

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.17 – RULES GOVERNING DEAD ANIMAL MOVEMENT AND DISPOSAL

DOCKET NO. 02-0417-1901

NOTICE OF RULEMAKING – PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2019.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2019.

DATED this 2nd day of August, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8500
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THE FOLLOWING IS THE PROPOSED RULE TEXT OF DOCKET NO. 02-0417-1901

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

This docket has been previously published as a temporary rule.

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

02.04.17 – RULES GOVERNING DEAD ANIMAL MOVEMENT AND DISPOSAL

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of [Title Sections 25-203 and 25-237](#), [Chapter 2](#), Idaho Code. (3-15-02)()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules Governing Dead Animal Movement and Disposal.” (3-15-02)

02. Scope. These rules govern the management, movement and disposal of dead animals. (3-15-02)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (3-15-02)

003. ADMINISTRATIVE APPEAL.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. There is no provision for administrative appeal before the State Department of Agriculture under these rules. (3-15-02)

004. INCORPORATION BY REFERENCE.

IDAPA 02.04.17 does not incorporate any materials by reference. (3-15-02)

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

The Idaho State Department of Agriculture central office is located at 2270 Old Penitentiary Road, Boise, ID 83712-8298. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is PO Box 7249, Boise, Idaho 83707. The phone number is (208) 332-8500 and the fax number is (208) 334-2170. The Department web address is <https://agri.idaho.gov/>. (3-15-02)

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records and are available for inspection at the State Department of Agriculture and on the internet. Official copies may be obtained from the Department of Administration, Office of Administrative Rules. (3-15-02)

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Abandon. To desert or intentionally leave a dead animal without proper disposal as provided in these rules. (3-15-02)

~~**02. Administrator.** The administrator of the Idaho State Department of Agriculture, Division of Animal Industries. (3-15-02)~~

~~**03. Air Curtain Incineration.** A mechanical process of incineration by which super-heated air is continuously circulated to enhance combustion. (3-15-02)~~

~~**04. Burial.** Interment of a dead animal below the natural surface of the ground. (3-15-02)~~

~~**05. Burning.** The act of consuming or destroying by fire with or without the use of an accelerant. (3-15-02)~~

~~**06. Composting.** The biological decomposition of organic matter under controlled conditions. (3-15-02)~~

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

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

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

~~109.~~ **Digestion.** A process by which organic matter is hydrolyzed. (3-15-02)

~~11.~~ **Director.** *The director of the Idaho State Department of Agriculture.* (3-15-02)

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

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

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

~~1513.~~ **Incineration.** The controlled and monitored combustion of dead animals for the purposes of volume reduction and pathogen control. (3-15-02)

~~16.~~ **Person.** *Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal government department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.* (3-15-02)

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

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

~~1916.~~ **Sanitary Landfill.** A solid waste disposal site permitted or approved by the Idaho Department of Environmental Quality. (3-15-02)

011. EXCLUSIONS.
The following establishments and animals shall be excluded from the provisions of these rules. (3-15-02)

01. Slaughter Establishments. Establishments that slaughter livestock for human consumption. (3-15-02)

02. Free-Ranging Wildlife. Non-captive wildlife or wild fish. (3-15-02)

03. House Pets. House pets less than one hundred (100) pounds in weight. (3-15-02)

04. Pets Buried in a Licensed Pet Cemetery. Pets of any weight buried in a licensed pet cemetery. (3-15-02)

012. -- 019. (RESERVED)

020. ABANDONMENT OF DEAD ANIMALS.
No person who owns or is caring for an animal that has died shall abandon the dead animal. Animals that are being disposed of by decomposition in accordance with these rules shall not be considered abandoned. (3-15-02)

021. -- 029. (RESERVED)

030. DISPOSAL OF DEAD ANIMALS.

Dead animals shall be disposed of within seventy-two (72) hours after knowledge of the death of the animal or as provided by the Administrator. No person shall dispose of a dead animal on the land of another without the permission of the property owner. Disposal shall be by one (1) of the following methods: (3-15-02)

01. Dead Animals on Federally Managed Land. Animals that die on federally managed rangeland from causes other than significant infectious or contagious diseases or agents shall be disposed of as provided by the rules and regulations of the responsible land management agency. (3-15-02)

02. Disposal Methods Determined by the Administrator. The Administrator may determine the appropriate method of disposal for animals that die of significant infectious or contagious diseases or agents. (3-15-02)

03. Rendering. If a licensed and approved rendering facility accepts the dead animal, rendering is an approved method of disposal. (3-15-02)

a. When carcasses are held for pickup, the site shall be screened from public view, in a dry area and not in a water runoff or drainage area. (3-15-02)

b. Run-off from the holding area must be contained. (3-15-02)

04. Burial. Dead animals shall be buried to such a depth that no part of the dead animal shall be nearer than three (3) feet to the natural surface of the ground. Every part of the dead animal shall be covered with at least three (3) feet of earth. The location of a burial site shall be: (3-15-02)

a. At least three hundred (300) feet from any wells, surface water intake structures, and public or private drinking water supply lakes or springs. (3-15-02)

b. At least three hundred (300) feet from any existing residences. (3-15-02)

c. At least fifty (50) feet from property lines. (3-15-02)

d. At least one hundred (100) feet from public roadways. (3-15-02)

e. At least two hundred (200) feet from any body of surface water such as a river, stream, lake, pond, intermittent stream, or sinkhole. (3-15-02)

f. Burial sites shall not be located in low-lying areas subject to flooding, or in areas with a high water table where the seasonal high water level may contact the burial pit. (3-15-02)

05. Disposal in an Approved Sanitary Landfill. Arrangements shall be made with a city, county, regional, or private landfill official in order to dispose of a dead animal in a city, county, regional, or private landfill. (3-15-02)

06. Composting. (3-15-02)

a. Composting of dead animals shall be accomplished in a manner approved by the Administrator. (3-15-02)

b. No composters that have been approved by other agencies shall begin composting dead animals without the approval of the Administrator. (3-15-02)

07. Digestion. Digestion of dead animals shall be accomplished in a properly designed and sized dead animal digester approved by the Administrator. (3-15-02)

08. Incineration. (3-15-02)

a. Incineration of dead animals shall be accomplished in an approved incineration facility, or by a mobile air curtain incinerator at a site approved by the Administrator. (3-15-02)

b. The incineration shall be thorough and complete, reducing the carcass to mineral residue. (3-15-02)

09. Burning. Open burning of dead animals is not allowed, except as authorized by the Administrator, in coordination with the Department of Environmental Quality. (3-15-02)

10. Decomposition. Animals that die on private or state rangeland, except domesticated livestock that are harvested, from causes other than significant infectious or contagious diseases or agents may be left to decompose naturally provided that: (4-2-08)

a. They are at least one thousand three hundred twenty (1,320) feet from any wells, lakes, ponds, streams, surface water intake structures, public or private drinking water supply lakes, springs or sinkholes. (3-15-02)

b. They are at least one thousand three hundred twenty (1,320) feet from any public roadways. (3-15-02)

c. They are at least one thousand three hundred twenty (1,320) feet from any residence not owned by the owner of the dead animal. (3-15-02)

11. Allowance for Variances by the Administrator. The Administrator may grant written variances to the requirements of Section 030 on a case-by-case basis. (4-2-08)

031. -- 039. (RESERVED)

040. MOVEMENT OF DEAD ANIMALS.

No dead animals shall be loaded into the same vehicle with live animals. (3-15-02)

01. Vehicles Used for Transporting Dead Animals. Vehicles used for transporting dead animals shall be constructed and maintained, or be prepared prior to receiving dead animals into the vehicle, so that no liquid or fluid from the dead animals is allowed to drip or seep from the vehicle during transport. (3-15-02)

02. Dead Animals Concealed from View. Dead animals shall be concealed from public view during transportation. (3-15-02)

03. Direct to Destination. Vehicles hauling dead animals shall travel to their destination directly. (3-15-02)

04. Disinfection. Vehicles that have hauled dead animals off an owner's property shall not be used to haul live animals, feeds or similar commodities to the property of another person until they have been thoroughly cleaned and disinfected. (3-15-02)

05. Transport of Dead Animals. No person shall transport a dead animal across or through the property of another person without the landowner's permission. (3-15-02)

041. -- 049. (RESERVED)

050. DEAD ANIMAL EMERGENCIES.

Dead animal emergencies are those situations involving dead animals that have been determined by the Administrator to require extraordinary disposal measures. (3-15-02)

01. Situations Requiring Extraordinary Disposal Measures. These situations include, but are not limited to, the following: (3-15-02)

a. Situations where one (1) or more animals die of an infectious or contagious disease or agent that may pose a significant threat to humans or animals; (3-15-02)

b. Situations wherein the number of dead animals is large enough to require extraordinary disposal measures. (3-15-02)

02. Administrator to Determine Disposal Methods. The Administrator may employ exceptional or extraordinary methods of dead animal disposal as necessary to protect the health and welfare of the human and animal populations of the state of Idaho. Such methods may include, but *shall* not be limited to: (3-15-02)()

- a. Open burning; (3-15-02)
- b. Pit burning; (3-15-02)
- c. Burning with accelerants; (3-15-02)
- d. Pyre burning; (3-15-02)
- e. Air curtain incineration; (3-15-02)
- f. Mass burial; or (3-15-02)
- g. Natural decomposition. (3-15-02)

~~051. -- 089. (RESERVED)~~

~~**090. PENALTIES.**~~

~~Pursuant to 25-237, Idaho Code.~~

~~(3-15-02)~~

~~**01. Civil Penalty.** Any person violating any of the provisions of these rules may be assessed a civil penalty by the department or its agent of not more than five thousand dollars (\$5,000) for each offense. Persons against whom civil penalties are assessed are liable for reasonable attorney's fees. (3-15-02)~~

~~**a.** Civil penalties may be assessed in conjunction with any other department administrative action. Civil penalties may not be assessed unless the person charged has been given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, Chapter 52, Title 67, Idaho Code. If the department is unable to collect an assessed civil penalty or if any person fails to pay all or a set portion of a civil penalty as determined by the department, the department may recover such amount by action in the appropriate district court. (3-15-02)~~

~~**b.** Any person against whom the department has assessed a civil penalty under these rules may, within twenty-eight (28) days of the final agency action making the assessment, seek judicial review of the assessment in accordance with the provisions of Chapter 52, Title 67, Idaho Code. (3-15-02)~~

~~**c.** Moneys collected for violations of these rules shall be deposited in the state treasury and credited to the Livestock Disease Control and T.B. Indemnity Fund. (3-15-02)~~

~~**d.** If the Director determines that a person has not complied with these rules, the director shall identify appropriate corrective actions. The Director may develop a formal compliance schedule to correct deficiencies caused by noncompliance. The Director may, through a formal compliance schedule, allow all or part of the value of the assessed civil penalties to apply toward correction of the deficiencies. (3-15-02)~~

~~**02. Criminal Penalty.** Any person violating any of the provisions of these rules shall be guilty of a misdemeanor. Upon conviction, violators are subject to a fine of not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000) for each offense, or by imprisonment in the county jail not exceeding six (6) months. (3-15-02)~~

~~**03. Minor Violations.** Nothing in this section requires the Director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action. (3-15-02)~~

~~**091. — 999. (RESERVED)**~~