-22)~~

~~**03. Sealed Vicinity Map With Site Location.** A detailed sketch of the proposed or existing CLTWF site location, on an aerial photograph if available, which includes the following: (3-31-22)~~

~~**a.** The location of all homes, schools, churches, etc. within a one (1) mile radius of the proposed CLTWF; and (3-31-22)~~

~~**b.** Private and community domestic water wells, irrigation wells, existing monitoring wells, and existing injection wells as documented by Idaho Department of Water Resources or other sources, which are within a one (1) mile radius of the proposed or existing CLTWF; and (3-31-22)~~

~~**c.** Irrigation canals, irrigation laterals, rivers, streams, springs, lakes, reservoirs, and designated wetlands, which are within a one (1) mile radius of the proposed CLTWF; and (3-31-22)~~

~~**d.** Location of all land application sites; and (3-31-22)~~

~~**e.** FEMA flood zones or other appropriate flood data for the CLTWF site and all land application sites. (3-31-22)~~

~~**04. Sealed Site Plan.** A site plan showing all buildings, process wastewater and manure storage areas, piping, and roadways. (3-31-22)~~

~~**05. Land Application System.** A detailed description of the current or proposed management practices and methods used to make land application including: (3-31-22)~~

~~**a.** Timing, frequency, and duration of practices. (3-31-22)~~

~~**b.** Proximity of land application sites to residential and public use areas. (3-31-22)~~

~~**06. Nutrient Management Plan.** A NMP for all land where manure or process wastewater from the CLTWF is land applied. (3-31-22)~~

102. -- 109. (RESERVED)

110. DURATION OF PERMIT.

Permits issued pursuant to this chapter are valid for a period of two (2) years. ()

111. RENEWAL OF PERMIT.

The operator of a CLTWF shall submit an application to renew the permit to the Director for approval ninety (90) days prior to the expiration of the existing permit. ()

112. -- 119. (RESERVED)

120. REVOCATION OF PERMIT.

The Director may revoke the permit of any CLTWF that violates any of the provisions of this Chapter. ()

121. -- 199. (RESERVED)

200. UNAUTHORIZED DISCHARGES.

Unauthorized discharges of manure or process wastewater from CLTWF or land application sites owned or controlled by a CLTWF are prohibited. CLTWF operators shall notify the Director within twenty-four (24) hours of learning of a discharge. (3-31-22)()

~~201. -- 209. (RESERVED)~~

~~210. NOTIFICATION OF DISCHARGE.~~

~~Within twenty-four (24) hours of learning of a discharge, the operator of a CLTWF shall verbally notify the Director of such a discharge.~~ (3-31-22)

~~211. WRITTEN NOTIFICATION.~~

~~If the ISDA 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:~~ (3-31-22)

- ~~01. **A Description of the Discharge.** A description of the flow path to the receiving water body; and~~ (3-31-22)
- ~~02. **Flow Rate.** An estimation of the flow rate and volume discharged; and~~ (3-31-22)
- ~~03. **Dates and Time.** The period of discharge, including dates and times, and if not already corrected, the anticipated time the discharge is expected to continue; and~~ (3-31-22)
- ~~04. **Steps Taken.** Steps taken to reduce, eliminate, and prevent recurrence of the discharge.~~ (3-31-22)

~~212~~**01. -- 299. (RESERVED)**

300. WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

All CLTWF shall have wastewater storage and containment facilities designed, constructed, operated, and maintained pursuant to IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." ~~sufficient to contain:~~ (3-31-22)()

- ~~01. **Process Wastewater.** All process wastewater generated on the CLTWF during the non-land application season; and~~ (3-31-22)
- ~~02. **Rainfall.** The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and~~ (3-31-22)
- ~~03. **Winter Precipitation.** 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.~~ (3-31-22)

301. -- 3019. (RESERVED)

310. CONSTRUCTION REQUIREMENTS.

All CLTWF shall have wastewater storage and containment facilities designed and constructed 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. (3-31-22)

~~311. -- 319. (RESERVED)~~

320. SUBSTANCES ENTERING WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

Only manure and process wastewater from the operation of the CLTWF shall be allowed to enter wastewater storage and containment facilities. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to oil, grease, heavy metals, chlorinated solvents, and human waste is prohibited. ()

321. -- 329. (RESERVED)

330. NUTRIENT MANAGEMENT.

Each CLTWF shall ~~submit, to the Director for approval,~~ have an NMP that conforms to ~~the nutrient management standard~~ IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." (3-31-22)()

~~01. Odor. Each NMP shall address odors generated on the CLTWF, and land application sites. Odors shall not be generated in excess of odors normally associated with livestock production in Idaho.~~ (3-31-22)

~~02. Land Application. Each NMP shall include all land to which manure or process wastewater from the CLTWF is land applied.~~ (3-31-22)

~~03. Duty of Operator. It shall be the duty of the operator of a CLTWF to ensure that the NMP, for any land included in the NMP, is implemented.~~ (3-31-22)

~~04. Implementation of NMP. Failure to implement and abide by an approved NMP is a violation of this chapter.~~ (3-31-22)

331. -- ~~359~~999. (RESERVED)

360. NEW CLTWF.

~~Any new CLTWF shall submit a NMP to the Director for approval with its application for a permit to operate a CLTWF. The Director responds to or approves such NMP within sixty (60) days of submission.~~ (3-31-22)

~~361. -- 999. (RESERVED)~~