

## **Rulemaking Summary**

### **IDAPA 02.04.14 – Rules Governing Dairy Byproduct**

#### **Where is the rulemaking authority?**

Authority for this rulemaking resides in the Title 37 Chapters 3 ,4, 6 Idaho Code

#### **What does this rule do?**

These rules govern the Department’s review, approval, and enforcement of dairy environmental management plans

#### **What is the agency proposing to change?**

The agency has performed Zero Based Regulation to simplify, clarify or remove outdated, unnecessary or irrelevant language in sections highlighted **blue** in the attached strawman. The amended language in these sections does not change the regulatory impact, scope, intent or authority in the current rule.

The agency has conducted an internal audit of this rule and identified sections that may require amendments due to inaccurate or confusing language, recommendations to improve the efficiency of the program or changes that must be made to coincide with recent statutory amendments. The changes listed below, and highlighted in **yellow** in the attached strawman, may result in a change to the regulatory impact, scope, intent or authority in the current rule.

- Removal of the sunset clause for phosphorus threshold (Section 031)

## 02.04.14 – RULES GOVERNING DAIRY BYPRODUCT

### 000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapters 3, 4, and 6, Idaho Code. (3-20-20)T

### 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 Byproduct.” (3-20-20)T

**02. Scope.** ~~This chapter has the following scope: These rules 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 37-602(2), Idaho Code. 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. (3-20-20)T~~

### 002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (3-20-20)T

### 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. (3-20-20)T

### 004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this chapter. (3-20-20)T

**01. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (1997 Edition) (USDA, NRCS).** This document is available online at [https://agri.idaho.gov/main/wp-content/uploads/2017/08/nrcs\\_10d\\_1997.pdf](https://agri.idaho.gov/main/wp-content/uploads/2017/08/nrcs_10d_1997.pdf). (3-20-20)T

**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 [https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient\\_Management\\_code\\_590.pdf](https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf). (3-20-20)T

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**07. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2017.** This document is available online at

<https://agri.idaho.gov/main/wp-content/uploads/2018/12/Phosphorus-Site-Index-reference-2017-revised.pdf>. (3-20-20)T

~~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/>. (3-20-20)T~~

~~006. Public Records Act Compliance. These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture. (3-20-20)T~~

007. -- 009. (RESERVED)

010. DEFINITIONS.

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

~~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. (3-20-20)T~~

~~02. **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. (3-20-20)T~~

~~03. **Certified Planner.** A person who has completed nutrient management certification in accordance with the Nutrient Management Standard (NMS) and is approved by the Department. (3-20-20)T~~

~~**Approved Laboratory.** A soil testing 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.~~

04. **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. (3-20-20)T

05. **Dairy Animal.** Milking cows, sheep or goats. (3-20-20)T

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. (3-20-20)T

~~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. (3-20-20)T~~

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. (3-20-20)T

09. **Dairy Farm.** The land owned or operated by a person as an integral component of a Department-

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Commented [DSL2]: Redundant. 37-604

Commented [DSL3]: Idaho Code 37-604

permitted grade A or manufacture grade facility 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. (3-20-20)T

~~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. (3-20-20)T~~

Commented [DSL4]: Idaho Code 37-604

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. (3-20-20)T

~~12. **Department.** The Idaho State Department of Agriculture. (3-20-20)T~~

Commented [DSL5]: Idaho Code 37-604

~~13. **Director.** The Director of the Idaho State Department of Agriculture or his designee. (3-20-20)T~~

~~14. **Export.** The delivery of dairy byproducts from a dairy farm to a third party for the third party's use. (3-20-20)T~~

~~15. **Fieldman.** An individual qualified and approved by the Department to perform dairy farm inspections. (3-20-20)T~~

~~16. **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. (3-20-20)T~~

17. **Inspector.** A qualified, trained person employed by the Department to perform dairy farm inspections. (3-20-20)T

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. (3-20-20)T

19. **Modification or Modified.** Structural changes and alterations to the dairy storage and containment facility that would require increased storage or containment capacity or the function of the facility. (3-20-20)T

~~20. **Non-Compliance.** A practice or condition that does not meet the requirements of a dairy environmental management plan. Noncompliance does not include an upset condition. (3-20-20)T~~

Commented [DSL6]: Idaho Code 37-604

~~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. (3-20-20)T~~

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 fifty percent (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. (3-20-20)T

23. **Permit.** A permit issued by the Department allowing the sale of Grade A milk or manufacture grade

milk. (3-20-20)T

~~24. **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. (3-20-20)T~~

Commented [DSL7]: Redundant. 37-604

25. **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. (3-20-20)T

~~26. **Process Water** Water directly or indirectly used or produced in dairy animal rearing, milk production and environmental management processes including, but not limited to: (3-20-20)T~~

Commented [DSL8]: Idaho Code 37-604

~~a. Excess milk: spillage or overflow from watering, washing, spraying or cooling dairy animals; (3-20-20)T~~

~~b. 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; (3-20-20)T~~

~~c. Water used for dust control; and (3-20-20)T~~

~~d. Water that comes into contact with any raw materials, products, or byproducts of the dairy production and environmental management processes. (3-20-20)T~~

27. **Producer.** The person who owns or operates a permitted dairy farm. (3-20-20)T

~~28. **Unauthorized Discharge** A discharge of 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. (3-20-20)T~~

Commented [DSL9]: Idaho Code 37-604

~~29. **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. (3-20-20)T~~

~~30. **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. (3-20-20)T~~

011. **ABBREVIATIONS.**

01. **ASABE.** American Society of Agricultural and Biological Engineers. (3-20-20)T

02. **IPDES.** Idaho Pollutant Distribution Elimination System. (3-20-20)T

03. **NMS.** Nutrient Management Standard (3-20-20)T

04. **NRCS.** Natural Resources Conservation Service. (3-20-20)T

05. **USDA.** United States Department of Agriculture. (3-20-20)T

012. -- 029. **(RESERVED)**

030. **DAIRY ENVIRONMENTAL MANAGEMENT PLAN APPROVAL.**

The Department is authorized to approve environmental management plans, as provided in Section 37-606A, Idaho Code. (3-20-20)T

**01. Dairy Storage and Containment Facility Criteria.** (3-20-20)T

a. Dairy storage and containment facilities shall be constructed to meet a minimum of one hundred eighty (180) days of holding capacity. 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. (3-20-20)T

b. Earthen dairy storage and containment 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 maintain 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 not exceed two (2) horizontal to one (1) vertical slope. Earthen dairy storage and containment facilities with outside embankments higher greater 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. (3-20-20)T

c. The inside bottom of the dairy storage and containment facility shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen dairy storage and containment facility, a soil liner shall be installed such that the specific discharge rate of the containment structure meet 1 x 10<sup>-6</sup> cm<sup>3</sup>/cm<sup>2</sup>/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 Storage February 2004 ASAE and Appendix 10D specifications as incorporated by reference in Section 004 of these rules. (3-20-20)T

d. Storage areas for dairy byproduct, including compost and solid manure storage areas, shall be located on approved soils and appropriately protected to prevent run on, and run off and contamination of ground and surface water. (3-20-20)T

e. Dairy environmental management systems shall be maintained in a condition that allows the producer to regularly inspect the integrity of the systems. (3-20-20)T

**02. Dairy Nutrient Management Plan (DNMP).** Except as provided below, e 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: (3-20-20)T

a. Producer annual soil tests shall be conducted as set forth in IDAPA 02.04.30, "Rules Governing Nutrient Management," and tested by an approved laboratory. (3-20-20)T

b. Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with Section 031 and with IDAPA 02.04.30, "Rules Governing Nutrient Management." (3-20-20)T

c. Accurate DNMP records shall be maintained. These records shall include at a minimum: (3-20-20)T

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.~~ (3-20-20)T

ii. Annual soil analysis; (3-20-20)T

Commented [DSL10]: Redundant

iii. Date and amount of dairy byproduct and commercial fertilizer applied to individual dairy owned or operated fields; (3-20-20)T

iv. Date(s) of exported dairy byproduct, number of acres applied, amount of dairy byproduct exported, and to whom dairy byproduct was exported; and (3-20-20)T

v. Actual crop yields on dairy owned or operated fields. (3-20-20)T

vi. A nitrogen management plan worksheet (~~pages 35-36 of the 2017 Idaho Phosphorus Site Index Standards~~) shall be completed for all fields and pastures receiving land application of nutrients. (3-20-20)T

d. ~~Pasturing. All pastures utilized for grazing of dairy animals, and other animals owned, leased or otherwise under the control of a producer grazing within the same pasture, shall be incorporated in and subject to the DNMP. These pastures are also and~~ subject to the following requirements: (3-20-20)T

i. ~~Soil testing. Soil tests shall be conducted~~ pursuant to the NMS and ~~this~~ Section, ~~031 on all lands utilized as pasture.~~ (3-20-20)T

ii. Surface water access. If pastured animals have access to surface water within a pasture, the producer may be required to implement one (1) or more NRCS conservation practice standards to minimize adverse impact on surface water quality. (3-20-20)T

iii. ~~Land application. If land application occurs within a pasture, annual soil tests shall be conducted annually on that pasture.~~ (3-20-20)T

iv. Confinement areas. Confinement areas shall not be considered part of a pasture. (3-20-20)T

e. ~~IPDES Permits. Dairy farms governed by the IPDES program are not required to submit a DNMP to the Department.~~

### 031. ~~PHOSPHORUS MANAGEMENT.~~

Dairy farms shall utilize either Phosphorus Indexing (Section 031.01) or the Phosphorus Threshold (Section 031.02) to manage nutrient application. ~~After June 30, 2023, dairy farms will no longer be allowed to use the Phosphorus Threshold (Section 031.02) provision and all facilities will be required to use Phosphorus Indexing (Section 031.01).~~ (3-20-20)T

**01. Phosphorus Indexing.** The dairy farm shall utilize phosphorus site indexing (PSI) for each field where dairy byproducts and/or commercial fertilizers are land applied and for each pasture utilized for grazing, in accordance with the 2017 Idaho Phosphorus Site Index Standards. The PSI shall be calculated by a Nutrient Management Planner, certified by the Department, and be included as a component of the DNMP in the dairy farm's Environmental Management Plan. It shall be the dairy farm's responsibility to provide updated information, including annual soil test results, to the Nutrient Management Planner for calculation of the PSI on all fields and pastures on an annual basis. Failure to abide by the nutrient application and management provisions of a field or pasture's PSI risk classification in the DNMP shall constitute a non-compliance and the producer may be penalized as provided in these rules. (3-20-20)T

a. Notwithstanding anything to the contrary in the 2017 Idaho Phosphorus Site Index Standards, no land application of phosphorus shall be permitted on any fields or pastures that possess a soil phosphorus level exceeding three hundred (300) parts per million, as determined by the required annual soil test (via Olsen method). Further, the dairy farm shall not receive BMP Coefficient credit for implementing any best management practice designed to reduce phosphorus loss on fields exceeding three hundred (300) parts per million, via Olsen method. (3-20-20)T

b. The Department may award zero (0) or partial BMP Coefficient credit when a dairy farm

**Commented [DSL11]:** This section can be reworked and clarified for each system.

**Commented [DSL12]:** Statutory amendment

implements a best management practice designed to reduce phosphorus loss from fields that does not fully conform to NRCS standards or the standards set forth in the 2017 Idaho Phosphorus Site Index Standards BMP definition section. (3-20-20)T

**02. Phosphorus Threshold.** If the regulatory or producer soil tests reveal that phosphorus thresholds on fields and pastures have exceeded the levels established in the NMS, the producer shall only apply phosphorus at the appropriate phosphorus crop uptake rate. 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. (3-20-20)T

**032. -- 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 byproducts and process water 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. (3-20-20)T

**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. (3-20-20)T

**042. -- 049. (RESERVED)**

**050. COMPLIANCE SCHEDULES.**

**01. Non-Compliance or Unauthorized Release Violations Identified.** Appropriate corrective actions will be identified and informally scheduled when the Director identifies items of non-compliance or unauthorized release violations are identified, 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: (3-20-20)T

- a. When Failure to complete corrective actions cannot be completed within thirty (30) days; or (3-20-20)T
- b. When corrective actions require significant capital investment; or (3-20-20)T
- c. When informal schedules have not been followed. (3-20-20)T

**02. Re-Inspection.** Re-inspection of the dairy farm will be conducted as appropriate, to ensure compliance. An unauthorized release violation shall be corrected immediately, when at all possible. (3-20-20)T

**051. -- 059. (RESERVED)**

**060. UNAUTHORIZED DISCHARGES AND UNAUTHORIZED RELEASES -- PENALTIES.**

~~01. Unauthorized Discharge. No dairy farm shall cause an unauthorized discharge. (3-20-20)T~~

~~02. Unauthorized Release. No dairy farm shall cause an unauthorized release. (3-20-20)T~~

**03. Non-Compliance.** Non-compliance with requirements for dairy environmental systems, the NMS, and DNMP shall be addressed through corrective actions and compliance schedules pursuant to these rules. (3-20-20)T

~~04. Penalties. For unauthorized releases and non-compliance conditions, the Director shall have the~~

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Commented [DSL14]: Idaho Code 37-609



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. (3-20-20)T

~~05. **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. (3-20-20)T~~

**Commented [DSL15]:** Redundant 02.04.30.141 & 171

~~061. **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 dairy farm to waters of the United States 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. (3-20-20)T~~

**Commented [DSL16]:** Idaho Code 37-603

062. -- 999. (RESERVED)

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<https://agri.idaho.gov/main/wp-content/uploads/2018/12/Phosphorus-Site-Index-reference-2017-revised.pdf>. (3-20-20)T

~~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/>. (3-20-20)T~~

~~006. Public Records Act Compliance. These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture. (3-20-20)T~~

007. – 009. (RESERVED)

**010. DEFINITIONS.**

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

~~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. (3-20-20)T~~

~~02. **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. (3-20-20)T~~

~~03. **Certified Planner.** A person who has completed nutrient management certification in accordance with the Nutrient Management Standard (NMS) and is approved by the Department. (3-20-20)T~~

~~**Approved Laboratory.** A soil testing 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.~~

04. **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. (3-20-20)T

05. **Dairy Animal.** Milking cows, sheep or goats. (3-20-20)T

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. (3-20-20)T

~~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. (3-20-20)T~~

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. (3-20-20)T

09. **Dairy Farm.** The land owned or operated by a person as an integral component of a Department-

Commented [DSL1]: Redundant

Commented [DSL2]: Redundant. 37-604

Commented [DSL3]: Idaho Code 37-604

permitted grade A or manufacture grade facility 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. (3-20-20)T

~~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. (3-20-20)T~~

Commented [DSL4]: Idaho Code 37-604

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. (3-20-20)T

~~12. **Department.** The Idaho State Department of Agriculture. (3-20-20)T~~

Commented [DSL5]: Idaho Code 37-604

~~13. **Director.** The Director of the Idaho State Department of Agriculture or his designee. (3-20-20)T~~

~~14. **Export.** The delivery of dairy byproducts from a dairy farm to a third party for the third party's use. (3-20-20)T~~

~~15. **Fieldman.** An individual qualified and approved by the Department to perform dairy farm inspections. (3-20-20)T~~

~~16. **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. (3-20-20)T~~

17. **Inspector.** A qualified, trained person employed by the Department to perform dairy farm inspections. (3-20-20)T

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. (3-20-20)T

19. **Modification or Modified.** Structural changes and alterations to the dairy storage and containment facility that would require increased storage or containment capacity or the function of the facility. (3-20-20)T

~~20. **Non-Compliance.** A practice or condition that does not meet the requirements of a dairy environmental management plan. Noncompliance does not include an upset condition. (3-20-20)T~~

Commented [DSL6]: Idaho Code 37-604

~~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. (3-20-20)T~~

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 fifty percent (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. (3-20-20)T

23. **Permit.** A permit issued by the Department allowing the sale of Grade A milk or manufacture grade

milk. (3-20-20)T

~~24. **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. (3-20-20)T~~

Commented [DSL7]: Redundant. 37-604

25. **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. (3-20-20)T

~~26. **Process Water** Water directly or indirectly used or produced in dairy animal rearing, milk production and environmental management processes including, but not limited to: (3-20-20)T~~

Commented [DSL8]: Idaho Code 37-604

~~a. Excess milk: spillage or overflow from watering, washing, spraying or cooling dairy animals; (3-20-20)T~~

~~b. 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; (3-20-20)T~~

~~c. Water used for dust control; and (3-20-20)T~~

~~d. Water that comes into contact with any raw materials, products, or byproducts of the dairy production and environmental management processes. (3-20-20)T~~

27. **Producer.** The person who owns or operates a permitted dairy farm. (3-20-20)T

~~28. **Unauthorized Discharge** A discharge of 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. (3-20-20)T~~

Commented [DSL9]: Idaho Code 37-604

~~29. **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. (3-20-20)T~~

~~30. **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. (3-20-20)T~~

011. **ABBREVIATIONS.**

01. **ASABE.** American Society of Agricultural and Biological Engineers. (3-20-20)T

02. **IPDES.** Idaho Pollutant Distribution Elimination System. (3-20-20)T

03. **NMS.** Nutrient Management Standard (3-20-20)T

04. **NRCS.** Natural Resources Conservation Service. (3-20-20)T

05. **USDA.** United States Department of Agriculture. (3-20-20)T

012. -- 029. **(RESERVED)**

030. **DAIRY ENVIRONMENTAL MANAGEMENT PLAN APPROVAL.**

The Department is authorized to approve environmental management plans, as provided in Section 37-606A, Idaho Code. (3-20-20)T

**01. Dairy Storage and Containment Facility Criteria.** (3-20-20)T

a. Dairy storage and containment facilities shall be constructed to meet a minimum of one hundred eighty (180) days of holding capacity. 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. (3-20-20)T

b. Earthen dairy storage and containment 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 maintain 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 not exceed two (2) horizontal to one (1) vertical slope. Earthen dairy storage and containment facilities with outside embankments higher greater 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. (3-20-20)T

c. The inside bottom of the dairy storage and containment facility shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen dairy storage and containment facility, a soil liner shall be installed such that the specific discharge rate of the containment structure meet 1 x 10<sup>-6</sup> cm<sup>3</sup>/cm<sup>2</sup>/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 Storage February 2004 ASAE and Appendix 10D specifications as incorporated by reference in Section 004 of these rules. (3-20-20)T

d. Storage areas for dairy byproduct, including compost and solid manure storage areas, shall be located on approved soils and appropriately protected to prevent run on, and run off and contamination of ground and surface water. (3-20-20)T

e. Dairy environmental management systems shall be maintained in a condition that allows the producer to regularly inspect the integrity of the systems. (3-20-20)T

**02. Dairy Nutrient Management Plan (DNMP).** Except as provided below, e 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: (3-20-20)T

a. Producer annual soil tests shall be conducted as set forth in IDAPA 02.04.30, "Rules Governing Nutrient Management," and tested by an approved laboratory. (3-20-20)T

b. Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with Section 031 and with IDAPA 02.04.30, "Rules Governing Nutrient Management." (3-20-20)T

c. Accurate DNMP records shall be maintained. These records shall include at a minimum: (3-20-20)T

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.~~ (3-20-20)T

ii. Annual soil analysis; (3-20-20)T

Commented [DSL10]: Redundant

iii. Date and amount of dairy byproduct and commercial fertilizer applied to individual dairy owned or operated fields; (3-20-20)T

iv. Date(s) of exported dairy byproduct, number of acres applied, amount of dairy byproduct exported, and to whom dairy byproduct was exported; and (3-20-20)T

v. Actual crop yields on dairy owned or operated fields. (3-20-20)T

vi. A nitrogen management plan worksheet (~~pages 35-36 of the 2017 Idaho Phosphorus Site Index Standards~~) shall be completed for all fields and pastures receiving land application of nutrients. (3-20-20)T

d. ~~Pasturing. All pastures utilized for grazing of dairy animals, and other animals owned, leased or otherwise under the control of a producer grazing within the same pasture, shall be incorporated in and subject to the DNMP. These pastures are also and~~ subject to the following requirements: (3-20-20)T

i. ~~Soil testing. Soil tests shall be conducted~~ pursuant to the NMS and ~~this~~ Section, ~~031 on all lands utilized as pasture.~~ (3-20-20)T

ii. Surface water access. If pastured animals have access to surface water within a pasture, the producer may be required to implement one (1) or more NRCS conservation practice standards to minimize adverse impact on surface water quality. (3-20-20)T

iii. ~~Land application. If land application occurs within a pasture, annual soil tests shall be conducted annually on that pasture.~~ (3-20-20)T

iv. Confinement areas. Confinement areas shall not be considered part of a pasture. (3-20-20)T

e. ~~IPDES Permits. Dairy farms governed by the IPDES program are not required to submit a DNMP to the Department.~~

### 031. ~~PHOSPHORUS MANAGEMENT.~~

Dairy farms shall utilize either Phosphorus Indexing (Section 031.01) or the Phosphorus Threshold (Section 031.02) to manage nutrient application. ~~After June 30, 2023, dairy farms will no longer be allowed to use the Phosphorus Threshold (Section 031.02) provision and all facilities will be required to use Phosphorus Indexing (Section 031.01).~~ (3-20-20)T

01. **Phosphorus Indexing.** The dairy farm shall utilize phosphorus site indexing (PSI) for each field where dairy byproducts and/or commercial fertilizers are land applied and for each pasture utilized for grazing, in accordance with the 2017 Idaho Phosphorus Site Index Standards. The PSI shall be calculated by a Nutrient Management Planner, certified by the Department, and be included as a component of the DNMP in the dairy farm's Environmental Management Plan. It shall be the dairy farm's responsibility to provide updated information, including annual soil test results, to the Nutrient Management Planner for calculation of the PSI on all fields and pastures on an annual basis. Failure to abide by the nutrient application and management provisions of a field or pasture's PSI risk classification in the DNMP shall constitute a non-compliance and the producer may be penalized as provided in these rules. (3-20-20)T

a. Notwithstanding anything to the contrary in the 2017 Idaho Phosphorus Site Index Standards, no land application of phosphorus shall be permitted on any fields or pastures that possess a soil phosphorus level exceeding three hundred (300) parts per million, as determined by the required annual soil test (via Olsen method). Further, the dairy farm shall not receive BMP Coefficient credit for implementing any best management practice designed to reduce phosphorus loss on fields exceeding three hundred (300) parts per million, via Olsen method. (3-20-20)T

b. The Department may award zero (0) or partial BMP Coefficient credit when a dairy farm

**Commented [DSL11]:** This section can be reworked and clarified for each system.

**Commented [DSL12]:** Statutory amendment



implements a best management practice designed to reduce phosphorus loss from fields that does not fully conform to NRCS standards or the standards set forth in the 2017 Idaho Phosphorus Site Index Standards BMP definition section. (3-20-20)T

**02. Phosphorus Threshold.** If the regulatory or producer soil tests reveal that phosphorus thresholds on fields and pastures have exceeded the levels established in the NMS, the producer shall only apply phosphorus at the appropriate phosphorus crop uptake rate. 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. (3-20-20)T

**032. -- 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 byproducts and process water 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. (3-20-20)T

**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. (3-20-20)T

**042. -- 049. (RESERVED)**

**050. COMPLIANCE SCHEDULES.**

**01. Non-Compliance or Unauthorized Release Violations Identified.** Appropriate corrective actions will be identified and informally scheduled when the Director identifies items of non-compliance or unauthorized release violations are identified, 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: (3-20-20)T

- a. When Failure to complete corrective actions cannot be completed within thirty (30) days; or (3-20-20)T
- b. When corrective actions require significant capital investment; or (3-20-20)T
- c. When informal schedules have not been followed. (3-20-20)T

**02. Re-Inspection.** Re-inspection of the dairy farm will be conducted as appropriate, to ensure compliance. An unauthorized release violation shall be corrected immediately, when at all possible. (3-20-20)T

**051. -- 059. (RESERVED)**

**060. UNAUTHORIZED DISCHARGES AND UNAUTHORIZED RELEASES -- PENALTIES.**

~~01. Unauthorized Discharge. No dairy farm shall cause an unauthorized discharge. (3-20-20)T~~

~~02. Unauthorized Release. No dairy farm shall cause an unauthorized release. (3-20-20)T~~

**03. Non-Compliance.** Non-compliance with requirements for dairy environmental systems, the NMS, and DNMP shall be addressed through corrective actions and compliance schedules pursuant to these rules. (3-20-20)T

~~04. Penalties. For unauthorized releases and non-compliance conditions, the Director shall have the~~

Commented [DSL13]: Idaho Code 37-609

Commented [DSL14]: Idaho Code 37-609

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. (3-20-20)T

~~05. **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. (3-20-20)T~~

**Commented [DSL15]:** Redundant 02.04.30.141 & 171

~~061. **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 dairy farm to waters of the United States 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. (3-20-20)T~~

**Commented [DSL16]:** Idaho Code 37-603

062. -- 999. (RESERVED)

## 02.04.14 – RULES GOVERNING DAIRY BYPRODUCT

### 000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapters 3, 4, and 6, Idaho Code. (3-20-20)T

### 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 Byproduct." (3-20-20)T~~

~~02. Scope. This chapter has the following scope: These rules 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 37-602(2), Idaho Code. 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. (3-20-20)T~~

### 002. -- 003. (RESERVED)

### ~~002. WRITTEN INTERPRETATIONS.~~

~~There are no written interpretations of these rules. (3-20-20)T~~

### ~~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. (3-20-20)T~~

### 004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this chapter. (3-20-20)T

01. **Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (1997 Edition) (USDA, NRCS).** This document is available online at [https://agri.idaho.gov/main/wp-content/uploads/2017/08/nrcs\\_10d\\_1997.pdf](https://agri.idaho.gov/main/wp-content/uploads/2017/08/nrcs_10d_1997.pdf). (3-20-20)T

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 [https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient\\_Management\\_code\\_590.pdf](https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf). (3-20-20)T

03. **Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004.** This document is available online at [https://agri.idaho.gov/main/wp-content/uploads/2017/10/nrcs\\_313\\_Dec\\_2004.pdf](https://agri.idaho.gov/main/wp-content/uploads/2017/10/nrcs_313_Dec_2004.pdf). (3-20-20)T

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/>. (3-20-20)T

05. **Natural Resources Conservation Service (NRCS) Web Soil Survey Database.** This document is available online at <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. (3-20-20)T

06. **Natural Resources Conservation Service (NRCS) Part 630, Hydrology National Engineering Handbook, Chapter 7, (Hydrologic Soil Groups), January 2009.** This document is available online at <https://www.wcc.nrcs.usda.gov/ftpref/wntsc/H&H/NEHhydrology/ch7.pdf>. (3-20-20)T

**07. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2017.** This document is available online at <https://agri.idaho.gov/main/wp-content/uploads/2018/12/Phosphorus-Site-Index-reference-2017-revised.pdf>. (3-20-20)T

~~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/>. (3-20-20)T~~

~~006. — Public Records Act Compliance.~~

~~These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture. (3-20-20)T~~

**0075. -- 009. (RESERVED)**

**010. DEFINITIONS.**

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

~~**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. (3-20-20)T~~

~~**02. — 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. (3-20-20)T~~

~~**03. — Certified Planner.** A person who has completed nutrient management certification in accordance with the Nutrient Management Standard (NMS) and is approved by the Department. (3-20-20)T~~

~~**01. — Approved Laboratory.** A soil testing 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.~~

~~**0402. 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. (3-20-20)T~~

~~**0503. Dairy Animal.** Milking cows, sheep or goats. (3-20-20)T~~

~~**0604. 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. (3-20-20)T~~

~~**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. (3-20-20)T~~

~~**0805. 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. (3-20-20)T~~

**0906. Dairy Farm.** The land owned or operated by a person as an integral component of a Department-permitted grade A or manufacture grade facility 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. (3-20-20)T

~~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. (3-20-20)T

**1407. 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. (3-20-20)T

~~12. Department.~~ The Idaho State Department of Agriculture. (3-20-20)T

~~13. Director.~~ The Director of the Idaho State Department of Agriculture or his designee. (3-20-20)T

~~14. Export.~~ The delivery of dairy byproducts from a dairy farm to a third party for the third party's use. (3-20-20)T

~~15. Fieldman.~~ An individual qualified and approved by the Department to perform dairy farm inspections. (3-20-20)T

~~16. 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. (3-20-20)T

**1708. Inspector.** A qualified, trained person employed by the Department to perform dairy farm inspections. (3-20-20)T

**1809. 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. (3-20-20)T

**1910. Modification or Modified.** Structural changes and alterations to the dairy storage and containment facility that would require increased storage or containment capacity or the function of the facility. (3-20-20)T

~~20. Non-Compliance.~~ A practice or condition that does not meet the requirements of a dairy environmental management plan. Noncompliance does not include an upset condition. (3-20-20)T

~~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. (3-20-20)T

**2211. 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 fifty percent (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. (3-20-20)T

~~23~~**12. Permit.** A permit issued by the Department allowing the sale of Grade A milk or manufacture grade milk. (3-20-20)T

~~24. 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. (3-20-20)T

~~13~~**25. 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. (3-20-20)T

~~26. Process Water.~~ Water directly or indirectly used or produced in dairy animal rearing, milk production and environmental management processes including, but not limited to: (3-20-20)T

~~a. Excess milk: spillage or overflow from watering, washing, spraying or cooling dairy animals; (3-20-20)T~~

~~b. 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; (3-20-20)T~~

~~c. Water used for dust control; and (3-20-20)T~~

~~d. Water that comes into contact with any raw materials, products, or byproducts of the dairy production and environmental management processes. (3-20-20)T~~

~~27~~**14. Producer.** The person who owns or operates a permitted dairy farm. (3-20-20)T

~~28. Unauthorized Discharge.~~ A discharge of 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. (3-20-20)T

~~29. 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. (3-20-20)T

~~30. 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. (3-20-20)T

## 011. ABBREVIATIONS.

01. ASABE. American Society of Agricultural and Biological Engineers. (3-20-20)T

02. IPDES. Idaho Pollutant Distribution Elimination System. (3-20-20)T

03. NMS. Nutrient Management Standard (3-20-20)T

04. NRCS. Natural Resources Conservation Service. (3-20-20)T

05. USDA. United States Department of Agriculture. (3-20-20)T

012. -- 029. (RESERVED)

**030. DAIRY ENVIRONMENTAL MANAGEMENT PLAN APPROVAL.**

~~The Department is authorized to approve environmental management plans, as provided in Section 37-606A, Idaho Code. (3-20-20)T~~

**01. Dairy Storage and Containment Facility Criteria. (3-20-20)T**

**a.** Dairy storage and containment facilities shall be constructed to meet a minimum of one hundred eighty (180) days of holding capacity. 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. (3-20-20)T

**b.** Earthen dairy storage and containment 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 maintain 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 not exceed two (2) horizontal to one (1) vertical slope.~~ Earthen dairy storage and containment facilities ~~with outside embankments higher greater 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.~~ (3-20-20)T

**c.** The inside bottom of the dairy storage and containment facility shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen dairy storage and containment facility, a soil liner shall be installed such that the specific discharge rate of the containment structure meet 1 x 10<sup>-6</sup> cm<sup>3</sup>/cm<sup>2</sup>/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 ASAE and Appendix 10D specifications as incorporated by reference in Section 004 of these rules.~~ (3-20-20)T

**d.** Storage areas for dairy byproduct, including compost and solid manure storage areas, shall be ~~located on approved soils and appropriately protected to prevent run on, and run off and contamination of ground and surface water.~~ (3-20-20)T

**e.** Dairy environmental management systems shall be maintained in a condition that allows the producer to regularly inspect the integrity of the systems. (3-20-20)T

**02. Dairy Nutrient Management Plan (DNMP).** ~~Except as provided below, e~~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: (3-20-20)T

**a.** Producer annual soil tests shall be conducted as set forth in IDAPA 02.04.30, "Rules Governing Nutrient Management " and tested by an approved laboratory. (3-20-20)T

**b.** Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with Section 031 and with IDAPA 02.04.30, "Rules Governing Nutrient Management." (3-20-20)T

**c.** Accurate DNMP records shall be maintained. These records shall include at a minimum: (3-20-20)T

**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;~~ (3-20-20)T

- ii. Annual soil analysis; (3-20-20)T
  - iii. Date and amount of dairy byproduct and commercial fertilizer applied to individual dairy owned or operated fields; (3-20-20)T
  - iii. Date(s) of exported dairy byproduct, number of acres applied, amount of dairy byproduct exported, and to whom dairy byproduct was exported; and (3-20-20)T
  - iv. Actual crop yields on dairy owned or operated fields. (3-20-20)T
  - vi. A nitrogen management plan worksheet (~~pages 35-36 of the 2017 Idaho Phosphorus Site Index Standards~~) shall be completed for all fields and pastures receiving land application of nutrients. (3-20-20)T
- d. Pasturing.** ~~All P~~pastures utilized for grazing of dairy animals, and other animals ~~owned, leased or otherwise under the control of a producer~~ grazing within the same pasture, shall be incorporated in and subject to the DNMP. ~~These pastures are also~~ and subject to the following requirements: (3-20-20)T
- i. ~~Soil testing. Soil tests shall be conducted~~ pursuant to the NMS and this Section. ~~031 on all lands utilized as pasture.~~ (3-20-20)T
  - ii. Surface water access. If pastured animals have access to surface water within a pasture, the producer may be required to implement one (1) or more NRCS conservation practice standards to minimize adverse impact on surface water quality. (3-20-20)T
  - iii. Land application. If land application occurs within a pasture, annual soil tests shall be conducted ~~annually on that pasture.~~ (3-20-20)T
  - iv. Confinement areas. Confinement areas shall not be considered part of a pasture. (3-20-20)T
- e. IPDES Permits.** Dairy farms governed by the IPDES program are not required to submit a DNMP to the Department.

**031. PHOSPHORUS MANAGEMENT.**

Dairy farms shall utilize either Phosphorus Indexing (Section 031.01) or the Phosphorus Threshold (Section 031.02) to manage nutrient application. ~~After June 30, 2023, dairy farms will no longer be allowed to use the Phosphorus Threshold (Section 031.02) provision and all facilities will be required to use Phosphorus Indexing (Section 031.01).~~ (3-20-20)T

**01. Phosphorus Indexing.** The dairy farm shall utilize phosphorus site indexing (PSI) for each field where dairy byproducts and/or commercial fertilizers are land applied and for each pasture utilized for grazing, in accordance with the 2017 Idaho Phosphorus Site Index Standards. The PSI shall be calculated by a Nutrient Management Planner, certified by the Department, and be included as a component of the DNMP in the dairy farm's Environmental Management Plan. It shall be the dairy farm's responsibility to provide updated information, including annual soil test results, to the Nutrient Management Planner for calculation of the PSI on all fields and pastures on an annual basis. Failure to abide by the nutrient application and management provisions of a field or pasture's PSI risk classification in the DNMP shall constitute a non-compliance and the producer may be penalized as provided in these rules. (3-20-20)T

**a.** Notwithstanding anything to the contrary in the 2017 Idaho Phosphorus Site Index Standards, no land application of phosphorus shall be permitted on any fields or pastures that possess a soil phosphorus level exceeding three hundred (300) parts per million, as determined by the required annual soil test (via Olsen method). Further, the dairy farm shall not receive BMP Coefficient credit for implementing any best management practice designed to reduce phosphorus loss on fields exceeding three hundred (300) parts per million, via Olsen method. (3-20-20)T



b. The Department may award zero (0) or partial BMP Coefficient credit when a dairy farm implements a best management practice designed to reduce phosphorus loss from fields that does not fully conform to NRCS standards or the standards set forth in the 2017 Idaho Phosphorus Site Index Standards BMP definition section. (3-20-20)T

**02. Phosphorus Threshold.** If the regulatory or producer soil tests reveal that phosphorus thresholds on fields and pastures have exceeded the levels established in the NMS, the producer shall only apply phosphorus at the appropriate phosphorus crop uptake rate. 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. (3-20-20)T

**032. -- 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 byproducts and process water 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.~~ (3-20-20)T

~~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. — (3-20-20)T~~

~~042. -- 049. (RESERVED)~~

**050. COMPLIANCE SCHEDULES.**

**01. Non-Compliance or Unauthorized Release Violations ~~Identified.~~** Appropriate corrective actions will be identified and informally scheduled ~~When the Director identifies~~ items of non-compliance or unauthorized release violations are identified, ~~the deficiencies will be noted and discussed with the producer. Appropriate corrective actions will be identified and scheduled informally. The identified.~~ The Director may develop a formal compliance schedule in the following cases: (3-20-20)T

a. ~~When Failure to complete~~ Failure to complete corrective actions ~~cannot be completed~~ within thirty (30) days; or (3-20-20)T

b. ~~When e~~ Corrective actions require significant capital investment; or (3-20-20)T

c. ~~When i~~ Informal schedules have not been followed. (3-20-20)T

**02. Re-Inspection.** Re-inspection of the dairy farm will be conducted as appropriate, to ensure compliance. An unauthorized release violation shall be corrected immediately, when at all possible. (3-20-20)T

**051. -- 059. (RESERVED)**

**060. UNAUTHORIZED DISCHARGES AND UNAUTHORIZED RELEASES -- PENALTIES.**

~~01. — Unauthorized Discharge.~~ No dairy farm shall cause an unauthorized discharge. (3-20-20)T

~~02. — Unauthorized Release.~~ No dairy farm shall cause an unauthorized release. (3-20-20)T

**031. Non-Compliance.** Non-compliance with requirements for dairy environmental systems, the NMS, and DNMP shall be addressed through corrective actions and compliance schedules pursuant to these rules. (3-20-20)T

~~04. — Penalties. For unauthorized 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. (3-20-20)T~~

~~05. — 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. (3-20-20)T~~

~~061. — 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 dairy farm to waters of the United States 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. (3-20-20)T~~

~~0621. -- 999. (RESERVED)~~

***Idaho State Department of Agriculture  
02.04.14 Rules Governing Dairy Byproduct  
April 19, 2021, 1:30 p.m.***

***Lloyd Knight, Dr. Scott Leibsle, Chanel Tewalt, Hosts/Facilitators***

Present: Dallas Burkhalter, Office of Attorney General – ISDA; Katy DeVries, Office of Attorney General – ISDA; Mitch Vermeer, ISDA; Martha Walbey, ISDA; April Leytem, USDA – ARS; Dave Bjorneberg, USDA – ARS; Josh Johnson, Idaho Conservation League; Bob Naerebout, Idaho Dairyman’s Association; Rick Naerebout, Idaho Dairyman’s Association; Marv Patten, Milk Producers of Idaho.

**AGENDA ITEMS**

**WELCOME:**

Lloyd Knight started the meeting at 1:35p.m. by teleconference. Mr. Knight discussed the house rules and then turned the meeting over to Dr. Scott Leibsle to present the strawman.

Dr. Leibsle started the meeting by explaining the fiscal budget for the Dairy Byproducts Rule, IDAPA 02.04.14 Rules Governing Dairy Byproduct. Scott Leibsle explained the agency conducted 1,213 environmental inspections on dairies and 875 NMP reviews on 400 dairies. There are 5 full time positions funded through general and dedicated funds. General funds expenses were \$189,601, and dedicated funds were \$83,131, having a total FY20 expenditure of \$272,732.

Bob Naerebout asked out of the general fund of \$189,601 does this include beef & dairy?

Scott Leibsle replied no, strictly for dairy. Dairy inspectors, NMP inspectors, and the soil scientist. When ISDA Grade A inspectors do a Grade A inspection they also do a waste inspection.

Rick Naerebout asked how do you spend out of general funds vs. dedicated funds.

Scott Leibsle replied the positions are defaulted to general fund and then once those funds run out it goes to dedicated.

Chanel Tewalt asked Rick Naerebout if he would like a follow up meeting to discuss this.

Bob Naerebout stated that we have continually understood the dairy NMP program was strictly under dedicated funding, so we are surprised to hear anything comes out of general fund. I think we should sit down outside of rulemaking and discuss.

Chanel Tewalt asked if there is any clarity to Bob’s comment?

Scott Leibsle replied that all onsite inspections for Grade A sanitation and the accompanied waste inspection by the ISDA inspector strictly come out of dedicated funds. The NMP inspectors & the soil scientist that perform NMP reviews are partially funded through comes partly out of general funds.

Scott Leibsle explained the basic layout of the strawman was the language highlighted in blue was to simplify or clarify the rule without affecting the scope, intent or regulatory impact. The language highlighted in yellow was a to identify proposed changes that would change the scope, intent or regulatory impact of the rule.

Section 001 – redundant scope language is being removed. Section 005 - address section is redundant and is being removed.

Section 010 - definition section. All duplicated definitions taken word for word from the statute are being removed.

Section 030 - Dairy Environmental Management Plan Approval.

Lagoon construction requirements are out of place in this rule....should be located in 02.04.30 Rules Governing Environmental and Nutrient Management. We'll leave language intact for now until the opportunity arises to add it to the NMP rule.

Bob Naerebout asked for clarification in that blue is being redundant under this section.

Scott Leibsle said the proposed changes in blue are strictly to clarify requirements and to reduce the length of the rule.

Section 030.02 - DEQ authority is unnecessary to include in this rule....the language is already stated in statute. Regulatory soil sampling requirements are listed in Rules Governing Environmental and Nutrient Management...redundant in this rule.

Scott Leibsle asked if there is a need to clarify “pasteurizing” in this rule? No comments provided.

Section 031 Phosphorus Management – A 2021 statutory amendment was signed by the Governor to remove the sunset clause for phosphorus threshold. This language is being removed to gain consistency with the statute. Scott Leibsle asked if there is a desire to clarify any additional language in this section? No comments provided.

Section 040 – Inspection. Remove duplicate and unnecessary language ..

Section 050. Compliance section - Remove duplicate and unnecessary language that is duplicated word for word from statute.

Rick Naerebout asked if regulatory soil sampling was outlined for labs/individuals to be certified in 02.04.30 language so that the authority to certify soil samplers is not lost when this language was deleted.

Scott Leibsle clarified all soil sampler certification language is present in section 160 of Rules Governing Environmental and Nutrient Management.

Scott Leibsle asked if there were any comments or desire to change how penalties were enforced in this rule. No comments were provided.

Section 061. - all language is repetitive from Idaho Code 37-603 under statue, so it is unnecessary and repetitive.

Scott Leibsle concluded the presentation and asked for any additional comments from stakeholders. No comments were provided. Scott Leibsle clarified that the written comment would be open until after the conclusion of the June negotiated rules meeting. Any comments submitted prior to that deadline would be included in the rulemaking record and be available on the ISDA website.

Lloyd Knight ended meeting at 2:08p.m.

***Idaho State Department of Agriculture  
02.04.14 Rules Governing Dairy Byproduct  
April 19, 2021, 1:30 p.m.***

***Lloyd Knight, Dr. Scott Leibsle, Chanel Tewalt, Hosts/Facilitators***

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Lloyd Knight ended meeting at 2:08p.m.



***Idaho State Department of Agriculture  
02.04.14 Rules Governing Dairy Byproduct  
May 19, 2021, 1:30 p.m.***

***Lloyd Knight, Dr. Scott Leibsle, Chanel Tewalt, Hosts/Facilitators***

Present: Dallas Burkhalter, Office of Attorney General – ISDA; Katy DeVries, Office of Attorney General – ISDA; Mitch Vermeer, ISDA; Martha Walbey, ISDA; Dave Bjorneberg, USDA – ARS; Josh Johnson, Idaho Conservation League; Bob Naerebout, Idaho Dairymen’s Association; Marv Patten, Milk Producers of Idaho.

**AGENDA ITEMS**

**WELCOME:**

Lloyd Knight started the meeting at 1:32 p.m. by teleconference. Mr. Knight discussed the house rules and then turned the meeting over to Dr. Scott Leibsle to present the strawman.

Scott Leibsle started to explain the basic layout of the strawman. What was highlighted in blue was to simplify or clarify the rule, and what was highlighted in yellow was to change the language of the rule.

Dr. Leibsle started the meeting by stating there have been no comments from the stakeholders since the last meeting.

With the exception of removing the phosphorus sunset clause, everything else in the rule is simplifying the language.

Marv Patten stated there are quite a few “shalls” in the rule, did you want to remove them.

Scott Leibsle responded this section could be reworded, but I will leave that up to the stakeholders. No comments provided.

Marv Patten asked if a producer could use the phosphorus threshold on some fields and a different threshold on other fields.

Scott Leibsle stated no, producers need to choose one or the other for their entire farm. They need to either convert to indexing or remain on phosphorus threshold.

Marv Patten asked if a producer did do both, would it be illegal.

Scott Leibsle said it would be confusing for the producers and problematic to document/enforce. It would also create a loophole for producers to circumvent the intent of both methods by choosing to

regulate their high-risk fields using threshold and their high phosphorus fields using indexing. Marv Patten stated that he disagreed with that. Marv Patten stated it should be clearly stated in the rule.

Scott Leibsle responded it is stated in the rule, but we could add additional language.

Chanel Tewalt stated we encourage stakeholders to submit comment on language rather than us adding language.

Bob Naerebout said the board is satisfied with how this rule is written.

Josh Johnson asked if Scott Leibsle could reiterate his concerns regarding producers using both indexing and phosphorus thresholds.

Scott Leibsle responded that the ability for ISDA to educate producers on the issue clearly and consistently, not to mention enforce, would be problematic. ISDA and the industry have had numerous outreach trainings on the two different types of standards and if producers start picking and choosing different fields to do different testing on it will cause confusion.

Josh Johnson said we would also share your concerns.

Lloyd Knight ended meeting at 1:50 p.m.



May 24, 2021

Dr. Scott Leibsle  
Idaho State Department of Agriculture  
Idaho State Veterinarian

Mr. Lloyd Knight  
Idaho State Department of Agriculture  
Rules Review Officer

RE: IDAPA 02.04.14 Rules Governing Dairy Byproduct.

Dr Leibsle and Mr. Knight,

At the Idaho Dairymen's Association board meeting held on May 19, 2021 the proposed changes were reviewed by the board. The board supports IDAPA 02.04.14 Rules Governing Dairy Byproduct as currently written.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Naerebout", is written over a horizontal line.

Rick Naerebout  
Chief Executive Officer  
Idaho Dairymen's Association, Inc.

195 River Vista Place  
Twin Falls, Idaho 83301  
208.736.1953  
[www.idahodairymens.org](http://www.idahodairymens.org)

# **Nutrient Management Fiscal Report FY20**

**# Environmental Inspections FY20 - 1,213**

**# NMP reviews FY20 - 875**

**General Fund Expenses FY20 - \$189,601**

**Dedicated Fund Expenses FY20 - \$83,131**

**Total Expenses FY20 - \$272,732**

**IDAPA 02 – DEPARTMENT OF AGRICULTURE**  
**02.04.14 – RULES GOVERNING DAIRY BYPRODUCT**  
**DOCKET NO. 02-XXXX-XXXX (OARC will assign)**  
**NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is Sine Die, 2021.

**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 37-603, 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 re-adopts a previously adopted temporary rule that was not approved for extension by the 2021 legislature as required for its continued enforcement.

The rules governing dairy byproduct outline standards for dairy environmental management plans governing the storage, containment and land application of dairy byproduct. The rule sets limits on certain nutrient loading at land application sites and establishes prohibitions of discharges of dairy byproduct beyond property boundaries and/or into waters of the state.

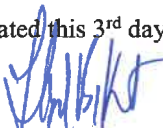
**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

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 temporary rule implements the duly enacted laws of the state of Idaho, provides citizens with the detailed rules and standards for complying with those laws, and assists 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.

**FEE SUMMARY:** No fee or charge is imposed or changed through this rulemaking.

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

Dated this 3<sup>rd</sup> day of March, 2021.

  
Lloyd Knight  
Rules Review Officer  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 7249  
Boise, Idaho 83707  
Phone: (208) 332-8664  
Fax: (208) 334-2170

**IDAPA 02 – DEPARTMENT OF AGRICULTURE**  
**02.04.14 – RULES GOVERNING DAIRY BYPRODUCT**  
**DOCKET NO. 02-XXXX-XXXX (OARC will assign)**  
**NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is Sine Die, 2021.

**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 37-603, 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 re-adopts a previously adopted temporary rule that was not approved for extension by the 2021 legislature as required for its continued enforcement.

The rules governing dairy byproduct outline standards for dairy environmental management plans governing the storage, containment and land application of dairy byproduct. The rule sets limits on certain nutrient loading at land application sites and establishes prohibitions of discharges of dairy byproduct beyond property boundaries and/or into waters of the state.

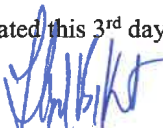
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Dated this 3<sup>rd</sup> day of March, 2021.

  
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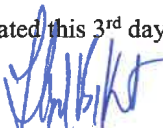
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Dated this 3<sup>rd</sup> day of March, 2021.

  
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**BRAD LITTLE**, GOVERNOR

**CELIA GOULD**, DIRECTOR

## ISDA 2021 Negotiated Rulemaking

April 2021 Update

Dear Stakeholders,

As the rulemaking season approaches, we wanted to provide a roadmap as to what rulemaking will look like this year. We will have some new processes and rulemakings as a result of executive orders or legislative changes. The one constant is the importance of having your participation and involvement. We know our agency benefits from a close relationship with our programs and the needs or expectations of stakeholders.

ISDA's 2021 negotiated rulemaking will fall into two categories:

- Rules reviewed as part of the Governor's Zero-Based Regulation Executive Order, and/or
- Rules reviewed as a result of new legislation.

All notices for these negotiated rulemakings will publish in the Administrative Bulletin on April 2, 2021. The Administrative Bulletin can be found at <https://adminrules.idaho.gov/bulletin/>.

### Zero-Based Rulemaking

Governor Little's Executive Order No. 2020-01 – Zero Based Regulation – directs agencies to facilitate an ongoing review process for existing rules, requiring agencies to put each rule on a five-year review schedule. This process aims to reduce the overall regulatory burden, or remain neutral, as compared to the original rule. Attached you will find the entire five-year review schedule for the agency. Specifically, for 2021, the following rules are scheduled for Zero Based Rulemaking. Notices will be published in the April Administrative Bulletin and meeting dates also are listed below. We strongly encourage all interested stakeholders to participate in these rulemaking meetings.

IDAPA	Name	Meeting Dates
IDAPA 02.04.05	Rules Governing Grade A Milk and Manufacture Grade Milk	Tuesday, April 20, May 18, and June 15 all from 8:30 a.m. to noon
IDAPA 02.04.13	Rules Governing Raw Milk	Tuesday, April 20, May 18, and June 15 all from 1:30 to 5 p.m.
IDAPA 02.04.19	Rules Governing Domestic Cervidae *needs to be updated per legislative action, will include ZBR*	Wednesday, April 21, May 19, and June 16 all from 8:30 a.m. to noon
IDAPA 02.06.33	Organic Food Products Rules	Wednesday, April 21, Monday, May 17, and Wednesday, June 16 all from 1:30 to 5 p.m.
IDAPA 02.04.21	Rules Governing Importation of Animals	Thursday, April 22, May 20, June 17 from 8:30 a.m. to noon
IDAPA 02.04.27	Rules Governing Deleterious Exotic Animals	Thursday, April 22,



		May 20, June 17 from 1:30 to 5 p.m.
IDAPA 02.06.06	Rules Governing the Planting of Beans	Friday, April 23, May 21, June 18 from 8:30 a.m. to noon
IDAPA 02.06.09	Rules Governing Invasive Species and Noxious Weeds	Friday, April 23, May 21, June 18 from 1:30 to 5 p.m.
IDAPA 02.04.14	Rules Governing Dairy Byproduct *needs to be updated per legislative action, will include ZBR*	Monday, April 19, Wednesday, May 19, Monday, June 14 from 1:30 to 5 p.m.

The format of each rulemaking meeting will be similar:

- Facilitated by the Rules Review Coordinator with ISDA staff on hand to answer technical questions and present draft language from previous discussions or as provided by law.
- Initial discussion drafts will be developed by agency staff simply as a starting point for the first meeting and drafts will reference those sections required by statute and those sections that may be out of date with the statute or other incorporated reference documents.
- If stakeholders have proposed changes or drafts they would like to submit for discussion during the meetings, they can email them to [rulesinfo@isda.idaho.gov](mailto:rulesinfo@isda.idaho.gov) prior to the next meeting so they can be shared on screen.
- Meetings will be held via WebEx.
- As always, all rulemaking information will be posted on the ISDA website under “Laws and Rules.” Information for joining all upcoming meetings will be posted on the website.
- Agency staff will compile minutes, presented materials, and stakeholders’ recommended draft changes. This information also will be posted to the ISDA website.
- ISDA needs to have proposed rules and other supporting materials submitted to DFM in mid-July to ensure adequate time for review prior to publication in the September Bulletin, the subsequent comment period, and a final rule to be prepared for presentation for review by the 2022 Legislature.

If you have any questions or to RSVP for a meeting, please contact Lloyd Knight, ISDA’s Rules Review Coordinator at [rulesinfo@isda.idaho.gov](mailto:rulesinfo@isda.idaho.gov).

**IDAPA 02 – DEPARTMENT OF AGRICULTURE**

**02.04.14 - RULES GOVERNING DAIRY BYPRODUCT**

**DOCKET NO. 02-xxxx-xxxx (OAR will assign)**

**(THIRD) NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 37-603 Idaho Code.

**MEETING SCHEDULE:** Negotiated rulemaking meetings have been scheduled. Additional meetings may be scheduled and will be posted on the ISDA website.

**MEETING SET FOR PUBLIC PARTICIPATION  
VIA TELEPHONE AND WEB CONFERENCING**

**Monday April 19, 2021 - 2 p.m. to 5 p.m.**

**Wednesday May 19, 2021 - 2 p.m. to 5 p.m.**

**Monday June 14, 2021 - 2 p.m. to 5 p.m.**

Contact [rulesinfo@isda.idaho.gov](mailto:rulesinfo@isda.idaho.gov) to make arrangements for participation by telephone and web conferencing.

On March 25, 2020, Governor Little issued a Proclamation declaring an emergency and taking steps to reduce and slow the coronavirus spread. In compliance with the Proclamation and Stages of Reopening, ISDA will hold this meeting via telephone and web conferencing.

**METHOD OF PARTICIPATION:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the scheduled meeting via telephone and web conferencing. Individuals interested in participating by telephone and web conferencing should contact [rulesinfo@isda.idaho.gov](mailto:rulesinfo@isda.idaho.gov). For those who cannot participate by attending the meeting, information for submitting written comments is provided below.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency website.

**DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

This negotiated rulemaking is to make this rule conform with the statutory changes to the dairy laws found in Title 37, Chapter 6, Idaho Code. The issues to be negotiated are 1) removal of the sunset clause from the phosphorus threshold management option, pursuant to the amendment to Idaho Code; 2) Update the Nutrient Management Standard to coincide with the requirements of Idaho Code 22-101A 3) Conduct negotiated Zero Based Rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at [scott.leibsle@isda.idaho.gov](mailto:scott.leibsle@isda.idaho.gov) or (208) 332-8540. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the ISDA web site ([www.agri.idaho.gov/rulemaking](http://www.agri.idaho.gov/rulemaking)).

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 20, 2020.

DATED this 3<sup>rd</sup> day of March, 2021

  
Lloyd B. Knight

Rules Review Officer  
Idaho Department of Agriculture

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