

Rules Governing Dairy Byproduct

Rule Update

June, 2020



1.1 Purpose and Scope

This discussion paper presents the Idaho State Department of Agriculture's (ISDA) justification and recommendations for amending IDAPA 02.04.14 to comply with Idaho Code 22-101A and move forward the two (2) rulemaking petitions received from stakeholders.

1.2 Background

As ISDA conducts negotiated rulemaking for the Rules Governing Dairy Byproduct, it is required to ensure that the rulemaking process is consistent with the statutory requirements of Idaho Code section 22-101A. Pertinent sections of Idaho Code 22-101A provide "In proposing any rule or portions of any rule pursuant to [The Dairy Environmental Control Act] the director shall utilize: (a) the best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and (b) Data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justify use of the data." Idaho Code section 22-101A(2)(a)(b) (emphasis added).

The current rulemaking was initiated in 2018 by two industry petitions and has been ongoing for two consecutive years. The previous rulemaking meetings have produced a draft of an updated Nutrient Management Standard (NMS) that would replace the existing 1999 NRCS Idaho Conservation Practice Standard 590 document as the regulatory standard for nutrient management on Idaho dairies.

The first petition received, submitted by Milk Producers of Idaho and the Idaho Farm Bureau, requested the sunset clause for the Phosphorus Threshold (PT) standard be removed from the rule to allow Idaho dairy producers to choose the method of nutrient management for their facilities indefinitely. The current rule language contains a sunset clause for PT, that would become effective July 1, 2023. Because PT is based on limiting phosphorus accumulations in soil at land application sites, the Idaho Nutrient Management Standard (NMS) must be updated in order to allow PT to continue as an option for Idaho dairies. The current NMS is now over twenty (20) years old (1999 NRCS 590). Stakeholders discussed and agreed that the most current version of the NRCS 590 (2017) was never intended to be used as a regulatory document and contained several provisions and management practices that were not relevant to the dairy industry. Stakeholders agreed that Idaho should begin drafting a new, dairy-specific NMS. Due to the abbreviated rulemaking timeline and the amount of work necessary to develop a new NMS from scratch, stakeholders agreed to continue the rulemaking.

The second petition received by the ISDA from the Idaho Dairyman's Association requested the enforcement language in the rule be amended to include a "margin of error" for soil phosphorus testing. At that time, there was no peer-reviewed research available that addressed the issue of soil phosphorus testing variability. The ISDA agreed to propose and execute a study that would attempt to quantify the expected variability of a typical soil phosphorus test, based upon the person sampling the soil and the lab conducting the test.

The ISDA reconvened the rulemaking in the spring of 2019 and presented the findings of the soil test variability experiment to stakeholders, along with a draft of an updated, dairy-specific NMS. The NMS underwent several drafts and revisions after receiving input from all stakeholders. In the summer of 2019, there were still several unresolved issues between stakeholders and it was determined that the rulemaking should again be continued to the following year.

2. Issues to be Decided

2.2 "Trigger Point"

The remaining issue left to be discussed and agreed upon in the NMS is the "trigger point" in which the level of soil phosphorus tested in a producer's field will require them to transition their nutrient management plan from PT to phosphorus indexing. For future rulemaking to be productive, ISDA requested stakeholders research and provide peer-reviewed literature related to soil phosphorus conservation and testing that would support whatever position their organization chooses to take on setting the 'trigger point' for soil phosphorus levels.

2.2 Margin of Error

The second issue to be decided is if a margin-of-error for soil phosphorus testing is feasible to implement for the PT enforcement language.