



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

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MEMORANDUM

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

FROM: Katharine Gerrity - Deputy Division Manager

DATE: July 10, 2019

SUBJECT: Temporary Rule(s)

IDAPA 02.04.23 - Rules Governing Commercial Livestock Truck Washing Facilities - Adoption of Temporary Rule - Docket No. 02-0423-1901

IDAPA 02.04.30 - Rules Governing Nutrient Management - Adoption of Temporary Rule - Docket No. 02-0430-1902

IDAPA 02.04.31 - Rules Governing the Stockpiling of Agricultural Waste - Adoption of Temporary Rule - Docket No. 02-0431-1901

IDAPA 02.04.32 - Rules Governing Poultry Operations - Adoption of Temporary Rule - Docket No. 02-0432-1901

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

Attachment: Temporary Rule(s)

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IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

DOCKET NO. 02-0423-1901

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

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

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 22-103(15), Idaho Code.

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

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

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

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

This rule establishes standards for the permitting and management of commercial livestock truck washing facilities in Idaho. These rules also outline the construction standards for all containment structures that are designed to protect the environment regarding the storage and management of all nutrients and process wastewater that accumulate when washing a commercial livestock vehicle to prevent from discharging into waters of the state.

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

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

Dated this 6th day of June, 2019.

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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 02-0423-1901

IDAPA 02
TITLE 04
CHAPTER 23

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 22, Chapter 103 (17), Idaho Code. (5-3-03)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.23, “Rules Governing Commercial Livestock Truck Washing Facilities.” (5-3-03)

02. Scope. These rules govern the permitting, construction, and management of commercial livestock truck washing facilities. (5-3-03)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (5-3-03)

003. ADMINISTRATIVE APPEAL.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (5-3-03)

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. (5-3-03)

01. The 1997 United States Department of Agriculture Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10 D. (5-3-03)

02. The 2000 American Society of Agricultural Engineers Standard EP393.3. (5-3-03)

03. The 1999 Publication by the United States Department Of Agriculture, Natural Resource Conservation Service, Conservation Practice Standard, Nutrient Management Code 590. (5-3-03)

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/>. (5-3-03)

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. (5-3-03)

007. -- 009. (RESERVED)

010. DEFINITIONS.

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

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,” or 02.04.15 “Rules of the Department of Agriculture Governing Beef Cattle Animal Feeding Operations.” (5-3-03)

02. Compost. A biologically stable material derived from the biological decomposition of organic matter. (5-3-03)

03. Director. The Director of the Idaho State Department of Agriculture or his designee. (5-3-03)

04. Discharge. Release of process wastewater or manure from a commercial livestock truck washing facility to waters of the state. (5-3-03)

05. Land Application. The spreading on, or incorporation of manure or process wastewater into the soil. (5-3-03)

06. Livestock. Bovidae, ovidae, suidae, and equidae. (5-3-03)

07. Livestock Truck Washing Facilities. Those facilities utilized primarily for washing and cleaning trucks and trailers that haul livestock. (5-3-03)

08. Manure. Livestock excrement that may also contain bedding, spilled feed, water, or soil. (5-3-03)

09. 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. (5-3-03)

10. 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. (5-3-03)

11. Non-Land Application Season. The portion of the year during which land application is not allowed pursuant to an approved NMP. (5-3-03)

12. 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. (5-3-03)

13. 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. (5-3-03)

14. Operate. Washing or cleaning livestock trucks. (5-3-03)

15. Operator. The person who has power or authority to manage, or direct, or has financial control of a commercial livestock truck washing facility. (5-3-03)

16. 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. (5-3-03)

17. Process Wastewater. Any water generated on a commercial livestock truck washing facility that comes into contact with manure, compost, bedding, or feed. (5-3-03)

18. Runoff. Any precipitation that comes into contact with manure, compost, bedding, or feed on a commercial livestock truck washing facility. (5-3-03)

19. 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 a National Pollutant Discharge Elimination System permit issued by the United States Environmental Protection Agency. (5-3-03)

20. 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. (5-3-03)

21. 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. (5-3-03)

011. ABBREVIATIONS.

01. CLTWF. Commercial Livestock Truck Washing Facility. (5-3-03)

02. FEMA. Federal Emergency Management Agency. (5-3-03)

03. ISDA. Idaho State Department of Agriculture. (5-3-03)

04. NMP. Nutrient Management Plan. (5-3-03)

05. NPDES. National Pollutant Discharge Elimination System. (5-3-03)

06. NRCS. Natural Resources Conservation Service. (5-3-03)

07. USDA. United States Department of Agriculture. (5-3-03)

012. APPLICABILITY.

These rules apply to all CLTWF. (5-3-03)

013. -- 049. (RESERVED)

050. INSPECTIONS.

In order to ascertain compliance with this chapter, the Director shall have reasonable access to: (5-3-03)

01. Inspect Facilities. Inspect any facility or land application site listed in the CLTWF's NMP. (5-3-03)

02. Inspect Records. Inspect, review, or copy any CLTWF's records deemed necessary, during normal business hours. (5-3-03)

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. (5-3-03)

101. APPLICATION FOR PERMIT.

Applications for permits submitted to the Director shall contain the following: (5-3-03)

01. Name, Telephone Number, and Address. The name, telephone number, and address of the owner and operator of the CLTWF. (5-3-03)

02. Physical Address. The physical address of the CLTWF. (5-3-03)

03. Scaled 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: (5-3-03)

a. The location of all homes, schools, churches, etc. within a one (1) mile radius of the proposed CLTWF; and (5-3-03)

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 (5-3-03)

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 (5-3-03)

d. Location of all land application sites; and (5-3-03)

e. FEMA flood zones or other appropriate flood data for the CLTWF site and all land application sites. (5-3-03)

04. Scaled Site Plan. A site plan showing all buildings, process wastewater and manure storage areas, piping, and roadways. (5-3-03)

05. Land Application System. A detailed description of the current or proposed management practices and methods used to make land application including: (5-3-03)

a. Timing, frequency, and duration of practices. (5-3-03)

b. Proximity of land application sites to residential and public use areas. (5-3-03)

06. Nutrient Management Plan. A NMP for all land where manure or process wastewater from the CLTWF is land applied. (5-3-03)

102. -- 109. (RESERVED)

110. DURATION OF PERMIT. Permits issued pursuant to this chapter shall be valid for a period of two (2) years. (5-3-03)

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. (5-3-03)

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. (5-3-03)

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. (5-3-03)

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. (5-3-03)

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: (5-3-03)

01. A Description of the Discharge. A description of the flow path to the receiving water body; and (5-3-03)

02. Flow Rate. An estimation of the flow rate and volume discharged; and (5-3-03)

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 (5-3-03)

04. Steps Taken. Steps taken to reduce, eliminate, and prevent recurrence of the discharge. (5-3-03)

212. -- 299. (RESERVED)

300. WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

All CLTWF shall have wastewater storage and containment facilities designed, constructed, operated, and maintained sufficient to contain: (5-3-03)

01. Process Wastewater. All process wastewater generated on the CLTWF during the non-land application season; and (5-3-03)

02. Rainfall. The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and (5-3-03)

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. (5-3-03)

301. -- 309. (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. (5-3-03)

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. (5-3-03)

321. -- 329. (RESERVED)

330. NUTRIENT MANAGEMENT.

Each CLTWF shall submit, to the Director for approval, a NMP that conforms to the nutrient management standard. (5-3-03)

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. (5-3-03)

02. Land Application. Each NMP shall include all land to which manure or process wastewater from the CLTWF is land applied. (5-3-03)

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. (5-3-03)

04. Implementation of NMP. Failure to implement and abide by an approved NMP is a violation of this chapter. (5-3-03)

331. -- 349. (RESERVED)

350. EXISTING CLTWF.
CLTWF that are operating on or before July 1, 2002 shall submit a NMP to the director for approval no later than January 1, 2003. (5-3-03)

351. -- 359. (RESERVED)

360. NEW CLTWF.
Any new CLTWF, commencing operations after July 1, 2002, shall submit a NMP to the Director for approval with its application for a permit to operate a CLTWF. The Director shall respond to or approve such NMP within sixty (60) days of submission. (5-3-03)

361. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.30 – RULES GOVERNING NUTRIENT MANAGEMENT

DOCKET NO. 02-0430-1902

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

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

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 37-401(4), 37-606(1), 37-405, 22-4903, 25-4012(2), 37-603(1) Idaho Code.

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

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

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

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

The Rules Governing Nutrient Management establishes standards for the certification of soil samplers and nutrient management planners in Idaho. The rule also describes the process for collecting soil samples to be used in developing a nutrient management plan (NMP) for Grade A dairies, Beef Cattle Animal Feeding Operations and commercial Poultry Operations in Idaho. These rules identify the nutrient management standards to be used in the writing and approval of an NMP.

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

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

Dated this 6th day of June, 2019.

Brian Oakey
Deputy Director
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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 02-0430-1902

IDAPA 02
TITLE 04
CHAPTER 30

02.04.30 – RULES GOVERNING NUTRIENT MANAGEMENT

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapter 4, Title 22, Chapters 1 and 49, and Title 25, Chapter 40, Idaho Code. (3-29-12)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules Governing Nutrient Management.” (4-2-08)

02. Scope. These rules shall govern the certification process for soil samplers and nutrient management planners, and the process for collecting and handling soil samples. (4-2-08)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (4-2-08)

003. ADMINISTRATIVE APPEAL.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. (4-2-08)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this chapter. (3-29-12)

01. August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised). This document can be viewed online at <http://www.cals.uidaho.edu/edComm/pdf/EXT/EXT0704.pdf>. (3-29-12)

02. Nutrient Management Standard (NMS). (3-29-12)

a. 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 can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf. (3-29-12)

b. The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/june_2007_NRCS_590.pdf. (3-29-12)

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

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006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture central office. (4-2-08)

007. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter: (4-2-08)

01. Certified Soil Sampler. A person who has completed a Department approved soil sampler certification program and has received written certification from the Department. (4-2-08)

02. Department. The Idaho State Department of Agriculture. (4-2-08)

03. Director. The Director of the Idaho State Department of Agriculture or his designee. (3-29-12)

04. Nutrient Management Plan. A plan prepared in conformance with the Nutrient Management Standard for managing the amount, source, placement, form, and timing of the land application of nutrients and soil amendments for plant production. (4-2-08)

05. Nutrient Management Standard. For dairies and beef cattle animal feeding operations, the Nutrient Management Standard is the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the Director. For poultry concentrated animal feeding operations, the Nutrient Management Standard is the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the director. (3-29-12)

06. Person. Any individual, partnership, association, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency, or instrumentality, or any legal entity, that is recognized by law as the subject of rights and duties. (3-29-12)

07. Operation(s). Animal feeding operation(s). (3-29-12)

08. Representative Soil Sample. A representative soil sample is a soil sample obtained as outlined by the August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised) or other equivalent method as approved by the Department. (4-2-08)

09. Resource Concerns. Surface water runoff that leaves the operation from normal storm events, rain or snow, frozen ground or irrigation; and ground water concerns on the operation from a high water table, fractured bedrock, cobbles, gravel, coarse textured soils or other environmental considerations such as tile drains or shallow soils that are conducive for the downward movement of water and associated nutrients. (4-2-08)

011. ABBREVIATIONS.

01. CNMP. Certified Nutrient Management Planner. (4-2-08)

02. CSS. Certified Soil Sampler. (4-2-08)

03. NMP. Nutrient Management Plan. (4-2-08)

04. NMS. Nutrient Management Standard. (4-2-08)

05. NRCS. United States Department of Agriculture, Natural Resources Conservation Service. (4-2-08)

06. SSB. August 1997 University of Idaho Soil Sampling Bulletin 704 (revised). (4-2-08)

07. **USDA.** United States Department of Agriculture. (4-2-08)

012. -- 019. (RESERVED)

020. APPLICABILITY.

These rules apply to nutrient management on the following operations: (3-29-12)

01. Dairies. All Manufactured Grade and Grade A dairies located in Idaho licensed to sell milk for human consumption. (3-29-12)

02. Beef Cattle Animal Feeding Operations. All beef cattle animal feeding operations in Idaho required to implement a NMP pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (4-2-08)

03. Poultry Concentrated Animal Feeding Operations. All poultry operations required to implement an NMP pursuant to Title 25, Chapter 40, Idaho Code. (3-29-12)

021. -- 099. (RESERVED)

100. NUTRIENT MANAGEMENT PLANS.

All NMPs required by IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," must be written by nutrient management planners who have been certified by the Department. (3-29-12)

101. -- 149. (RESERVED)

150. NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

All persons who develop NMPs must be certified through the Department Certification Program. (4-2-08)

01. Certification. The Nutrient Management Planner Certification will be valid unless revoked by the Department. (4-2-08)

02. Development. Nothing shall prohibit any person from developing an NMP for his own operation provided the person possesses a valid Nutrient Management Planner Certification issued by the Department. (4-2-08)

03. Continuing Education. The Department may require a CNMP to complete periodic continuing education training to retain certification. (4-2-08)

151. -- 189. (RESERVED)

190. REVOCATION OF NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

Nutrient Management Planner Certification may be revoked by the Department if the CNMP: (4-2-08)

01. Submits Inaccurate Information. Submits NMPs that contain falsified or materially inaccurate information. (4-2-08)

02. Fails to Submit Plans. Fails to submit an NMP to the ISDA within thirty (30) days after being paid by a producer. (4-2-08)

03. Fails to Follow Provisions. Fails to meet any requirement of this rule. (4-2-08)

191. -- 199. (RESERVED)

200. SOIL SAMPLES.

The owners or operators of all dairies, beef cattle operations, and poultry operations required to implement nutrient management plans pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules

Governing Beef Cattle Animal Feeding Operations,” and IDAPA 02.04.32, “Rules Governing Poultry Operations,” must have soil samples collected each year from all fields owned or operated by the dairy, beef, or poultry operation to which livestock waste, manure, or process wastewater from the operation was land applied. In addition, a poultry operation must have soil samples collected each year from all fields owned or operated by the poultry operation to which soil amendments from the operation were land applied. (3-29-12)

201. -- 219. (RESERVED)

220. SOIL SAMPLE COLLECTION.

01. CSS. All soil samples required to be collected pursuant to this chapter must be collected by a CSS. (4-2-08)

02. Representative Samples. All soil samples collected by a CSS must be representative samples pursuant to the provisions of the SSB. (4-2-08)

03. Sampling Depth. The soil samples shall be obtained from depths outlined in each operation’s NMP unless soil survey data or site specific situations warrant alternative sampling depths. (4-2-08)

04. Alternative Sampling Depths. If the CSS determines that an alternative sampling depth is necessary due to resource concerns, the CSS must indicate such deviation in sampling depths on soil samples and laboratory soil sample submission forms. (4-2-08)

221. -- 229. (RESERVED)

230. SOIL SAMPLE SUBMISSION.

All soil samples collected pursuant to this chapter must be appropriately handled to protect the integrity of the sample and must be submitted to an approved laboratory by the CSS who collected the soil sample. (4-2-08)

231. -- 299. (RESERVED)

300. APPROVED LABORATORIES.

Only laboratories that hold a current valid certification from the North American Laboratory Proficiency Testing Program or equivalent method approved by the Department are approved laboratories for the purposes of this chapter. (3-29-12)

301. -- 399. (RESERVED)

400. RECORDS OF NUTRIENT ANALYSIS.

Owners or operators of facilities who are required to implement NMPs pursuant to IDAPA 02.04.14, “Rules Governing Dairy Byproduct,” IDAPA 02.04.15, “Rules Governing Beef Cattle Animal Feeding Operations,” and IDAPA 02.04.32, “Rules Governing Poultry Operations,” must retain records of nutrient analysis for a minimum of five (5) years. (3-29-12)

01. Complete Records. Records must be complete, readily available, and identified to the fields listed in the facility’s NMP. (4-2-08)

02. Available to the Director. Records must be made available to the director for inspection and copying upon request. (4-2-08)

401. -- 499. (RESERVED)

500. SOIL SAMPLER CERTIFICATION.

All persons who collect soil samples from operations that are required to sample and test soil for nutrients pursuant to this chapter must be certified through the Department Certification Program. (4-2-08)

01. Certification. The Soil Sampler Certification will be valid unless revoked by the Department.

(4-2-08)

02. Sampling. Nothing shall prohibit any person from sampling their own operation as outlined in these rules provided the person possesses a valid Soil Sampler Certification issued by the Department. (4-2-08)

03. Continuing Education. The Department may require CSS to complete continuing education training to ensure compliance within the provisions of this chapter. (4-2-08)

501. -- 899. (RESERVED)

900. REVOCATION OF SOIL SAMPLER CERTIFICATION.

Soil Sampler Certification is subject to revocation by the Department if the Certified Soil Sampler fails to meet the soil sampling criteria set forth in these rules. (4-2-08)

901. -- 989. (RESERVED)

990. PENALTIES.

Any person violating any of the provisions of this Chapter may be subject to the penalty provisions of Title 22, Chapter 1 and 49, Title 37, Chapter 4, and Title 25, Chapter 40, Idaho Code. (3-29-12)

01. Monetary Penalties. The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires. (4-2-08)

02. Minor Violations. The Director may issue suitable warnings or other administrative actions for minor violations. (4-2-08)

991. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.31 – RULES GOVERNING THE STOCKPILING OF AGRICULTURAL WASTE

DOCKET NO. 02-0431-1901

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

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

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 22-110, Idaho Code.

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

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

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

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

The Rules Governing the Stockpiling of Agricultural Waste establish certain safeguards to protect animals, humans and the environment from the storage of large quantities of agricultural waste. The rule identifies setback requirements for stockpiles of agricultural waste in excess of fifty (50) cubic yards from dwellings, domestic wells, waters of the State and other public entities to minimize the risk to public health and the environment.

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

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

Dated this 6th day of June, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8550
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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 02-0431-1901

IDAPA 02
TITLE 04
CHAPTER 31

02.04.31 – RULES GOVERNING THE STOCKPILING OF AGRICULTURAL WASTE

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-110, Idaho Code. (3-29-10)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules Governing the Stockpiling of Agricultural Waste.” (3-29-10)

02. Scope. These Rules govern the Stockpiling of Agricultural Waste at Agricultural Operations to safeguard and protect animals, man, and the environment. The official citation of this chapter is IDAPA 02.04.31.000 et seq. For example, this section’s citation is IDAPA 02.04.31.001. (3-29-10)

002. WRITTEN INTERPRETATIONS.

The Idaho State Department of Agriculture may have written statements that pertain to the interpretation of the rules in this chapter. Any such written statement shall be available for review at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, Boise, Idaho 83712. (3-29-10)

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to administrative appeal as set forth in Title 67, Chapter 52, Idaho Code. (3-29-10)

004. 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/>. (3-29-10)

005. PUBLIC RECORDS ACT COMPLIANCE.

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

006. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter: (3-29-10)

01. Agricultural Operation. Facilities that generate or receive and stockpile agricultural waste and that are not regulated under IDAPA 02.04.14, “Rules Governing Dairy Byproduct,” or IDAPA 02.04.15, “Rules Governing Beef Cattle Animal Feeding Operations.” (3-29-10)

02. Agricultural Waste. Agricultural waste means livestock waste. (3-29-10)

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

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

05. Duration. The length of time agricultural waste is stockpiled. (3-29-10)

06. Dwelling. The house, residence, abode, or other structure where a person lives. (3-29-10)

07. Livestock. Bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds, and captive waterfowl. (3-29-10)

08. Livestock Waste. Manure that may also contain bedding, spilled feed, feathers, water, or soil. It also includes wastes not particularly associated with manure, such as milking center or washing wastes, milk, feed leachate, or livestock carcasses or parts thereof. (3-29-10)

09. Non-Compliance. A practice or facility condition that does not comply with Section 22-110, Idaho Code, or the provisions of these rules. (3-29-10)

10. Person. Any individual, partnership, association, firm, joint stock company, trust, political subdivision, public or private corporation, or any other legal entity which is recognized by law as the subject of rights and duties. (3-29-10)

11. Public Highway. All highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision. (3-29-10)

12. Responsible Party. A person who generates or receives and stockpiles agricultural waste on property the person owns, leases, or otherwise has permission to use as a stockpile site. (3-29-10)

13. Setbacks for a Stockpile Site. The distance from a stockpile site to a location identified in Section 020 of this rule. (3-29-10)

14. Stockpile Staging Site. A physical area where stockpiling occurs for a duration of no longer than thirty (30) days. (3-29-10)

15. Stockpile Site. A physical location where agricultural waste is stockpiled for a duration of more than thirty (30) days and that stockpiles more than fifty (50) cubic yards of agricultural waste. (3-29-10)

16. Stockpiling. The accumulation of agricultural waste on an agricultural operation. (3-29-10)

17. Surface Waters of the State. All accumulations of surface water, natural and artificial, public and private, or parts thereof that are wholly or partially within, that flow through or border upon the state. (3-29-10)

011. -- 019. (RESERVED)

020. SETBACKS FOR STOCKPILE SITES. Stockpile sites at agricultural operations must meet the following setback requirements. (3-29-10)

01. Setback Distances. Stockpile sites shall maintain the following setbacks: (3-29-10)

a. Three hundred (300) feet from a non-responsible party's dwelling. (3-29-10)

b. Five hundred (500) feet from a hospital, church, or school. (3-29-10)

c. One hundred (100) feet from a domestic or irrigation well. (3-29-10)

d. One hundred (100) feet from surface waters of the State. (3-29-10)

e. Fifty (50) feet from a public highway. (3-29-10)

02. Responsible Party's Dwellings. Stockpile sites shall not have setbacks from a responsible party's dwelling or dwellings owned by the responsible party. (3-29-10)

03. Stockpile Staging Sites. Stockpile staging sites shall not be subject to the setbacks set forth in these rules. (3-29-10)

021. -- 039. (RESERVED)

040. RESPONSE TO COMPLAINTS.

Complaints regarding a stockpile site or a stockpile staging site will be investigated by the Department to determine compliance with these rules. (3-29-10)

041. -- 059. (RESERVED)

060. PENALTIES.

Penalties for violations of this chapter will be assessed in accordance with Section 22-110(3), Idaho Code. (3-29-10)

061. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.32 – RULES GOVERNING POULTRY OPERATIONS

DOCKET NO. 02-0432-1901

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

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

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 25-4012, Idaho Code.

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

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

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

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

The Rules Governing Poultry Operations establish standards for the storage, containment and application of nutrients from commercial poultry facilities. These rules also outline the construction standards for all storage containment structures. The rule sets limits on certain nutrient loading at land application site and establishes prohibitions of discharges into waters of the state.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

The fees outlined in this rule fund the required activities. The program outlines waste management standards for poultry operations in Idaho. The fee assessed funds bi-annual inspections of each facility and nutrient management plan review.

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

Dated this 6th day of June, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 02-0432-1901

IDAPA 02
TITLE 04
CHAPTER 32

02.04.32 – RULES GOVERNING POULTRY OPERATIONS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 25-4012, Idaho Code. (3-21-12)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.32, “Rules Governing Poultry Operations.” (3-21-12)

02. Scope. These rules govern the design, function and management practices of waste systems on poultry concentrated animal feeding operations. These rules also establish the procedures and requirements for issuance of a permit to construct, operate, or expand poultry concentrated animal feeding operations. (3-21-12)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (3-21-12)

003. ADMINISTRATIVE APPEAL.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. There is no provision for administrative appeal before the department of Agriculture under these rules. (3-21-12)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference and copies of these documents may be obtained from the Idaho State Department of Agriculture central office. (3-21-12)

01. The 2004 Code of Federal Regulations (CFR) Title 40 Part 122 Section 122.23 (b). This document can be viewed online at http://www.access.gpo.gov/nara/cfr/waisidx_04/40cfrv20_04.html. (3-21-12)

02. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS). This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/2008_Appendix_10D.pdf. (3-21-12)

03. Nutrient Management Standard (NMS). The June 2007 publication by the United States Department of Agriculture (USDA) Idaho Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/june_2007_NRCS_590.pdf. (3-21-12)

04. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/nrcs_313_Dec_2004.pdf. (3-21-12)

05. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/asae_EP393.3_Feb_04.pdf. (3-21-12)

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/>. (3-21-12)

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture central office. (3-21-12)

007. -- 009. (RESERVED)

010. DEFINITIONS.

The definitions set forth in Section 25-4002, Idaho Code, must apply in the interpretation and the enforcement of this chapter. (3-21-12)

01. Discharge. Release of process wastewater or manure from a poultry animal feeding operation, including its land application area, to waters of the state or beyond the poultry facility's property boundaries or beyond the property boundary of any facility. Contract manure haulers, producers and other persons who haul manure beyond the operator's property boundaries are responsible for releases of manure between the property boundaries of the operator and the property boundaries at the point of application. A discharge does not include aerosolized matter, or manure that has been reasonably incorporated on the land application area. (3-21-12)

02. 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)

03. Runoff. Any precipitation that comes into contact with manure, compost, bedding, or feed on a poultry feeding operation and flows off the production area or flows off land application areas where the manure, compost, bedding, or feed has not been reasonably incorporated into the soil. (3-21-12)

011. ABBREVIATIONS.

- 01. AFO.** Animal Feeding Operation. (3-21-12)
- 02. ASABE.** American Society of Agricultural and Biological Engineers. (3-21-12)
- 03. CAFO.** Concentrated Animal Feeding Operation. (3-21-12)
- 04. DEQ.** Department of Environmental Quality. (3-21-12)
- 05. FEMA.** Federal Emergency Management Agency. (3-21-12)
- 06. IPDES.** Idaho Pollutant Discharge Elimination System. (3-29-17)
- 07. NMP.** Nutrient Management Plan. (3-21-12)
- 08. NMS.** Nutrient Management Standard. (3-21-12)
- 09. NRCS.** United States Department of Agriculture, Natural Resources Conservation Service. (3-21-12)
- 10. USGS.** United States Geological Survey. (3-21-12)

012. -- 099. (RESERVED)

100. PERMIT REQUIRED.

No person may construct, operate, or expand a poultry CAFO after April 6, 2011, without first obtaining a permit issued by the director as provided in these rules. (3-21-12)

01. Common Control. Two (2) or more poultry CAFOs under common control of the same person may be considered, for purposes of permitting, to be a single facility, even though separately their capacity is less than a large or medium poultry CAFO, if they use a common animal waste system or land application site. (3-21-12)

02. Existing Poultry Facilities. Poultry operations that existed on or before April 6, 2011, are not required to obtain a permit unless the facility is expanding to the extent that it will meet the definition of a poultry CAFO. Existing poultry facilities must register and submit an NMP in accordance with Section 170 of these rules, and must otherwise comply with these rules. (3-21-12)

101. -- 109. (RESERVED)

110. PERMIT APPLICATION.

01. Permit Application. Every person required by these rules to obtain a permit must submit a permit application to the department. The permit application will be used to determine if the construction and operation of the poultry CAFO will be in conformance with these rules. (3-21-12)

02. Contents of Application. Each application must include, in the format set forth by the director and when determined applicable by the director, the information set forth in Section 110 in sufficient detail to allow the director to make necessary application review decisions concerning design and environmental protection. (3-21-12)

03. Relevant Information. (3-21-12)

a. Name, mailing address and phone number of the facility owner. (3-21-12)

b. Name, mailing address and phone number of the facility operator. (3-21-12)

c. Name and mailing address of the facility. (3-21-12)

d. Legal description of the facility location. (3-21-12)

e. The one-time animal capacity, by head, of the facility. (3-21-12)

f. The type of animals to be confined at the facility. (3-21-12)

g. The facility's biosecurity and sanitary standards. (3-21-12)

04. Construction Plans. Plans and specifications for the facility's animal waste management system that include the following information: (3-21-12)

a. Vicinity map(s) prepared on one (1) or more seven and one-half minute (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following: (3-21-12)

i. Layout of the facility, including buildings and animal waste management system; (3-21-12)

ii. The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant; and (3-21-12)

iii. Private and community domestic water wells, irrigation wells, monitoring wells, and injection wells, irrigation conveyance and drainage structures, wetlands, streams, springs, and reservoirs that are within a one (1) mile radius of the facility. (3-21-12)

b. A site plan showing: (3-21-12)

- i. Building locations; (3-21-12)
- ii. Waste facilities; (3-21-12)
- iii. All waste conveyance systems; and (3-21-12)
- iv. All irrigation systems used for land application, including details of approved water supply protection devices. (3-21-12)
- c. Building plans showing: (3-21-12)
 - i. All wastewater collection systems in housed units; (3-21-12)
 - ii. All freshwater supply systems, including details of approved water supply protection devices; (3-21-12)
 - iii. Detailed drawings of wastewater collection and conveyance systems and containment construction. (3-21-12)
- d. If a CAFO Site Advisory Team suitability determination was not conducted for the facility, the following additional information must be provided: (3-21-12)
 - i. Idaho DEQ delineated source water assessment areas within a one (1) mile radius of the facility and land application area; (3-21-12)
 - ii. Idaho DEQ delineated nitrate priority areas that intersect the facility or land application area; (3-21-12)
 - iii. Soil characteristics from NRCS; and (3-21-12)
 - iv. Well logs associated with wells listed in Subsection 110.04.a.iii. (3-21-12)
- e. All construction plans will specify how the facility will meet the engineering standards outlined in the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS), Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004, or American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. (3-21-12)

05. Nutrient Management Plan. NMPs must be 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. (3-21-12)

06. Other Information. An applicant must provide any other information required by Section 110 as deemed necessary by the director to assess whether the facility poses or will pose a threat to the state's water resources. (3-21-12)

111. -- 119. (RESERVED)

120. APPLICATION PROCESSING PROCEDURE.

01. Application Completeness. Within thirty (30) days of receipt of an application, the department will provide written notice to the applicant as to whether the application contains all of the information required in Section 110. If the application is incomplete, the department will provide a specific list of the missing information. The application will not be processed until it is deemed complete by the department. (3-21-12)

02. Application Processing. Within sixty (60) days of receiving a complete application, the

department will review the application materials and determine whether the design of the facility is in accordance with the engineering standards and specifications provided by the NRCS or ASABE. The department will notify the applicant of the results of that review. (3-21-12)

121. -- 129. (RESERVED)

130. PERMIT CONDITIONS.

The following conditions will apply to all permittees: (3-21-12)

01. Compliance Required. The permittee must comply with all conditions of the permit. The permit must not relieve the permittee of the responsibility of complying with all applicable local, state, and federal laws. (3-21-12)

02. Construction, Operation, and Maintenance of the Facility. The permittee must ensure that construction, operation, and maintenance of the facility proceed according to the construction plans and specifications and the approved nutrient management plans, and comply with the following: (3-21-12)

a. Within thirty (30) days of construction completion, submit as-built construction plans. (3-21-12)

b. Apply best management practices as approved by the director. (3-21-12)

c. The facility or operations associated with the facility must not adversely affect waters of the state or create nuisance conditions including odor. (3-21-12)

d. The removal of animal waste from an impoundment or storage structure must be performed in a manner not to damage the integrity of the liner. (3-21-12)

e. Dead animals must be handled in accordance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." (3-21-12)

f. Nutrient management plans must be amended in accordance with IDAPA 02.04.30.000 et seq. "Rules Governing Nutrient Management." (3-21-12)

g. Soil tests must be conducted annually on all land application sites owned or leased by the permittee to determine compliance with the NMP and NMS. The director may require more frequent soil tests if he deems it necessary. (3-21-12)

03. Information to be Provided. The permittee must furnish to the director, within a reasonable time, any information which the director may reasonably require to determine whether causes exists to modify or revoke the permit, or to determine compliance with the permit or applicable rules. (3-21-12)

04. Entry and Access. The permittee must allow the director entry and access in accordance with Section 25-4008, Idaho Code. (3-21-12)

05. Reporting. Permittees must report discharges or noncompliance issues within the following time frames: (3-21-12)

a. Within twenty-four (24) hours of the time the permittee knows or should have known of a discharge or unauthorized discharge, the permittee must verbally report the discharge. (3-21-12)

b. Within five (5) working days from the time a permittee knows or reasonably should have known of any event which has resulted or which may result in noncompliance with these rules, the permittee must file a written report with the director. The report must contain: (3-21-12)

i. A description of the event and its cause or if the cause is not known, steps taken to investigate and determine the cause; (3-21-12)

- ii. The period of the event including, to the extent possible, times and dates; (3-21-12)
- iii. Measures taken to mitigate or eliminate the event; and (3-21-12)
- iv. Steps taken to prevent recurrence of the event. (3-21-12)
- c. Immediately, whenever the permittee knows or learns or should reasonably know of material relevant acts not submitted or incorrect information submitted in a permit application or any report or notice to the director. (3-21-12)

06. Construction Commencement. If a permittee fails to begin construction or expansion of a facility within five (5) years of the effective date of the permit, the director may void the permit and require a new permit application. (3-21-12)

07. Permit Renewal. If a permittee intends to continue operation of the permitted facility after expiration of an existing permit, the permittee must apply for a new permit at least one hundred eighty (180) days prior to the expiration of the permit. (3-21-12)

08. Specific Permit Conditions. The director may establish specific permit conditions on a case by case basis. Specific conditions will be established in consideration of facility's specific characteristics and will be designed to protect the state's water resources. (3-21-12)

131. -- 139. (RESERVED)

140. FEES AND ASSESSMENTS.

01. Annual Fees or Assessments. The director may establish annual fees or assessments for each permittee of no more than three cents (\$0.03) per square foot of containment area. (3-21-12)

02. Payment of Annual Fees or Assessments. The director must notify each permittee with a fee or assessment invoice by December 20th of each calendar year. Annual fees or assessments are due annually by January 20th of the next calendar year. (3-21-12)

03. Adjustment in Fees or Assessments. The director will provide at least thirty (30) days written notice to each permittee before fees or assessments are increased or decreased. (3-21-12)

141. -- 149. (RESERVED)

150. PERMIT MODIFICATION.

01. Minor Modifications. Minor permit modifications are those which do not have a potential effect on the state's water resources. Such modifications will be made by the director, and are generally limited to: (3-21-12)

- a. The correction of typographical or clerical errors; (3-21-12)
- b. Transfer of ownership or operational control in accordance with Section 160; or (3-21-12)
- c. Certain minor changes in monitoring or operational conditions. (3-21-12)

02. Major Modifications. All permit modifications not considered minor will be deemed major. The procedure for making major modifications is the same as that used for a new permit under these rules. (3-21-12)

151. -- 159. (RESERVED)

160. TRANSFER OF PERMITS.

01. Transfer Application. A new owner or operator of a facility must submit a transfer application to the director that includes at least the following: (3-21-12)

- a. The relevant information required by Subsection 110.03; and (3-21-12)
- b. Any change of conditions at the facility resulting from the ownership or operation transfer. (3-21-12)

02. Transfer Application Review. The director will review the transfer application and either approve or deny the application within sixty (60) days of its receipt. (3-21-12)

a. An approved transfer will be considered a minor modification pursuant to Subsection 150.01 as long as there are no major changes of conditions at the facility. Major changes of conditions at the facility are subject to Subsection 150.02. (3-21-12)

b. If the director denies the transfer application, he will set forth the specific reasons for the denial, the steps necessary to meet the requirements for a permit transfer, and the opportunity to request a hearing. (3-21-12)

161. -- 169. (RESERVED)

170. REGISTRATION OF EXISTING POULTRY CAFOS.

All large and medium poultry CAFOs in existence on or before April 6, 2011, must register with the department no later than January 1, 2012, upon forms furnished by the department. (3-21-12)

01. Information Required. The following information must be provided to the department in order to register an existing medium or large poultry CAFO. (3-21-12)

- a. Name, mailing address, phone number and email address (if applicable) of the facility owner; (3-21-12)
- b. Name, mailing address, phone number and email address (if applicable) of the facility operator; (3-21-12)
- c. Physical address of the facility; (3-21-12)
- d. Facility site map; (3-21-12)
- e. Facility capacity; and (3-21-12)
- f. Average poultry population over the twelve (12) months preceding the date the registration information is provided by the operator. (3-21-12)

02. Nutrient Management Plan. No later than April 6, 2012, existing medium and large poultry CAFOs must submit an NMP, prepared in conformance with the NMS or other equally protective standard for managing the amount, source, placement, form and timing of the land application of nutrients or soil amendments. The NMP must accurately reflect the operation of the facility. (3-21-12)

03. Permit Allowed. An existing medium or large CAFO may, in the alternative, seek a permit pursuant to Section 110. (3-21-12)

04. Permit Required. An existing facility must obtain a permit in accordance with Section 110, prior to increasing the one-time animal capacity of the facility by ten percent (10%) or more. (3-21-12)

05. Ownership Transfer. If an existing poultry CAFO has registered with the department and ownership is subsequently transferred to a new owner, the new owners must apply for and obtain a new permit in accordance with Section 110. (3-21-12)

171. -- 199. (RESERVED)

200. WASTE STORAGE AND CONTAINMENT FACILITIES.

01. Wastewater Storage and Containment Facilities. All poultry AFOs where process wastewater leaves the confinement area and has the potential to impact water of the state or be in violation of state water quality standards or ground water quality standards must have wastewater storage and containment facilities designed, constructed, operated, and maintained sufficient to contain: (3-21-12)

- a. All process wastewater generated on the facility during the non-land application season; (3-21-12)
- b. The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and (3-21-12)
- 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. (3-21-12)

02. All Substances Entering Wastewater Storage and Containment Facilities. All substances entering wastewater storage and containment facilities must be composed of manure and process wastewater from the operation of the poultry AFO. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to, human waste, is prohibited. (3-21-12)

03. Waste Storage. Storage areas for poultry waste including compost and solid manure storage areas must be located on approved soils and appropriately protected to prevent run on and run off. (3-21-12)

04. Waste and Wastewater System Maintenance. Waste and wastewater storage and containment systems must be maintained in a condition that allows the producer to regularly inspect the integrity of the systems. (3-21-12)

05. Additional Ground Water Protection Requirements. The permittee must construct and maintain all waste containment structures within the parameters of this rule, including the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS), Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004, or American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004 (see Section 004, Incorporation by Reference). After inspection, if the Department has information that the waste containment structure(s) has been compromised severely enough to no longer meet the requirements of this rule, the Department may require an evaluation to be conducted by a licensed professional engineer. The engineer will make recommendations on steps needed to bring the facility into compliance with this rule. The permittee is responsible for engineering and reconstruction costs. If the permittee has a repeat waste containment compromise, as determined by the department, the Director may require ground water monitoring by the permittee. (3-21-12)

201. -- 249. (RESERVED)

250. NUTRIENT MANAGEMENT.

Each poultry CAFO must submit an NMP for land owned or controlled by the operator to the director for approval. The NMP must conform to the NMS and address odors generated in excess of odors normally associated with raising poultry in Idaho. (3-21-12)

01. Existing Poultry CAFOs. Poultry CAFOs that are operating on or before April 6, 2011, must submit an NMP to the director for approval no later than April 6, 2012. (3-21-12)

02. New Poultry CAFOs. Any poultry CAFO which commences operations after April 6, 2011, must not operate prior to the director's approval of the NMP. (3-21-12)

03. Designated Poultry CAFOs. Any poultry AFO which is designated as a CAFO by the department in accordance with Section 400 must submit an NMP within forty-five (45) days of designation. (3-21-12)

04. NMP Approval. The director will respond to or approve an NMP in writing within forty-five (45) days of submission. (3-21-12)

05. NMP Updates or Amendments. Nutrient management plans must be updated as needed to accurately reflect the facility and its nutrient management system. (3-21-12)

251. NUTRIENT MANAGEMENT PLAN RETENTION.

All NMPs which have been approved by the department and returned to the CAFO must be maintained on site at the CAFO and available to the department upon request. The department will retain a copy of the NMP. (3-21-12)

252. NUTRIENT MANAGEMENT RECORDS.

01. Required Nutrient Management Records. The CAFO operator must keep complete and accurate records of: (3-21-12)

a. Land application records, consisting of, at a minimum: (3-21-12)

i. The dates, methods and approximate amounts of any manure or process wastewater applied on land owned or controlled by the operator. (3-21-12)

ii. Weather conditions and soil moisture at the time of application. (3-21-12)

iii. The lapsed time to manure incorporation, rainfall or irrigation event. (3-21-12)

iv. Documentation of the actual rate at which nutrients were applied. When the actual rate used differs from the recommended and planned rates, nutrient management records must indicate the rationale for the difference. (3-21-12)

b. The name and address of any third party receiving manure or process wastewater from the facility, including the dates of the transfer and the amount of manure or process wastewater transferred. (3-21-12)

c. Nutrient Application. The quantities, analyses and sources of nutrients applied. (3-21-12)

d. Soil Analysis. Complete soil analysis to create nutrient budget. (3-21-12)

e. Crops. Crops planted, planting and harvest dates, yields and crop residues removed. (3-21-12)

f. Record Review. Dates of annual review, person performing the review, and recommendations determined from the review. (3-21-12)

02. Records Retention. All nutrient management records must be maintained for a period of five (5) years and provided to the department upon request. (3-21-12)

253. NMP VIOLATIONS.

The failure to implement an approved NMP, failure to retain and maintain an NMP at the CAFO, or failure to retain nutrient management records is a violation of these rules. (3-21-12)

254. -- 259. (RESERVED)

260. GROUND WATER QUALITY MONITORING.

At least annually, the department will sample and test the facility's production well water for nitrogen. (3-21-12)

261. -- 299. (RESERVED)

300. PROHIBITED DISCHARGES.

Discharges or unauthorized discharges of manure or process wastewater from poultry CAFO or land application sites owned or controlled by a poultry CAFO are prohibited. (3-21-12)

301. -- 309. (RESERVED)

310. NOTIFICATION OF DISCHARGE.

Within twenty-four (24) hours of learning of a discharge or unauthorized discharge, the operator of a poultry CAFO must verbally notify the department of the discharge or unauthorized discharge. (3-21-12)

311. -- 399. (RESERVED)

400. DESIGNATION OF POULTRY CONCENTRATED ANIMAL FEEDING OPERATIONS.

01. Designation of Animal Feeding Operations. The director may designate any poultry AFO as a CAFO if, after inspection, the director determines that the AFO is a significant contributor of pollution to waters of the state. The director will consider the following factors when making a designation: (3-21-12)

a. The size of the AFO and the amount of manure, process wastewater and runoff reaching waters of the state; (3-21-12)

b. Location of the AFO relative to waters of the state; (3-21-12)

c. Means of conveyance of manure, process wastewater, and runoff into waters of the state; (3-21-12)

d. Slope, vegetation, precipitation and other factors that affect the likelihood or frequency of discharge of manure, process wastewater and runoff into waters of the state; (3-21-12)

e. Unauthorized discharges into waters of the state through a man-made ditch, flushing system, or other similar man-made device; (3-21-12)

f. Unauthorized discharges directly into waters of the state that originate outside of and pass over, across or through the facility or otherwise come into contact with the animals confined in the AFO; and (3-21-12)

g. Repeated instances of noncompliance. (3-21-12)

02. Effect of Designation. Upon designation, a poultry facility will be required to follow all permit requirements for a medium poultry CAFO. (3-21-12)

03. Redesignation of a Poultry CAFO. The operator may request that the director redesignate a facility previously designated under Subsection 400.01. The director will redesignate the CAFO only if the facility is no longer a significant contributor of pollution to waters of the state. If granted, the redesignation will be provided to the operator in writing. No fees or assessments paid by the facility after designation will be refunded. (3-21-12)

401. -- 499. (RESERVED)

500. INSPECTIONS.

Pursuant to Title 25, Chapter 40, Idaho Code, the director or his designee is authorized to inspect any poultry AFO, and to have access to and copy any facility records deemed necessary to ensure compliance with Title 25, Chapter 40, Idaho Code, and these rules. (3-21-12)

01. Frequency. All poultry CAFOs will be inspected at least annually, or at intervals sufficient to determine that waste has been managed to prevent an unauthorized discharge or contamination of waters of the state. (3-21-12)

02. Inspection Methods. Inspections may include, but are not limited to, evaluating effectiveness of best management practices, collecting samples, taking photographs, video recording or collecting other information as necessary. (3-21-12)

03. Inspection Report Forms. An official inspection report form will be completed at the time of the

inspection and provided to the operator.

(3-21-12)

501. -- 549. (RESERVED)

550. VIOLATIONS.

01. Failure to Comply. Failure by a permittee to comply with the provisions of these rules or with any permit condition is a violation of these rules. (3-21-12)

02. Falsification of Statements and Records. It is a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application, report, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of a permit. (3-21-12)

03. Discharge. Any discharge or unauthorized discharge from a facility is a violation of these rules. (3-21-12)

551. -- 999. (RESERVED)