

**IDAPA 02
TITLE 04
CHAPTER 14**

02.04.14 - RULES GOVERNING DAIRY WASTE BYPRODUCT

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapters 3, 4 and 6, Idaho Code. (4-11-15)(_____)

001. TITLE AND SCOPE.

01. Title. The title of this chapter of the Idaho State Department of Agriculture is IDAPA 02.04.14, “Rules Governing Dairy ~~Waste~~ Byproduct.” (3-29-10)(_____)

02. Scope. This chapter has the following scope: These rules shall govern the Department’s review, approval and enforcement of dairy environmental management plans to ensure that dairy environmental management systems are constructed, operated and maintained in a manner that protects the natural resources of the state. This section’s citation is Idaho Code 37-602(2). the design, function and management practices of dairy waste systems. The official citation of this chapter is IDAPA 02.04.14.000 et seq. For example, this section’s citation is IDAPA 02.04.14.001. — (3-20-97) 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. (3-20-97)(_____)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference, and copies of the documents may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712 or accessed online. (3-29-10)

01. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (1997 Edition) (USDA, NRCS). This document is available online at http://www.agri.idaho.gov/AGRI/Categories/Animals/Documents/nrcs_10d_1997.pdf. (3-29-10)(_____)

02. Nutrient Management Standard (NMS). The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590, available online at http://www.agri.idaho.gov/AGRI/Categories/Animals/Documents/nutrient_Management_code_590.PDF. (3-29-10)(_____)

03. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004. This document is available online at http://www.agri.idaho.gov/AGRI/Categories/Environment/Documents/nrcs_313_Dec_2004.pdf. (3-29-10)(_____)

04. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. This document is part of a copyrighted publication and is available for viewing at the ISDA offices or a copy may be purchased online at <http://www.asabe.org/>. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

007. — FINDINGS.

The Department finds that pursuant to Section 67-5226(1), Idaho Code, these rules are necessary to protect the public health, safety, and welfare of Idaho, enhance Idaho water quality and preserve the integrity of the Idaho dairy industry. These rules establish design, construction, operation, location, and inspection criteria for dairy farms and dairy waste systems on Idaho dairy farms and enable the Department to implement the 1999 NRCS Nutrient Management Standard (NMS) on dairy farms to appropriately manage dairy waste. These rules also provide penalty provisions.

(4-11-15)

008007. -- 009. (RESERVED)

010. DEFINITIONS.

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

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

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

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

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

05. **Dairy Animal.** Milking cows, sheep or goats. ()

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

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

08. **Dairy Environmental Management System.** The areas and structures within a dairy farm where dairy byproducts are collected, stored, treated or applied to land. These areas and structures may include corrals, feeding areas, collection systems, conveyance systems, storage ponds, treatment lagoons, and evaporative ponds and land application areas, but do not include pastures as defined in these rules. ()

094. **Dairy Farm.** The land owned or operated by a person as an integral component of a Department-permitted grade A or manufacture grade facility dairy farm and is a place or premises where one (1) or more milking cows, sheep, or goats are kept, and from which all or a portion of the milk produced thereon is delivered, sold or offered for sale for human consumption. A dairy farm does not include those lands that contain non-dairy animals provided a physical separation exists from lands owned or operated by the dairy, byproducts remain separate, and dairy animals are not comingled with non-dairy animals. (4-11-15)()

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

11. **Dairy Storage and Containment Facilities.** The areas and structures within a dairy farm where dairy byproducts are collected, stored or treated in conformance with engineering standards and specifications

published by the USDA Natural Resources Conservation Service or by the ASABE, or other equally protective criteria approved by the Director. These areas may include corrals, feeding areas, collection systems, conveyance systems, storage ponds, treatment lagoons, evaporative ponds and compost areas, but do not include pastures as defined in these Rules. ()

~~05. Dairy Waste. Manure and process wastewater that may also contain bedding, spilled feed, compost, 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. (4-11-15)~~

~~06. Dairy Waste System or Waste System. The portion of a dairy farm where dairy waste is stored, collected, or treated. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons, and evaporative ponds. (4-11-15)~~

~~0712. Department. The Idaho State Department of Agriculture. (3-29-10)~~

~~0813. Director. The Director of the Idaho State Department of Agriculture or his designee. (3-29-10)~~

~~14. Export. The delivery of dairy byproducts from a dairy farm to a third party for the third party's use. ()~~

~~09. Farm Certification. A permit issued by the Department allowing the sale of manufacture grade milk. (3-20-97)~~

~~1015. Fieldman. An individual qualified and approved by the Department to perform dairy farm inspections. (3-20-97)~~

16. Idaho Pollutant Discharge Elimination System. 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. ()

~~1117. Inspector. A qualified, trained person employed by the Department to perform dairy farm inspections. (3-20-97)~~

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

~~12. Livestock. For the purposes of these rules the term livestock shall include bovidae, suidae, equidae and other animals that are kept on or contiguous to a dairy farm and are owned or controlled by a dairy farm. (3-19-99)~~

~~13. Manufacture Grade Milk. Milk produced for processing into dairy products for human consumption but not subject to Grade A requirements. (3-20-97)~~

~~194. Modification or Modified. Structural changes and alterations to the dairy waste storage and containment system facility that would require increased storage or containment capacity or such changes that would alter the function of the waste system facility. (4-11-15)()~~

~~15. National Pollutant Discharge Elimination System (NPDES). The point source permitting program established pursuant to section 402 of the federal clean water act. (4-11-15)~~

~~2016. Non-Compliance. A practice or condition that causes an unauthorized discharge; or, if left uncorrected, will cause an unauthorized discharge, or does not meet the requirements of a dairy environmental management plan. Noncompliance does not include an upset condition. nutrient management standards and comply with a NMP. (4-11-15)()~~

~~17. Nutrient Management Plan (NMP). A plan prepared in conformance with the Nutrient~~

~~Management Standard (NMS) or other equally protective standard for managing the amount, placement, form, and timing of the land application of nutrients and soil amendments. (4-11-15)~~

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

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

~~1823. Permit.~~ A permit issued by the Department allowing the sale of Grade A milk or manufacture grade milk. (3-20-97)()

1924. Person. Any individual, partnership, association, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency, or instrumentality; or any legal entity that is recognized by law as the subject of rights and duties. (4-11-15)

~~250. Process Wastewater. Liquid containing dairy manure.~~ Water directly or indirectly used or produced in dairy animal rearing, milk production and environmental management processes including, but not limited to: excess milk; spillage or overflow from watering, washing, spraying or cooling dairy animals; water containing dairy manure; water used in washing, cleaning, or flushing barns, manure pits and other areas involved in the milk production and environmental management processes; water used for dust control; and water that comes into contact with any raw materials, products, or byproducts of the dairy production and environmental management processes. (4-11-15)()

264. Producer. The person who owns or operates a permitted dairy farm, exercises control over the production of milk delivered to a plant, and who receives payment for this product. (3-20-97)

~~272. Unauthorized Discharge.~~ A discharge of dairy waste to state surface waters or ground waters, or beyond a dairy farm's property boundaries, that does not meet the requirements of these rules or ground water or surface water quality standards, pollutants from a dairy farm to waters of the United States as defined in the federal clean water act that is required to be but is not authorized by an IPDES permit. Unauthorized discharge does not include an upset condition or agricultural stormwater discharge. (4-11-15)()

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

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

011. ABBREVIATIONS.

~~There are no abbreviations in this chapter.~~ (3-29-10)

- 01. ASABE. American Society of Agricultural and Biological Engineers ()
- 02. IPDES. Idaho Pollutant Distribution Elimination System ()
- 03. NMS. Nutrient Management Standard ()
- 04. NRCS. Natural Resources Conservation Service ()
- 05. USDA. United States Department of Agriculture ()

012. -- ~~019029.~~ (RESERVED)

020. — PERMITS AND CERTIFICATION.

No Producer shall offer for sale or sell milk unless the producing dairy farm has been issued a Grade A permit or a farm certification from the Department. (3-20-97)

~~01. Grade A Permit. A permit issued by the Department if the dairy farm complies with the requirements of the “Grade ‘A’ Pasteurized Milk Ordinance”, as incorporated by reference in IDAPA 02.04.08, “Rules Governing Grade A Milk and Milk Products”, and has in place and operates a dairy waste system consistent with the NMP, NMS, and Appendix 10D. (3-29-10)~~

~~02. Farm Certification. A certification issued by the Department if the dairy farm complies with the requirements of IDAPA 02.04.05, “Rules Governing Manufacture Grade Milk,” and has in place and operates a dairy waste system consistent with the NMP, NMS, and Appendix 10D. (3-29-10)~~

~~021. — 029. — (RESERVED)~~

030. WASTE SYSTEM DAIRY ENVIRONMENTAL MANAGEMENT PLAN APPROVAL.

The Department is authorized to approve environmental management plans, as provided in 37-606A, Idaho Code, the design, construction, operation, and location of dairy waste systems. These systems must conform to the NMP, NMS, and Appendix 10D. (3-29-10)()

01. Waste Containment and Dairy Storage and Containment Facility Criteria. (3-29-10)()

a. ~~Waste Dairy storage and containment structures facilities~~ shall be constructed to meet a minimum of one hundred eighty (180) days of holding capacity. ~~Wastewater-Process water~~ containment structures that are utilized as the secondary or final storage for effluent shall have a minimum two (2) vertical feet of freeboard. (3-29-10)()

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

c. The inside bottom of the ~~waste-dairy storage and containment structure facility~~ shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen ~~waste-dairy storage and containment structure facility~~, a soil liner shall be installed such that the specific discharge rate of the containment structure meet 1×10^{-6} cm³/cm²/sec or less as described in Appendix 10D. Concrete or synthetic liners must be constructed to the American Society of Agricultural and Biological Engineers Specification ASABE EP393.3 Manure Storages February 2004 and Appendix 10D as incorporated by reference in Section 004 of these rules. (3-29-10)()

d. Storage areas for dairy ~~waste-byproduct~~, including compost and solid manure storage areas, shall be located on approved soils and appropriately protected to prevent run on and run off. (4-11-15)()

e. ~~Waste-Dairy environmental management storage~~ systems shall be maintained in a condition that allows the Producer to regularly inspect the integrity of the systems. (3-29-10)()

02. Dairy Nutrient Management Plan (DNMP). ~~All dairy farms shall implement a Nutrient Management Plan (NMP) approved by the Department that accurately reflects the operation of the facility. The NMP shall include an accurate description of the one hundred eighty (180) days of holding capacity of the waste containment system. It shall be the dairy farm’s responsibility to update the NMP. Except as provided below, each dairy farm shall have a dairy nutrient management plan that is approved by the Department and included in the dairy farm’s environmental management plan. The DNMP shall cover the dairy farm site and other land owned and operated by the dairy farm owner or operator to which dairy byproducts are land applied. A new dairy farm governed by the IPDES program is not required to submit a DNMP to the Department. An existing dairy farm with an~~

approved DNMP that has a discharge to waters of the U.S. that requires an IPDES permit must comply with the nutrient management plan requirements under the IPDES rules and IPDES permit, notwithstanding the Department approved DNMP. Requirements to comply with the provisions of a DNMP include the following:(4-11-15)()

a. Producer annual soil tests shall be conducted as set forth in ~~the NMS~~ IDAPA 02.04.30, Rules Governing Nutrient Management. (3-29-10)()

b. Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with ~~the NMS~~ IDAPA 02.04.30, Rules Governing Nutrient Management. (3-29-10)()

i. If the regulatory or Producer soil tests reveal that phosphorus thresholds have exceeded the levels established in the NMS, the Producer shall only apply nutrients at the appropriate phosphorus crop uptake rate. (3-29-10)

ii. Subsequent regulatory soil test(s) on fields and pastures that were identified as exceeding the phosphorus threshold will be conducted. If two (2) out of three (3) tests reveal the phosphorus index continues to trend upward, the Producer will be penalized as provided in these rules. These tests shall be taken in the top one (1) foot of soil. (3-29-10)()

c. Accurate DNMP records shall be maintained. These records shall include at a minimum: (3-29-10)()

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

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

iii. Date and amount of dairy ~~waste~~ byproduct and commercial fertilizer applied to individual dairy owned or operated fields; (4-11-15)()

iv. Date(s) of exported dairy ~~waste~~ byproduct, number of acres applied, amount of dairy ~~waste~~ byproduct exported, and to whom dairy ~~waste~~ byproduct was exported; and (4-11-15)()

v. Actual crop yields on dairy owned or operated fields. (3-29-10)

d. **Pasturing.** Pastures utilized for grazing of dairy animals, and other animals owned, leased or otherwise under the control of a producer within the same pasture, shall be incorporated in and subject to the DNMP. These pastures are also subject to the following requirements: ()

i. Soil Testing. Soil tests shall be conducted pursuant to the NMS on all lands utilized as pasture. If pasture soil tests exceed the phosphorus threshold, the Producer must take action to demonstrate a downward trend in the phosphorus index in subsequent soil tests. If two (2) out of three (3) subsequent soil tests reveal the phosphorus index continues to trend upward, the Producer will be penalized as provided in these rules. ()

ii. Surface Water Access. If pastured animals have access to surface water within a pasture, the producer may be required to implement one or more NRCS conservation practice standards to minimize adverse impact on surface water quality. ()

iii. Land Application. If land application occurs within a pasture, soil tests shall be conducted annually on that pasture. ()

iv. Confinement Areas. Confinement areas shall not be considered part of a pasture. ()

031. -- 039. (RESERVED)

040. INSPECTIONS.

Each dairy farm shall be inspected by an Inspector or Fieldman at least annually or at intervals sufficient to determine that dairy ~~waste~~ byproducts and process water ~~has~~ have been managed to prevent an unauthorized discharge, unauthorized release, or contamination of surface and ground water. An official inspection report form as described in Section 041 will be completed at the time of inspection. (4-11-15)(_____)

041. INSPECTION REPORT FORMS.

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

042. -- 049. (RESERVED)

050. COMPLIANCE SCHEDULES.

01. Non-Compliance or Unauthorized ~~Discharge~~ Release Violations Identified. When the Director identifies items of non-compliance or unauthorized ~~discharge~~ release violations, the deficiencies will be noted and discussed with the Producer. Appropriate corrective actions will be identified and scheduled informally. The Director may develop a formal compliance schedule in the following cases: (4-11-15)(_____)

- a. When corrective actions cannot be completed within thirty (30) days; (4-5-00)
- b. When corrective actions require significant capital investment; (4-5-00)
- c. When informal schedules have not been ~~complied with~~ followed. (4-5-00)(_____)

02. Re-Inspection. Re-inspection of the dairy farm will be conducted as appropriate, to ensure compliance. An unauthorized ~~discharge~~ release violation shall be corrected immediately, when at all possible. (4-11-15)(_____)

051. -- 059. (RESERVED)

060. UNAUTHORIZED DISCHARGES AND UNAUTHORIZED RELEASES -- PENALTIES.

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

032. Non-Compliance. Non-compliance with requirements for dairy ~~waste~~ environmental systems, the NMS, and DNMP shall be addressed through corrective actions and compliance schedules pursuant to these rules. (4-11-15)(_____)

043. Penalties. For unauthorized ~~discharges~~ releases and non-compliance conditions, the Director shall have the authority to assess a fine of up to ten thousand dollars (\$10,000) per occurrence. Civil penalties collected under this subsection shall be remitted to the county where the violation occurred for deposit in the county current expense fund. (4-11-15)(_____)

054. Suspend Planners or Soil Samplers Certification. The Director may suspend certification of Certified Planners or Certified Soil Samplers in the event such Certified Planners or Soil Samplers fail to develop DNMPs or collect soil samples as required by these rules. (3-29-10)(_____)

061. COMPLIANCE WITH IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

01. Discharges to Waters of the U.S. The department of environmental quality shall be solely responsible and authorized to determine whether the discharge of pollutants from a Dairy Farm to waters of the US is required to be authorized by an IPDES permit. The provisions of this rule do not define when a Dairy Farm is required to obtain a permit for a discharge, do not exempt a Dairy Farm from permitting requirements for such

discharges or alter the authority of DEQ with respect to such discharges.

()

061-062. -- 999. (RESERVED)