

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

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

IDAPA 02.04.15 - Rules Governing Beef Cattle Animal Feeding Operations - Proposed Rule (Docket  
No. 02-0415-1901);

IDAPA 02.04.17 - Rules Governing Dead Animal Movement and Disposal - Proposed Rule (Docket  
No. 02-0417-1901);

IDAPA 02.04.20 - Rules Governing Brucellosis - Proposed Rule (Docket No. 02-0420-1901).

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 10/08/2019. 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 11/06/2019.

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.



Eric Milstead  
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:** September 18, 2019

**SUBJECT:** Department of Agriculture

IDAPA 02.04.15 - Rules Governing Beef Cattle Animal Feeding Operations - Proposed Rule (Docket No. 02-0415-1901)

IDAPA 02.04.17 - Rules Governing Dead Animal Movement and Disposal - Proposed Rule (Docket No. 02-0417-1901)

IDAPA 02.04.20 - Rules Governing Brucellosis - Proposed Rule (Docket No. 02-0420-1901)

#### **1. IDAPA 02.04.15 - Rules Governing Beef Cattle Animal Feeding Operations**

##### **Summary and Stated Reasons for the Rule**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.15 - Rules Governing Beef Cattle Animal Feeding Operations. According to the department, the proposed rule adopts a previously approved and codified chapter. This rule establishes standards for the storage, management, and application of manure on Beef Cattle Animal Feeding Operations that manage over one thousand cattle in Idaho. The rule was also reviewed to comply with the Red Tape Reduction Act. The department has submitted a Section 22-101A statement indicating those portions of the rule that are broader in scope or more stringent than federal law or regulations. The department indicates that it uses the best available, peer reviewed studies to support and implement the rule, including studies done by the EPA, USDA Agricultural Resource Service, and other professional and scientific journals.

##### **Negotiated Rulemaking / Fiscal Impact**

The department states that negotiated rulemaking was not conducted because this existing chapter is being republished and reauthorized as previously promulgated and approved.

##### **Statutory Authority**

The rulemaking appears to be authorized pursuant to Sections 22-110 and 22-4903, Idaho Code.

#### **2. IDAPA 02.04.17 - Rules Governing Dead Animal Movement and Disposal**

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

### **Summary and Stated Reasons for the Rule**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.17 - Rules Governing Dead Animal Movement and Disposal. According to the department, this rule adopts a previously approved and codified chapter that establishes standards for the management and disposal of dead animal bodies, carcasses and body parts to best protect the environment and human health. The department notes that decomposition of animal carcasses can create an influx of nutrients, including phosphorus into soils and water sources. The rule was also reviewed to comply with the Red Tape Reduction Act. In its Section 22-101A statement, the department notes that the entire rule regulates an activity not regulated by the federal government. The department indicates that it uses the best available, peer reviewed studies to support and implement the rule, including studies done by the EPA, USDA Natural Resources Conservation Service, USDA Agricultural Resource Service, and other professional and scientific journals.

### **Negotiated Rulemaking / Fiscal Impact**

The department states that negotiated rulemaking was not conducted because this existing chapter is being republished and reauthorized as previously promulgated and approved.

### **Statutory Authority**

The rulemaking appears to be authorized pursuant to Sections 25-203 and 25-237, Idaho Code.

## **3. IDAPA 02.04.20 - Rules Governing Brucellosis**

### **Summary and Stated Reasons for the Rule**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.20 - Rules Governing Brucellosis. According to the department, the rule change will reduce the Brucellosis test eligible age of cattle/bison from 18 months to 12 months. The department notes that this recommendation was made following the 2018 USDA audit of Idaho's brucellosis program and is necessary to minimize restrictions on interstate market access for Idaho cattle producers and maintain eligibility for federal cooperative funding to operate the program. The department indicates that the rule change also will remove "Idaho origin" as a prerequisite for adult brucellosis vaccination of cattle/bison due to this being an unnecessary regulation that no longer poses a risk to the cattle industry. The rule was also reviewed for compliance with the Red Tape Reduction Act. The department indicates in its Section 22-101A statement that certain sections of the rule are broader in scope than federal law or regulations or not regulated by the federal government.

### **Negotiated Rulemaking / Fiscal Impact**

The department states that negotiated rulemaking was conducted.

### **Statutory Authority**

The rulemaking appears to be authorized pursuant to Sections 25-203 and 25-601, Idaho Code.

cc: Department of Agriculture  
Brian J. Oakey

### **\*\*\* 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.

## IDAPA 02 – DEPARTMENT OF AGRICULTURE

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

**DOCKET NO. 02-0415-1901**

#### **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 Sections 220-110 and 22-4903, 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 September 18, 2019.

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 proposed rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. This rule establishes standards for the storage, management and application of manure on Beef Cattle Animal Feeding Operations that manage over one thousand (1,000) cattle in Idaho. This rule was reviewed for amendment or repeal of non-substantive sections to comply with the Red Tape Reduction Act.

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

**IDAHO CODE SECTION 22-101A(1) STATEMENT:** This rule is broader in scope or more stringent than federal regulation in the following sections:

02.04.15.013	Broader in scope
02.04.15.030	More stringent
02.04.15.031	Broader in scope
02.04.15.032	Broader in scope
02.04.15.040	Broader in scope
02.04.15.050	Broader in scope
02.04.15.051	Broader in scope
02.04.15.080	Broader in scope
02.04.15.090	Broader in scope

For a more detailed analysis, please see Rulemaking Record for IDAPA 02-0415-1901.

**IDAHO CODE SECTION 22-101A(4) STATEMENT:** Idaho Code § 22-101A(4) requires that in proposing any rule necessary to protect human health and the environment, the Director shall include a summary of information in the rulemaking record by Idaho Code § 22-101A(3). This summary of Idaho Code § 22-101A(3) information is as follows:

IDAPA 02.04.15 regulates the environmental and public health effects associated with beef cattle animal feeding operations. The upper bound risks associated with phosphorus storage and application by Idaho beef cattle animal feeding operations of one thousand head or more are elevated phosphorus concentrations in phosphorus sensitive waterbodies. Elevated phosphorus can lead to blue-green algae blooms and the presence of cyanotoxins in waterbodies. Algal blooms can impair water use for industry, recreation, drinking and fisheries. Further, cyanotoxins create the upper bound risk of physical illness to approximately 400,000 private domestic well users, wildlife and domestic animals. Because the long term health and environmental effects of harmful algal blooms remain unclear, the absolute central and lower bound risks are not quantifiable.

ISDA uses the best available, peer reviewed studies to support and implement IDAPA 02.04.15, including studies done by U.S. Environmental Protection Agency, USDA Agricultural Resource Service, and other professional and scientific journals. However, even with such data, uncertainties remain, including variability in phosphorus sampling and testing.

To view ISDA's complete Idaho Code § 22-101A analysis and a comprehensive list of studies supporting and directly relevant to this Rule, please see the IDAPA 02.04.15 Rulemaking Record located at <https://agri.idaho.gov/main/i-need-to-see-lawsrules/rulemaking/isda-rulemaking-2019-2020/animal-industries-temporary-rulemaking-2019-2020/>.

**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:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this existing chapter of IDAPA is being re-published and re-authorized as previously promulgated and approved by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules would have inhibited the agency from executing its responsibilities to serve the citizens of Idaho and to protect their health, safety, and welfare.

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

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 September 25, 2019.

DATED this 2nd day of August, 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 PROPOSED RULE TEXT OF DOCKET NO. 02-0415-1901**

**Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a proposed rule.**

**This docket has been previously published as a temporary rule.**

**The original text of the temporary rule was published in the Idaho Administrative Bulletin, Volume 19-7, July 3, 2019, pages 68 through 75.**

**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~~ Sections 22-110 and 4922-4903, 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)~~

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

**032. 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)~~

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

**074. 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)~~

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

**106. 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)

~~107. Land Application.~~ The spreading on, or incorporation of manure or process wastewater into the soil. (3-16-01)

~~108. 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)~~

~~1409. 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)~~
- 1910. Operate.** Confining and feeding slaughter and feeder cattle in the state of Idaho. (4-6-05)
- 2011. 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)~~
- 2312. Runoff.** Any precipitation that comes into contact with manure, compost, bedding, or feed on a beef cattle animal feeding operation. (3-15-02)
- 2413. 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 Governing Dairy Byproduct." (4-6-05)
- 2514. 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~~ **AFOs** or land application sites owned or controlled by a beef cattle ~~animal feeding operation~~ **AFO** 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~~ **AFO** 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 operation~~ **AFOs** 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~~ AFO. 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~~ AFO 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~~ AFO shall submit a ~~nutrient management plan~~ NMP 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)~~

**021. New Beef Cattle Animal Feeding Operations.** Any new beef cattle ~~animal feeding operation commencing operations after July 1, 2000~~ AFO 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)(    )

**032. 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~~ AFO and available to the Administrator upon request. (4-6-05)(    )

**032. NUTRIENT MANAGEMENT RECORDS.**

The operators of beef cattle ~~animal feeding operations~~ AFOs 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~~ AFO that confines slaughter and feeder cattle as a beef cattle ~~animal feeding operation~~ AFO if, after an inspection, the Director determines that the ~~animal feeding operation~~ AFO is a significant

contributor of pollution to waters of the state. The designation ~~shall be~~ **is** provided to the operator of the ~~animal feeding operation~~ **AFO** in writing setting forth the basis for the Director's decision. When designated, these operations shall be considered existing beef cattle ~~animal feeding operations~~ **AFOs**. The Director ~~shall~~ **considers** the following factors when making such designation: (4-6-05)(    )

- a. Size of the ~~animal feeding operation~~ **AFO** and the amount of manure, process wastewater, and runoff reaching waters of the state; (3-15-02)(    )
- b. Location of the ~~animal feeding operation~~ **AFO** 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 will~~ 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~~ **is** 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~~ **AFO** that confines slaughter or feeder cattle in accordance with Title 22, Chapter 49, Idaho Code, to ensure compliance with these rules. The Director ~~shall may~~ 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~~ **AFO**. (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~~ **AFO** 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/~~videos of~~ ~~taping~~ facilities or collecting other information as necessary. An official inspection report form ~~shall be~~ **is** 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

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

DOCKET NO. 02-0417-1901

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 25-203 and 25-237, 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 September 18, 2019.

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 proposed rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. The Rules Governing Dead Animal Movement and Disposal establish standards for the management and disposal of dead animal bodies, carcasses and body parts to best protect the environment and human health. This rule was reviewed for amendment or repeal of non-substantive sections to comply with the Red Tape Reduction Act.

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

**IDAHO CODE SECTION 22-101A(1) STATEMENT:** This rule in its entirety regulates an activity not regulated by the federal government.

For a more detailed analysis, please see Rulemaking Record for IDAPA 02-0417-1901.

**IDAHO CODE SECTION 22-101A(4) STATEMENT:** Idaho Code § 22-101A(4) requires that in proposing any rule necessary to protect human health and the environment, the Director shall include a summary of information in the rulemaking record by Idaho Code § 22-101A(3). This summary of Idaho Code § 22-101A(3) information is as follows:

IDAPA 02.04.17 governs the movement, management and disposal of dead animals to protect human health and the environment. The decomposition of animal carcasses can create an influx of nutrients, including phosphorus into soils and water sources. The upper bound risks associated with a decomposing carcass may include elevated phosphorus concentrations in phosphorus sensitive water bodies leading to blue-green algae blooms and the presence of cyanotoxins in waterbodies. Algal blooms can impair water use for industry, recreation, drinking and fisheries. Further, cyanotoxins create the upper bound risk of physical illness to approximately 400,000 private domestic well users, wildlife and domestic animals. Because the long term health and environmental effects of harmful algal blooms remain unclear, the absolute central and lower bound risks are not quantifiable. Carcass decomposition intervals in outdoor settings beyond 30 days, cadaver depth and its effect on soil and vegetation, and insect impact on decomposition are poorly understood. In order to understand the complex associations between a decomposing carcass and the soil system, additional research must be conducted in both controlled laboratory environments and outdoor field environments. Such data would assist in establishing the lower bound risks associated with dead animal decomposition as well.

ISDA uses the best available, peer reviewed studies to support and implement IDAPA 02.04.17, including studies done by U.S. Environmental Protection Agency, USDA Natural Resources Conservation Service, USDA Agricultural Resource Service, and other professional and scientific journals. However, even with such data, uncertainties remain.

To view ISDA's complete Idaho Code § 22-101A analysis and a comprehensive list of studies supporting and directly relevant to this Rule, please see the IDAPA 02.04.17 Rulemaking Record located at <https://agri.idaho.gov/main/i-need-to-see-lawsrules/rulemaking/isda-rulemaking-2019-2020/animal-industries-temporary-rulemaking-2019-2020/>.

**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:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this existing chapter of IDAPA is being re-published and re-authorized as previously promulgated and approved by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules would have inhibited the agency from executing its responsibilities to serve the citizens of Idaho and to protect their health, safety, and welfare.

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

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 September 25, 2019.

DATED this 2nd day of August, 2019.

Brian Oakey  
Deputy Director  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 7249  
Boise, Idaho 83707  
Phone: (208) 332-8500  
Fax: (208) 334-2170

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

**Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a proposed rule.**

**This docket has been previously published as a temporary rule.**

**The original text of the temporary rule was published in the Idaho Administrative Bulletin, Volume 19-7, July 3, 2019, pages 86 through 92.**

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

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of [Title Sections 25-203 and 25-237](#), [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)~~

~~076.~~ **Dead Animals.** Carcasses and parts of carcasses from dead animals including domesticated livestock, sheep, goats, poultry, pets, and commercial fish. (3-15-02)

~~087.~~ **Dead Animal Emergencies.** Those situations involving dead animals that may require extenuating disposal measures as determined by the Administrator. (3-15-02)

~~098.~~ **Decomposition.** The decay of dead animals under natural conditions. (3-15-02)

~~109.~~ **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)

~~1210.~~ **Disposal.** The management of a dead animal. (3-15-02)

~~1311.~~ **Domesticated Livestock.** Bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds and captive waterfowl. (4-2-08)

~~1412.~~ **Harvested.** Domesticated livestock killed by a person if any portion of the carcass is salvaged. (4-2-08)

~~1513.~~ **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)

~~1714.~~ **Pets.** Cats, dogs, and other non-human species of animals that are kept as household companions. (3-15-02)

~~1815.~~ **Rendering.** The process or business of recycling dead animals and animal by-products. (3-15-02)

~~1916.~~ **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)**

## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.04.20 – RULES GOVERNING BRUCELLOSIS

DOCKET NO. 02-0420-1901

### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 25-203 and 25-601, 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 September 18, 2019.

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 change will reduce the Brucellosis test eligible age of cattle/bison from 18 months to 12 months. This recommendation was made following the 2018 USDA audit of Idaho's brucellosis program and is necessary to minimize restrictions on interstate market access for Idaho cattle producers and maintain eligibility for federal cooperative funding to operate the program. The second rule change will remove "Idaho origin" as a prerequisite for adult brucellosis vaccination of cattle/bison. This is an unnecessary regulation that no longer poses a risk to the cattle industry. IDAPA 02.04.20 was also reviewed for amendment or repeal of non-substantive sections in order to comply with the Red Tape Reduction Act.

**IDAHO CODE SECTION 22-101A STATEMENT:** This rule is broader in scope or regulates an activity not regulated by the federal government in the following sections:

02.04.20.027	Not regulated
02.04.20.028.03-04	Not regulated
02.04.20.029	Broader in scope
02.04.100-102	Not regulated
02.04.20.105	Broader in scope
02.04.20.120-123	Broader in scope
02.04.20.200-204	Not regulated
02.04.20.250-256	Not regulated
02.04.20.321	Broader in scope
02.04.20.421	Broader in scope

For a more detailed analysis, please see Rulemaking Record for IDAPA 02-0420-1901.

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

**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:

The agency does not anticipate any 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 June 5, 2019 Idaho Administrative Bulletin, [Vol. 19-6 pgs. 24-25](#). Negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on June 27, 2019. There were several comments received from the meeting attendees

entered into the record that were taken into consideration when drafting this proposed rule. Meeting attendees also participated in amending or repealing sections of this rule to comply with the Red Tape Reduction Act.

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Bill Barton, Administrator – Division of Animal Industries at (208) 332-8540.

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 September 25, 2019.

DATED this 2nd day of August, 2019.

Brian Oakey  
Deputy Director  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8550  
Fax: (208) 334-2710

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0420-1901**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS.**

The following definitions apply in the interpretation and enforcement of this chapter. (5-3-03)

**01. Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/VS in accordance with provisions of Title 9, Part 161, Code of Federal Regulations to perform functions of State-Federal animal disease control programs. (5-3-03)

**02. Approved Brucella Vaccine.** A vaccine product that is approved by and produced under license of the USDA for administration to cattle, domestic bison, swine or domestic cervidae for the purpose of enhancing the resistance to *brucellosis*. (5-3-03)

**03. Approved Feedlot.** A feedlot approved by the Administrator to feed female cattle and domestic bison, which have not been officially vaccinated against *brucellosis*. (5-3-03)

**04. Brucellosis.** An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. (5-3-03)

**05. Brucellosis Emergency.** The declaration of an animal health emergency by the director as the result of the diagnosis of *brucellosis* in cattle, domestic bison, swine or domestic cervidae in the state of Idaho or in areas outside the state that could result in transmission of *brucellosis* to Idaho cattle, domestic bison, swine, or domestic cervidae. (5-3-03)

**06. Brucellosis Herd Management Plan.** A written document outlining management practices a livestock producer will take to minimize the exposure of cattle or domestic bison to *brucellosis*. The herd

- management plan shall be valid when signed by the owner and the State Veterinarian or his designee. (3-29-12)
- 07. Cattle.** All bovidae. (5-3-03)
- 08. Commuter Herd.** A herd of cattle or domestic bison that moves from Idaho to another state pursuant to the provisions of IDAPA 02.04.21, "Rules Governing the Importation of Animals," Section 220. (3-30-07)
- 09. Designated Surveillance Area.** An area of Idaho, as ordered by the director or his designee, where brucellosis positive wildlife are known or believed to exist and where commingling of wildlife and livestock may lead to transmission of brucellosis from wildlife to livestock. (3-29-12)
- 10. Domestic Bison.** All animals in the genus *Bison* that are owned by a person. (5-3-03)
- 11. Domestic Cervidae.** Elk, fallow deer and reindeer that are owned by a person. (5-3-03)
- 12. Exposed.** Animals that have had contact with other animals, herds, or materials that have been determined to be infected with or affected by *Brucella*. (5-3-03)
- 13. Federal Animal Health Official.** An employee of USDA, APHIS, VS who is authorized to perform animal health activities. (5-3-03)
- 14. Infected Animals or Herds.** Animals that are classified as reactors by the designated *brucellosis* epidemiologist or herds that contain one or more reactor animals. (5-3-03)
- 15. Negative.** Cattle, domestic bison, swine or domestic cervidae are classified negative: (5-3-03)
- a.** When their blood serum has been subjected to official serological tests and the test results fail to disclose evidence of *Brucella* infection; and (5-3-03)
- b.** If blood, milk or tissues are subjected to bacteriological methods for cultivating field-strain *Brucella* and none are recovered. An animal is classified as negative when all tests that are performed fail to disclose evidence of *brucellosis*. (5-3-03)
- 16. Official Identification.** The unique individual identification of cattle, domestic bison, swine, or domestic cervidae in accordance with these rules. (5-3-03)
- 17. Official Vaccinate.** A bovine or domestic bison female that was inoculated, in accordance with these rules and the *brucellosis* Eradication UM&R, with an approved *Brucella* vaccine. (5-3-03)
- 18. Operator.** The person who has authority to manage or direct a cattle, domestic bison, swine, or domestic cervidae premises, or conveyance and the animals thereon. (3-30-07)
- 19. Parturient.** Visibly prepared to give birth or within two (2) weeks before giving birth. (3-30-07)
- 20. Postparturient.** Having already given birth. (3-30-07)
- 21. Premises.** The ground, area, buildings, corrals, and equipment utilized to keep, hold, or maintain animals. (3-30-07)
- 22. Quarantine.** A written order, executed by the Administrator, to confine or hold animals on a premise or any other location, and to prevent movement of animals from a premise or any other location when the administrator has determined that the animals have been found to be or are suspected to be exposed to or infected with *Brucella*, or the animals are not in compliance with the provisions of this chapter. (3-30-07)
- 23. Reactor.** Cattle, domestic bison, swine or domestic cervidae are classified as reactors when their blood serum has been subjected to official serological tests and the test results indicate that the animal has been

exposed to and infected with Brucella. Cattle, domestic bison, swine or domestic cervidae are also classified as reactors in the absence of significant serologic test results when other diagnostic methods, such as bacteriologic methods, result in the recovery of field-strain Brucella organisms, or a significant rise in the serologic titer occurs, or when other epidemiologic evidence of *Brucella* infection is demonstrated. (5-3-03)

**24. Re-Identification of Official Vaccinates.** The identification of female cattle or other animals which have been officially vaccinated and identified, as provided in this chapter, and which have lost the official identification device or the tattoo has faded to the extent that it cannot be discerned. (5-3-03)

**25. Restrain.** The confinement of cattle, domestic bison, swine, or domestic cervidae in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (5-3-03)

**26. Restricted Movement Permit.** A VS Form 1-27, or other document approved by the Administrator for movement of reactor or exposed animals in commerce. (5-3-03)

**27. State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication programs. (5-3-03)

**28. State/Federal Animal Health Laboratory.** The official laboratory in Idaho that is approved by the Administrator and USDA/APHIS/VS, to conduct serologic and bacteriologic tests to detect Brucella. (5-3-03)

**29. Suspect.** Cattle, domestic bison, swine, or domestic cervidae are classified as suspects when their blood serum has been subjected to official serologic tests and the results suggest infection but are inconclusive. If bacteriologic methods to culture Brucella from blood, milk or tissues were used, they did not yield field-strain Brucella. (5-3-03)

**30. Swine.** All animals in the family suidae. (5-3-03)

**31. Test Eligible.** Unless otherwise specifically provided in these rules, all sexually intact cattle and domestic bison ~~eighteen~~ twelve (~~18~~12) months of age and over, and all parturient, and postparturient cattle and domestic bison regardless of age. (~~3-30-07~~)(    )

**32. Wild Bison.** All animals in the genus Bison that are not owned by a person. (5-3-03)

**33. Wild Elk.** All elk that are not owned by a person. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. OFFICIAL VACCINATION.** Female cattle and domestic bison may be officially vaccinated through one (1) of the following methods: (5-3-03)

**01. Calfhood Vaccination.** Female cattle and domestic bison native to the state of Idaho or imported into the state of Idaho shall be calfhood vaccinated while not less than one hundred twenty (120) days of age or more than three-hundred sixty-five (365) days of age or be consigned to an approved feedlot, for finish feeding for slaughter only, prior to becoming three hundred sixty-five (365) days of age. (5-3-03)

**02. Adult Vaccination.** ~~Idaho origin~~Female cattle or domestic bison may be vaccinated as adults with the approval of the Administrator. (~~4-11-06~~)(    )

**a.** Female cattle or bison which are three hundred sixty-five (365) days of age or older shall be negative to an official brucellosis test within ten (10) days prior to being vaccinated. ~~Vaccinal dose to be administered shall be determined by the administrator, in consultation with the designated brucellosis epidemiologist and the USDA brucellosis program manager.~~ (~~4-11-06~~)(    )

b. The Administrator may make exceptions to the provisions of Section 101 of this rule on a case-by-case basis. (4-11-06)

**03. Approval for Adult Vaccination.** Accredited veterinarians representing owners, or accredited veterinarians authorized to perform services for specifically approved livestock markets who desire to have female cattle or domestic bison, which are over three hundred sixty-five (365) days of age vaccinated shall request approval from the Administrator. The Administrator may grant or deny the request to adult vaccinate the cattle based upon origin, history, age, pregnancy status and the potential of the cattle or domestic bison to spread other diseases of concern, such as tuberculosis or trichomoniasis. Approval or denial of the request to adult vaccinate the cattle shall be made within seven (7) working days of the date of the request. (4-11-06)

**04. Adult Vaccinations Required.** The Administrator may require animals at risk of becoming infected with brucellosis to be adult vaccinated. The animals shall be vaccinated at intervals and with the vaccinal dose determined by the designated brucellosis epidemiologist. Such vaccination shall be accomplished whether or not the animals have been previously vaccinated. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**121. TEST ELIGIBLE CATTLE AND DOMESTIC BISON IN AN ERADICATION AREA.** Test eligible cattle and domestic bison in an eradication area are: (3-30-07)

**01. Unvaccinated or Vaccinated with Brucella Abortus Strain RB 51 Vaccine.** Intact male and female cattle and domestic bison that are ~~not vaccinated against brucellosis with Brucella abortus strain 19 vaccine and are~~ six (6) months of age or older; ~~or~~. (5-3-03)(    )

~~02. Strain 19 Dairy Vaccinates. brucellosis strain 19 vaccinated female cattle of dairy breeds that are:~~ (5-3-03)

~~a. Twenty (20) months of age or older; or~~ (5-3-03)

~~b. Parturient; or~~ (5-3-03)

~~c. Post parturient; or~~ (5-3-03)

~~03. Strain 19 Beef or Domestic Bison Vaccinates. brucellosis strain 19 vaccinated female cattle of beef breeds or domestic bison that are:~~ (5-3-03)

~~a. Twenty-four (24) months of age or older; or~~ (5-3-03)

~~b. Parturient; or~~ (5-3-03)

~~c. Post parturient.~~ (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. IDAHO APPROVED FEEDLOT.** ~~Female cattle and domestic bison that have not been officially vaccinated for brucellosis may be fed for slaughter in an Idaho approved feedlot, with no provisions for pasturing or grazing.~~ Female cattle and domestic bison that have not been officially vaccinated for brucellosis shall not be fed for slaughter except in Idaho approved feedlots, with no provisions for pasturing or grazing. (5-3-03)(    )