

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

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

IDAPA 02.04.15 - Rules Governing Beef Cattle Animal Feeding Operations - Proposed Rule (Docket
No. 02-0415-2401).

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 11/21/2024. 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 12/19/2024.

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

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



Terri Kondeff
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: Legislative Drafter - Alli Olson

DATE: November 04, 2024

SUBJECT: Department of Agriculture

IDAPA 02.04.15 - Rules Governing Beef Cattle Animal Feeding Operations - Proposed Rule (Docket No. 02-0415-2401)

Summary and Stated Reasons for the Rule

The Idaho Department of Agriculture submits notice of proposed rulemaking for the Rules Governing Beef Cattle Animal Feeding Operations, IDAPA 02.04.15. The Department states that the rulemaking is being facilitated to remove now redundant language that is included in the Environmental & Nutrient management Rule that underwent Zero Based Regulation review in 2023 and was approved by the Legislature in 2024.

Negotiated Rulemaking / Fiscal Impact

The Department states that negotiated rulemaking was conducted because the changes and notice was published in the July 3, 2024, Idaho Administrative Bulletin, Volume 24-7, pages 43-44. The Department also states that there are no associated fees nor fiscal impact to the General Fund.

Statutory Authority

The Department of Agriculture appears to have the authority to promulgate this rule pursuant to Sections 22-110 and 22-4903 Idaho Code.

cc: Department of Agriculture
Lloyd Knight

*** PLEASE NOTE ***

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

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

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

IDAPA 02 – IDAHO STATE DEPARTMENT OF AGRICULTURE
02.04.15 – RULES GOVERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS
DOCKET NO. 02-0415-2401
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 22-110 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 October 16, 2024.

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 rulemaking is being facilitated to remove now redundant language that is included in the Environmental & Nutrient Management Rule that underwent Zero Based Regulation (ZBR) review in 2023 and was approved by the Idaho Legislature in 2024. This rule was last open for ZBR review in 2022.

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

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

There is no change in fee or charge

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

There is no fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000).

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 July 3, 2024 Idaho Administrative Bulletin, [Volume 24-7, Pages 43 and 44](#).

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:

The 1997 United States Department of Agriculture Natural Resources Conservation Service Agricultural Waste Management Field Handbook was added as an attachment to the ISDA website. The referenced web address change reflected this.

The 1999 Publication by the United States Department of Agriculture, Natural Resource Conservation Service, Conservation Practice Standard, Nutrient Management Code 590 was removed to be consistent with rule changes approved by the Idaho Legislature in the 2024 session.

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

This rule implements the requirements of the Beef Cattle Environmental Control Act, as defined in Title 22, Chapter 49, Idaho Code. The federal government does have regulatory authority over the permitting of discharges from beef cattle animal feeding operations, which is implemented by the Idaho Department of Environmental Quality Idaho Pollution Discharge Elimination System (IPDES) program.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight at lloyd.knight@isda.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2024.

DATED this 2nd day of October, 2024.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0415-2401
(Only Those Sections With Amendments Are Shown.)

02.04.15 – RULES GOVERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS

001. SCOPE.

These rules govern the design, function, and management practices of waste systems on beef cattle animal feeding operations. ~~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.~~ (4-6-23)()

002. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this chapter: (4-6-23)

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~~ https://agri.idaho.gov/main/wp-content/uploads/2017/08/nrcs_10d_1997.pdf. (4-6-23)()

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/>. (4-6-23)

~~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. (4-6-23)~~

043. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2022. This document is available online at <https://agri.idaho.gov/main/wp-content/uploads/2022/03/PSIBeef.pdf>. (4-6-23)

003. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of this chapter. (4-6-23)

01. Animal. Bovidae, ovidae, suidae, equidae, captive cervidae, captive antilocapridae, camelidae, and ratitidae. (4-6-23)

02. 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. (4-6-23)()

03. Compost. A biologically stable material derived from the biological decomposition of organic matter. (4-6-23)

04. 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 on contiguous property 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. (4-6-23)

05. Discharge. Release of process wastewater or manure from a beef cattle animal feeding operation to waters of the state. (4-6-23)

~~06. 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. (4-6-23)~~

~~076.~~ **Land Application.** The spreading on, or incorporation of manure or process wastewater into the soil. (4-6-23)

087. **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: (4-6-23)

a. Seven hundred (700) mature dairy cows, whether milked or dry; (4-6-23)

b. One thousand (1,000) veal calves; (4-6-23)

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; (4-6-23)

~~098.~~ **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: (4-6-23)

a. Two hundred (200) to six hundred ninety-nine (699) mature dairy cows, whether milked or dry; (4-6-23)

b. Three hundred (300) to nine hundred ninety-nine (999) veal calves; (4-6-23)

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; (4-6-23)

~~109.~~ **Operate.** Confining and feeding slaughter and feeder cattle in the state of Idaho. (4-6-23)

~~110.~~ **Operator.** The person who has power or authority to manage, or direct, or has financial control of a beef cattle animal feeding operation. (4-6-23)

~~121.~~ **Phosphorus Site Index.** A method to evaluate the relative potential for off-site movement of phosphorus from a field or pasture based upon risk factors relating to surface transport, phosphorus loss potential and nutrient management practices. (4-6-23)

~~132.~~ **Runoff.** Any precipitation that comes into contact with manure, compost, bedding, or feed on a beef cattle animal feeding operation. (4-6-23)

~~143.~~ **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." (4-6-23)

~~154.~~ **Small Concentrated Animal Feeding Operation.** An AFO that is designated as a CAFO and is not a medium or large CAFO. (4-6-23)

004. ABBREVIATIONS.

~~01.~~ **AFO.** Animal Feeding Operation. (4-6-23)

~~02.~~ **CAFO.** Concentrated Animal Feeding Operation. (4-6-23)

~~03.~~ ~~**IPDES.** Idaho Pollutant Discharge Elimination System.~~ (4-6-23)

~~043.~~ **NMP.** Nutrient Management Plan. (4-6-23)

~~054.~~ **NRCS.** United States Department of Agriculture, Natural Resources Conservation Service. (4-6-23)

~~065.~~ **PSI.** Phosphorus Site Index (4-6-23)

(BREAK IN CONTINUITY OF SECTIONS)

020. WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

~~01.~~ **Wastewater Storage and Containment Facilities.** All beef cattle 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, and operated, ~~and maintained sufficient to contain;~~ to meet a minimum of one hundred twenty (120) days of holding capacity and pursuant to IDAPA 02.04.30, Rules Governing Environmental and Nutrient Management. (4-6-23)()

~~a.~~ ~~All process wastewater generated on the facility during the non-land application season; and~~ (4-6-23)

~~b.~~ ~~The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and~~ (4-6-23)

~~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.~~ (4-6-23)

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 AFO. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to, human waste, is prohibited. (4-6-23)

(BREAK IN CONTINUITY OF SECTIONS)

~~032. NUTRIENT MANAGEMENT RECORDS.~~

~~The operators of beef cattle AFOs shall keep complete and accurate records of: (4-6-23)~~

~~**01. Land Application.** The dates and amounts of any manure or process wastewater applied on land owned or controlled by the operator. (4-6-23)~~

~~**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. (4-6-23)~~

~~033. -- 039. (RESERVED)~~

(BREAK IN CONTINUITY OF SECTIONS)

~~041. -- 049. (RESERVED)~~

~~050. 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. (4-6-23)~~

~~051. 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. (4-6-23)~~

~~052. -- 999. (RESERVED)~~