

02.04.30 – RULES GOVERNING ENVIRONMENTAL AND NUTRIENT MANAGEMENT

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of~~ Sections 22-110, 22-4903, 25-3802, 25-4012(2), 37-401(1), 37-405, 37-603(1), 67-6529F(4), Idaho Code. (3-31-22)

001. ~~TITLE AND SCOPE.~~

~~01. Title. The title of this chapter is IDAPA 02.04.30, “Rules Governing Environmental and Nutrient Management.”~~ (3-31-22)

02. **Scope.** This rule governs the certification process for soil samplers and nutrient management planners, the process for collecting and handling soil samples, the contents of a request to form a CAFO Site Advisory Team, formation of a CAFO Site Advisory Team, development of a site suitability determination, submission of the suitability determination to the appropriate county officials, the management of odor generated on agricultural operations, except beef cattle animal feeding operations and large swine and poultry operations and the stockpiling of agricultural waste at agricultural operations to safeguard and protect animals, man, and the environment. (3-31-22)

002. – 103. (RESERVED)

SUBCHAPTER A – NUTRIENT MANAGEMENT

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter A, Sections 104-203 only: (3-31-22)

01. **August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised).** This document can be viewed online at <http://www.extension.uidaho.edu/publishing/pdf/EXT/EXT0704.pdf>. (3-31-22)

02. **Nutrient Management Standard (NMS).** (3-31-22)

a. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf. (3-31-22)

b. The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/june_2007_NRCS_590.pdf. (3-31-22)

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/>.

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>. (3-31-22)

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>.

[04. Natural Resources Conservation Service \(NRCS\) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004.](https://agri.idaho.gov/main/wp-content/uploads/2017/10/nrcs_313_Dec_2004.pdf) This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/nrcs_313_Dec_2004.pdf.

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[02. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D \(Appendix 10D\) \(March 2008 Edition\) \(USDA, NRCS\).](https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17767.wba) This document can be viewed online at <https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17767.wba>.

105. -- 109. (RESERVED)

110. DEFINITIONS.

~~In addition to the definitions found in Sections 22-4904, 25-4002, and 37-604, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter A, Sections 104-203 only:~~ (3-31-22)

Commented [JS1]: Applicable statutory definitions apply whether referenced in code or not.

01. [Approved Laboratory.](#) A soil testing laboratory with a valid certification from the North American Proficiency Testing Program under the auspices of the Soil Science Society of America.

Certified Soil Sampler. A person who has completed a Department approved soil sampler certification program and has received written certification from the Department. (3-31-22)

02. [Nutrient Management Plan.](#) A plan prepared in conformance with the Nutrient Management Standard for managing the amount, source, placement, form, and timing of the land application of nutrients and soil amendments for plant production. (3-31-22)

Commented [JS2]: Consider striking. Already defined in both 22-4904 and 25-4002.

03. [Nutrient Management Standard.](#) ~~For dairies and beef~~ cattle animal feeding operations, the Nutrient Management Standard is the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the Director. For poultry concentrated animal feeding operations, the Nutrient Management Standard is the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the director. (3-31-22)

Commented [JS3]: This reads more like a substantive rule about which NMP applies, not a definitional rule.

04. **Operation(s).** Animal feeding operation(s). (3-31-22)

~~05. [Representative Soil Sample.](#) A representative soil sample is a soil sample obtained as outlined by the August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised) or other equivalent method as approved by the Department.~~ (3-31-22)

Commented [JS4]: Not used anywhere else in the rule chapter.

06. **Resource Concerns.** Surface water runoff that leaves the operation from normal storm events, rain or snow, frozen ground or irrigation; and ground water concerns on the operation from a high water table, fractured bedrock, cobbles, gravel, coarse textured soils or other environmental considerations such as tile drains or shallow soils that are conducive for the downward movement of water and associated nutrients. (3-31-22)

111. ABBREVIATIONS.

The following abbreviations apply in the interpretation and enforcement of Subchapter A, Sections 104-203 only: (3-31-22)

01. CNMP. Certified Nutrient Management Planner. (3-31-22)

02. CSS. Certified Soil Sampler. (3-31-22)

03. NMP. Nutrient Management Plan. (3-31-22)

04. NMS. Nutrient Management Standard. (3-31-22)

05. NRCS. United States Department of Agriculture, Natural Resources Conservation Service.

(3-31-22)

06. SSB. August 1997 University of Idaho Soil Sampling Bulletin 704 (revised). (3-31-22)

07. USDA. United States Department of Agriculture. (3-31-22)

112. -- 119. (RESERVED)

120. APPLICABILITY.

These rules apply to nutrient management on the following operations: (3-31-22)

01. Dairies. All Manufactured Grade and Grade A dairies located in Idaho licensed to sell milk for human consumption, pursuant to Title 37, Chapter 6, Idaho Code. (3-31-22)

02. Beef Cattle Animal Feeding Operations. All beef cattle animal feeding operations in Idaho required to implement a NMP pursuant to Title 22, Chapter 49 Idaho Code. (3-31-22)

03. Poultry Concentrated Animal Feeding Operations. All poultry operations required to implement an NMP pursuant to Title 25, Chapter 40, Idaho Code. (3-31-22)

04. Commercial Truck Wash Operations. All commercial truck washes required to implement an NMP pursuant to Title 22, Chapter 1, Idaho Code.

121. -- 129. (RESERVED)

130. NUTRIENT MANAGEMENT PLANS.

All NMPs required by IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," ~~and~~ IDAPA 02.04.32, "Rules Governing Poultry Operations," and IDAPA 02.04.23, "Rules Governing Commercial Livestock Truck Washing Facilities" must be approved by the Department and written by certified nutrient management planners, ~~who have been certified by the Department.~~ (3-31-22)

131. STORAGE AND CONTAINMENT FACILITY CRITERIA

All facilities required to maintain an NMP, pursuant to these rules, shall construct, operate and maintain all storage and containment facilities as follows:

01. 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. Process water and containment structures that are not the secondary or final storage for effluent shall have a minimum one (1) vertical feet of freeboard.

b. Earthen storage and containment facilities less than ten (10) vertical feet high with a maximum high water line of eight (8) vertical feet shall have a top embankment width of at least eight (8) feet. The combined embankment slopes must be at least five (5) horizontal to one (1) vertical, and shall not exceed two (2) horizontal to one (1) vertical slope. Earthen storage and containment facilities 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. (3-31-22)

c. The inside bottom of the 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 storage and containment facility, a soil liner shall be installed such that the specific discharge rate of the containment structure meet 1 x 10⁻⁶ cm³/cm²/sec or less. Concrete or synthetic liners must be constructed to ASAE and Appendix 10D specifications. (3-31-22)

d. Storage areas for byproduct, including compost and solid manure storage areas, shall be located on approved soils and appropriately protected to prevent run on, run off, and contamination of ground and surface water. (3-31-22)

Commented [JS5]: Were these rules promulgated to the relevant statutory sections? If so, likely not necessary here if statutory authority grants rulemaking authority to carry out the statutory chapter.

Commented [JS6]: For example of above, IC 25-4012(2) gives authority to the Director to "... modify the department's administrative rules and to make new rules for permitting and regulating poultry AFOs. "

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- e. Total containment volume shall be sufficient to contain:
 - i. ~~The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and~~
 - ii. ~~Either three (3) inches of runoff from the accumulation of winter precipitation or the amount of runoff from the accumulation of precipitation from a one-in-five (1 in 5) year winter~~

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f. All substances entering wastewater storage and containment facilities shall be composed of manure and process wastewater from the operation of the dairy, beef, poultry or commercial truck wash facility. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to, human waste, is prohibited.

g. Maintenance is sufficient to allow regular inspection of the integrity of the systems.

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131. -- 139. (RESERVED)

140. NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

All persons who develop NMPs pursuant to Subchapter A must be a certified nutrient management planner through via the Department Certification Program. The Department may require a CNMP to complete continuing education training to ensure compliance with Subchapter A. If a CNMP fails to follow the criteria in Subchapter A, the Department may revoke their certification.
(3-31-22)

01. ~~Certification.~~ The Nutrient Management Planner Certification will be valid unless revoked by the Department. (3-31-22)

02. ~~Development.~~ Any person may develop an NMP for his own operation provided the person possesses a valid Nutrient Management Planner Certification issued by the Department. (3-31-22)

Commented [DSL9]: Redundant....whether the NMP is for your own farm or someone else's, they must be a CNMP.

03. ~~Continuing Education.~~ The Department may require a CNMP to complete periodic continuing education training to retain certification. (3-31-22)

141. REVOCATION OF NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

CNMP Certification may be revoked by the Department if the CNMP fails to abide by the requirements of this chapter. (3-31-22)

Commented [JS10]: More concise.

01. ~~Submits Inaccurate Information.~~ Submits NMPs that contain falsified or materially inaccurate information. (3-31-22)

02. ~~Fails to Submit Plans.~~ Fails to submit an NMP to the ISDA within thirty (30) days after being paid by a producer. (3-31-22)

03. ~~Fails to Follow Provisions.~~ Fails to meet any requirement in Subchapter A of this rule. (3-31-22)

142. -- 149. (RESERVED)

150. SOIL SAMPLES.

Dairies, beef cattle operations, and poultry operations implementing nutrient management plans pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," Facilities required to maintain an NMP, pursuant to these rules, must have soil samples collected each year from all fields owned or operated by the dairy, beef, or poultry or commercial truck wash operation to which livestock waste, manure, or process wastewater from the operation was land applied. In addition, a poultry operation must have soil samples collected each year from all fields owned or operated by the poultry operation to which soil amendments from the operation were land applied. Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with this subchapter. (3-31-22)

Commented [JS11]: Is this soil sample collection already required by these rules? If so, this section seems redundant.

151. SOIL SAMPLE COLLECTION.

01. CSS. All soil samples collected pursuant to this chapter must be representative samples that are collected by a CSS at the depth indicated by the approved NMP for each facility. Samples shall be collected pursuant to SSB approved methods and submitted to an approved laboratory. If resource concerns require an alternate sampling depth be used, the CSS must indicate the alternate depths on all samples and lab submission forms. collected by a CSS. (3-31-22)

02. Representative Samples. All soil samples collected by a CSS must be representative samples pursuant to the provisions of the SSB. (3-31-22)

03. Sampling Depth. The soil samples shall be obtained from depths outlined in each operation's NMP unless soil survey data or site specific situations warrant alternative sampling depths. (3-31-22)

04. Alternative Sampling Depths. If the CSS determines that an alternative sampling depth is necessary due to resource concerns, the CSS must indicate such deviation in sampling depths on soil samples and laboratory soil sample submission forms. (3-31-22)

152. SOIL SAMPLE SUBMISSION.
All soil samples collected pursuant to this chapter must be appropriately handled to protect the integrity of the sample and submitted to an approved laboratory by the CSS who collected the soil sample. (3-31-22)

152. SOIL SAMPLER CERTIFICATION
All persons who collect soil samples pursuant to Subchapter A must be a certified soil sampler via the Department Certification Program. The Department may require a CSS to complete continuing education training to ensure compliance with Subchapter A. If a CSS fails to follow the criteria in Subchapter A, the Department may revoke their certification.

153. -- 159. (RESERVED)

160. APPROVED LABORATORIES.
Only laboratories that hold a current valid certification from the North American Laboratory Proficiency Testing Program or equivalent method approved by the Department are approved laboratories for the purposes of this chapter. (3-31-22)

161. RECORDS OF NUTRIENT ANALYSIS.
Owners or operators of facilities who are required to implement NMPs pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," must retain All nutrient management records and nutrient analysis data of nutrient analysis required under this chapter must be complete, readily available to the Director for inspection or copy, identified to the fields listed in the facility's NMP, retained for a minimum of five (5) years and available to the Department upon request. Required records include the following:

01. Annual Soil Analysis. Producer annual soil tests conducted as set forth in this subchapter, tested at an approved laboratory; and

02. Land Applications. Date and amount of nutrients, byproduct and commercial fertilizer applied to fields owned or operated by the approved NMP facility; (3-31-22)

03. Third-Party Exports. Date(s) of exported nutrients or byproduct, number of acres applied, amount of nutrients or byproduct exported, and to whom nutrients or byproduct was exported; and

04. Crop Yields. Actual crop yields on all fields owned or operated by the approved NMP facility.

05. IPDES permits. Dairy, beef, poultry or commercial truck facilities governed by the IPDES program are not required to submit an NMP to the Department.

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~~01. — Complete Records. Records must be complete, readily available, and identified to the fields listed in the facility's NMP. (3-31-22)~~

~~02. — Available to the Director. Records must be made available to the director for inspection and copying upon request. (3-31-22)~~

162. — 169. (RESERVED)

170. — SOIL SAMPLER CERTIFICATION.

All persons who collect soil samples pursuant to Subchapter A must be certified through the Department Certification Program. Any certification may be revoked by the Department if the person fails to meet the criteria in Subchapter A. (3-31-22)

~~01. — Certification. The Soil Sampler Certification will be valid unless revoked by the Department. (3-31-22S)~~

~~02. — Sampling. Any person may sample their own operation as outlined in Subchapter A of these rules provided the person possesses a valid Soil Sampler Certification issued by the Department. (3-31-22)~~

~~03. — Continuing Education. The Department may require CSS to complete continuing education training to ensure compliance within the provisions of this chapter. (3-31-22)~~

171. — REVOCATION OF SOIL SAMPLER CERTIFICATION.

Soil Sampler Certification is subject to revocation by the Department if the Certified Soil Sampler fails to meet the soil sampling criteria set forth in Subchapter A. (3-31-22)

172. — 179. (RESERVED)

180. — PENALTIES.

Any person violating any of the provisions of Subchapter A may be subject to the penalty provisions of Title 22, Chapter 1 and 49, Title 37, Chapter 4 and 6, and Title 25, Chapter 40, Idaho Code. (3-31-22)

~~01. — Monetary Penalties. The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires. (3-31-22)~~

~~02. — Minor Violations. The Director may issue suitable warnings or other administrative actions for minor violations. (3-31-22)~~

181. — 203. (RESERVED)

SUBCHAPTER B – CAFO SITE ADVISORY TEAM

204. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter B, Sections 204-303: (3-31-22)

01. Nutrient Management Standard (NMS). (3-31-22)

a. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf. (3-31-22)

b. The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document

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can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/june_2007_NRCS_590.pdf. (3-31-22)

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205. -- 209. (RESERVED)

210. DEFINITIONS.

~~In addition to the definitions found in Section 67-6529C, Idaho Code,~~ The following definitions apply in the interpretation and enforcement of Subchapter B, Sections 204-303: (3-31-22)

Commented [JS14]: See above. Statute already applies.

01. **Best Management Practices.** Practices, techniques, or measures that are determined by the Department to be a cost-effective and practicable means of preventing or reducing pollutants from point or non-point sources from entering waters of the state and managing odor generated on an agriculture operation to a level associated with accepted agriculture practices. (3-31-22)

02. **Land Application.** The spreading on, or incorporation into the soil of agricultural by-products such as manure, process wastewater, compost, cull potatoes, cull onions, or crop residues into the soil primarily for beneficial purposes. (3-31-22)

03. **Nutrient Management Plan.** A plan prepared in conformance with the nutrient management standard. (3-31-22)

04. **Nutrient Management Standard.** For dairies and beef cattle animal feeding operations, the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. For poultry concentrated animal feeding operations, the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. (3-31-22)

05. **Odor Management Plan.** A site-specific plan approved by the Director to manage odor from a CAFO to a level associated with accepted agricultural practices by utilizing best management practices. (3-31-22)

211. ABBREVIATIONS.

The following abbreviations apply in the interpretation and enforcement of Subchapter B, Sections 204-303: (3-31-22)

01. **BMP.** Best Management Practices. (3-31-22)

02. **CAFO.** Concentrated Animal Feeding Operation. (3-31-22)

~~03. **DEQ.** Idaho Department of Environmental Quality. (3-31-22)~~

~~04. **FEMA.** Federal Emergency Management Agency (3-31-22)~~

~~05. **IDWR.** Idaho Department of Water Resources. (3-31-22)~~

~~06. **NRCS.** The United States Department of Agriculture, Natural Resources Conservation Service. (3-31-22)~~

07. **NMP.** Nutrient Management Plan. (3-31-22)

08. **OMP.** Odor Management Plan. (3-31-22)

~~09. **USGS.** United States Geological Survey. (3-31-22)~~

212. -- 219. (RESERVED)

220. APPLICABILITY.

01. Site for a Proposed CAFO. A CAFO site advisory team shall review and make a site suitability determination for all proposed CAFO sites, as defined in Subchapter B of these rules, submitted by a board of county commissioners pursuant to Subchapter B. (3-31-22)

02. Sites That Do not Meet the Definition of a CAFO. The Director may form a CAFO site advisory team, as requested by a board of county commissioners, for a site that does not meet the animal numbers in the definition of a CAFO provided that: (3-31-22)

a. The county demonstrates that the site is in an environmentally sensitive area or is in close proximity to streams, lakes, or other bodies of surface water; or (3-31-22)

b. The state agencies have personnel and other resources available to conduct the site suitability determination. (3-31-22)

221. -- 229. (RESERVED)

~~230. — FORMATION OF A SITE ADVISORY TEAM.~~

~~A board of county commissioners may request the formation of a CAFO site advisory team to provide a site suitability determination by submitting to the Director a written request supported by the adoption of a resolution by the county. (3-31-22)~~

~~**01. — Designation of the Team Leader.** Upon receipt of a request to form a site advisory team, the Director shall designate a team leader. (3-31-22)~~

~~**02. — Notification of Team Members.** The team leader shall provide a copy of the request to form a site advisory team to DEQ and IDWR. After receiving notification, DEQ and IDWR shall notify the Team Leader of their respective representatives to the team. (3-31-22)~~

231. -- 239. (RESERVED)

240. CAFO SITE ADVISORY TEAMS

A CAFO site advisory team will make determinations of suitability on all proposed CAFO sites, as defined in Subchapter B, following a written request to the Director by a board of county commissioners. The team leader, designated by the Director, will notify DEQ and IDWR of all requests.

~~**01. — Site for a Proposed CAFO.** A CAFO site advisory team shall review and make a site suitability determination for all proposed CAFO sites, as defined in Subchapter B, submitted by a board of county commissioners pursuant to this Subchapter. (3-31-22)~~

~~**02. Non-CAFO Sites, That Do not Meet the Definition of a CAFO.** The Director may form a CAFO site advisory teams may be formed, as requested by a board of county commissioners, for a site that does not meet the animal numbers in the definition of a CAFO definitions provided that: (3-31-22)~~

~~**a.** The county demonstrates that the site is in an environmentally sensitive area or is in close proximity to streams, lakes, or other bodies of surface water; or (3-31-22)~~

~~**b.** The state agencies have personnel and other resources available to conduct the site suitability determination. (3-31-22)~~

~~241. — FORMATION OF A SITE ADVISORY TEAM.~~

~~A board of county commissioners may request the formation of a CAFO site advisory team to provide a site suitability determination by submitting to the Director a written request supported by the adoption of a resolution by the county. (3-31-22)~~

Commented [JS15]: Duplicative of Statute. See IC 67-6529E:

(1) A board of county commissioners shall submit its request for a suitability determination by a site advisory team in writing to the director of the department of agriculture and shall support its request by the adoption of a resolution.

~~01. Designation of the Team Leader. Upon receipt of a request to form a site advisory team, the Director will designate a team leader. (3-31-22)~~

~~02. Notification of Team Members. The team leader will provide a copy of the request to form a site advisory team to DEQ and IDWR. After receiving notification, DEQ and IDWR will notify the Team Leader of their respective representatives to the team. (3-31-22)~~

~~242. CONTENTS OF A REQUEST TO FORM A SITE ADVISORY TEAM. The information contained in a request includes, but is not limited to, the following: (3-31-22)~~

~~01. County Definition of CAFO. The county's definition of "CAFO" as set forth in any applicable county ordinance. (3-31-22)~~

~~02. Legal Description and Address. Legal description and address of the proposed CAFO. (3-31-22)~~

~~03. One-Time Unit Capacity. The one-time animal capacity of the proposed CAFO. (3-31-22)~~

~~04. Type of Animals. The type of animals to be confined at the proposed CAFO. (3-31-22)~~

~~05. Water Right Information. All requests shall include one (1) of the following: (3-31-22)~~

~~a. Evidence that a valid water right exists to supply adequate water for the operation of the proposed CAFO; or (3-31-22)~~

~~b. A copy of an application for a permit to appropriate water that has been filed with IDWR, that if approved, will supply adequate water for operation of the proposed CAFO; or (3-31-22)~~

~~c. A copy of an application to change the point of diversion, place, period, and nature of use of an existing water right that has been filed with IDWR, that if approved, will supply adequate water for the operation of the proposed CAFO. (3-31-22)~~

~~06. Vicinity Map with Site Location. A detailed sketch of the proposed CAFO site location, on an aerial photograph if available, that includes the following: (3-31-22)~~

~~a. Building locations; (3-31-22)~~

~~b. Waste storage facilities and general areas for any land application including a narrative description of the waste system; (3-31-22)~~

~~c. FEMA flood zones or other appropriate flood data for the proposed CAFO site and land application sites owned or leased by the applicant; (3-31-22)~~

~~d. Private and community domestic water wells, irrigation wells, existing monitoring wells, and existing injection wells as documented by IDWR or other sources, including the associated well logs if available, that are within a one (1) mile radius of the proposed CAFO; (3-31-22)~~

~~e. Irrigation canals, irrigation laterals, rivers, streams, springs, lakes, reservoirs, and designated wetlands, that are within a one (1) mile radius of the proposed CAFO. (3-31-22)~~

~~07. Site Characterization. A characterization of the proposed CAFO site and any land application sites owned or leased by the applicant, that includes the following information, if available: (3-31-22)~~

~~a. Annual precipitation and prevailing wind direction as contained in the Idaho Waste Management Guidelines, 1997; (3-31-22)~~

~~b. Soil characteristics from NRCS; (3-31-22)~~

Commented [JS16]: Duplicative of 67-6529E(2). Site Advisory Team already authorized to seek any other relevant information:

(2) Information in the request shall include, but not be limited to, the county's definition of "CAFO" as set forth in any applicable county ordinance, the relevant legal description and address of a proposed facility, the actual animal capacity of the facility, the types of animals to be confined at the proposed facility, all information related to water and water rights of the facility, any relevant vicinity maps **and any other information relevant to the site that will assist the site advisory team in issuing its suitability determination.** The board of county commissioners shall also provide the site advisory team with a copy of the odor management plan for the CAFO, if required to be submitted by the site applicant at the time of application.

- ~~c. Hydrologic characteristics from IDWR and USGS including: (3-31-22)~~
- ~~i. Depth to first water yielding zone and first encountered water; (3-31-22)~~
- ~~ii. Direction of ground water movement and gradient; (3-31-22)~~
- ~~iii. Sources and estimates of recharge; (3-31-22)~~
- ~~iv. Seasonal variations in water level and recharge characteristics; (3-31-22)~~
- ~~v. Susceptibility to contamination; and (3-31-22)~~
- ~~vi. Relation of ground water to surface water. (3-31-22)~~
- ~~d. Water quality data from DEQ, the Department, IDWR, or USGS, including: (3-31-22)~~
- ~~i. Microorganisms; (3-31-22)~~
- ~~ii. Nutrients; and (3-31-22)~~
- ~~iii. Pharmaceuticals and organic compounds. (3-31-22)~~
- ~~08. Required OMPs or NMPs. Any OMPs or NMPs that are required by the county to be submitted by the applicant at the time of application. (3-31-22)~~

243. -- 249. (RESERVED)

250. REVIEW OF REQUEST.

Team members ~~will review the information provided in the request~~ for the formation of a site advisory team to determine if ~~it includes the all~~ required elements of ~~Section 67-6520E(2), Idaho Code~~ ~~Section 242~~ ~~are included and to schedule the date and time of the onsite visit. If the request is incomplete, the team leader will contact the county and request additional information.~~ (3-31-22)

~~01. Insufficient Information. If the team determines that the information provided by the county does not include the required elements of Section 242~~ ~~Section 67-6520E(2), Idaho Code,~~ the team leader will contact the county and request additional information. (3-31-22)

~~02. Sufficient Information. When the team has determined that the information submitted by the county contains the required elements of Section 67-6520E(2), Idaho Code,~~ ~~Section 242,~~ the team leader schedules an onsite review of the information with the team members. ~~The team leader informs the county requesting the formation of the site advisory team of the date and time of the onsite review and the county may have a representative present.~~ (3-31-22)

251. -- 259. (RESERVED)

260. SITE SUITABILITY DETERMINATION.

Within thirty (30) days of receiving a request for the formation of a CAFO site advisory team that includes the required elements of ~~Section 67-6520E(2), Idaho Code,~~ ~~Section 242,~~ the team ~~will~~ develops and submits to the county a site suitability determination, ~~based on the elements of Section 67-6520E(2), Idaho Code, Section 242 or other relevant information,~~ that contains: (3-31-22)

01. Risk Category. A determination of an environmental risk category: high, moderate; low; or insufficient information to make a determination; (3-31-22)

02. Description of Factors. A description of the factors that contribute to the environmental risks;

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(3-31-22)

03. **Mitigation.** Any possible mitigation of the environmental risks. (3-31-22)

261. – 303. (RESERVED)

SUBCHAPTER C – AGRICULTURE ODOR MANAGEMENT

304. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter C, Sections 304-409 only: (3-31-22)

01. **Idaho NRCS Nutrient Management Standard 590, June 1999.** (3-31-22)

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02. **Best Management Practices listed in the “Idaho Agricultural Pollution Abatement Plan,” August 2001.** (3-31-22)

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03. **ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997.** (3-31-22)

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04. **NRCS Conservation Practice Standard 317, March 2001.** (3-31-22)

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305. – 309. (RESERVED)

310. DEFINITIONS.

~~In addition to the definitions found in Section 25-3803, Idaho Code,~~ The following definitions apply in the interpretation and enforcement of Subchapter C, Sections 304-409: (3-31-22)

~~01. **Animal.** Livestock and agricultural animals. (3-31-22)~~

02. **BAT.** The best application of science that is accessible and obtainable to achieve a desired objective. (3-31-22)

~~03. **Beef Cattle.** All cattle except those located on a dairy farm that have been permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, “Rules Governing Dairy Byproduct.” (3-31-22)~~

Commented [DSL17]: Redundant and unnecessary

~~04. **Beef Cattle Animal Feeding Operation.** Those operations regulated pursuant to IDAPA 02.04.15, “Rules Governing Beef Cattle Animal Feeding Operations.” (3-31-22)~~

05. **Compost.** A biologically stable material derived from the ~~biological~~ aerobic decomposition of organic matter. (3-31-22)

~~06. **Composting.** The aerobic degradation of manure and other organic material to a biologically stable form. (3-31-22)~~

07. **Land Application.** The spreading on, or incorporation into the soil of agricultural by-products including, but not limited to, manure, wastewater, compost, cull potatoes, cull onions, or crop residues. (3-31-22)

08. **Large Swine And Poultry Operations.** Those swine operations regulated pursuant to IDAPA 58.01.09, “Rules Regulating Swine Facilities,” and those poultry operations regulated pursuant to IDAPA 02.04.32, “Rules Governing Poultry Operations.” (3-31-22)

09. **Liquid-Solid Separation.** The removal of solid manure from water through mechanical or settling means. (3-31-22)

10. **Waste Collection and Conveyance Systems.** The areas and systems used in the collection and transfer of manure from the point of generation to the wastewater storage and containment facilities, prior to land

application. (3-31-22)

11. **Wastewater Treatment.** A process by which wastewater is treated through aerobic or anaerobic degradation or other means. (3-31-22)

311. **ABBREVIATIONS.**

The following abbreviations apply in the interpretation and enforcement of Subchapter C, Sections 304-409: (3-31-22)

~~01. ASAE. American Society of Agricultural Engineers. (3-31-22)~~

02. **BAT.** Best Available Technology. (3-31-22)

03. **BMP.** Best Management Practice. (3-31-22)

~~04. DEQ. Idaho Department of Environmental Quality. (3-31-22)~~

05. **NMP.** Nutrient Management Plan. (3-31-22)

~~06. NOV. Notice Of Violation. (3-31-22)~~

~~07. NRCS. The United States Department of Agriculture, Natural Resources Conservation Service. (3-31-22)~~

08. **OMP.** Odor Management Plan. (3-31-22)

312. – 319. **(RESERVED)**

320. **ACCEPTED AGRICULTURAL PRACTICES.**

Management practices conducted in accordance with applicable laws, rules and best management practices, ~~as referenced in Subsections 320.01 and 320.02, or in the absence of referenced best management practices, management practices conducted~~ in a manner that demonstrates reasonable efforts to minimize odors, are considered accepted agricultural practices for purposes of ~~Subchapter C~~ this rule. (3-31-22)

01. **Applicable Rules.** The following are applicable rules for the purpose of Section 320: (3-31-22)

a. IDAPA 02.04.14, “Rules Governing Dairy Byproduct.” (3-31-22)

b. IDAPA 02.03.03, “Rules Governing Pesticide and Chemigation Use and Application.” (3-31-22)

c. IDAPA 02.06.17, “Rules Concerning Disposal of Cull Onion and Potatoes.” (3-31-22)

d. IDAPA 02.04.17, “Rules Governing Dead Animal Movement and Disposal.” (3-31-22)

~~02. Applicable Best Management Practices. The following practices, or other management practices approved by the Director that are conducted in a manner that demonstrates reasonable efforts to minimize odors are considered accepted agricultural practices for purposes of this rule. (3-31-22)~~

~~a. Idaho NRCS Nutrient Management Standard 590, June 1999. (3-31-22)~~

~~b. Best Management Practices listed in the “Idaho Agricultural Pollution Abatement Plan,” August 2001. (3-31-22)~~

~~c. “Control of Manure Odors,” ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997. (3-31-22)~~

Commented [DSL18]: Is this necessary? We would not do an odor management plan for dead animals...either they are managing their deads correctly or they're not.

d. "Composting Facility," NRCS Conservation Practice Standard 317, March 2001. (3-31-22)

03. **Excess Odors.** An agricultural operation using an accepted agricultural practice that generates odors in excess of levels normally associated with such practice, as determined by the Department on a site specific basis, shall develop and submit an odor management plan to the Director in accordance with Section 360. (3-31-22)

321. -- 329. (RESERVED)

330. APPLICABILITY.

Subchapter C applies to all agricultural operations, except: (3-31-22)

01. **Beef Cattle.** Beef cattle animal feeding operations regulated pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (3-31-22)

02. **Swine and Poultry.** Large swine operations regulated pursuant to IDAPA 58.01.09, "Rules Regulating Swine Facilities," and large poultry operations regulated pursuant to IDAPA 02.04.32, "Rules Governing Poultry Operations." (3-31-22)

331. -- 339. (RESERVED)

~~340. LIQUID WASTE SYSTEMS.~~

~~No person shall begin construction of a new or modified liquid waste system prior to approval of such system by the Director. (3-31-22)~~

~~01. Department Review. The Director may order the construction to cease if the construction of a new or modified liquid waste system has commenced prior to the Director's approval. In doing so, the Director will consider a review and assessment of such systems made by Department staff. (3-31-22)~~

~~02. Design Requirements. All new or modified liquid waste systems shall be designed by licensed professional engineers, approved in writing by the Director, and constructed in accordance with standards and specifications approved by the Director for management of odors. (3-31-22)~~

~~a. If construction is commenced prior to the Director's written approval, the Director may order construction activities to be ceased. (3-31-22)~~

~~b. Material deviations from the approved plans and specifications are not allowed without the prior written approval of the director. (3-31-22)~~

~~c. Within thirty (30) days of completion of construction, alteration or modification of any new or modified liquid waste system, complete and accurate plans and specifications depicting the actual construction, alteration, or modification performed must be submitted by the operator to the Director. (3-31-22)~~

~~d. If construction does not materially deviate from the plans approved by the Director, a statement to that effect shall be filed by the agricultural operation with the Director. (3-31-22)~~

~~341. STANDARDS AND SPECIFICATIONS FOR LIQUID WASTE SYSTEMS.~~

~~All new or modified liquid waste systems shall be designed and constructed in accordance with applicable laws and rules, and for the purpose of managing odors. The Director shall require techniques and management practices as standards and specifications of liquid waste systems for the management of odors. These techniques and management practices may include but are not be limited to the following: (3-31-22)~~

~~01. Wastewater Storage and Containment Facilities: (3-31-22)~~

~~a. Liquid-solid separation. (3-31-22)~~

~~b. Wastewater treatment. (3-31-22)~~

Commented [DSL19]: Enforceability?

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Commented [JS20]: Duplicative of IC 25-3804:

All new or modified liquid waste systems shall be designed by licensed professional engineers, approved by the director of the department of agriculture for compliance with the provisions of this chapter, and constructed in accordance with standards and specifications either approved by the director for management of odors or in accordance with any existing relevant memorandums of understanding with the department of environmental quality. Provided however, that all persons shall submit plans and specifications for new or modified liquid waste systems to the director for approval and shall not begin construction of a liquid waste system prior to approval of plans and specifications by the director. If construction is commenced prior to receiving necessary approval, the director may order construction activities to be ceased. No material deviation shall be made from the approved plans and specifications without the prior written approval of the director. Within thirty (30) days of completion of construction, alteration or modification of any new or modified liquid waste system, complete and accurate plans and specifications depicting the actual construction, alteration or modification performed must be submitted by the operator to the director. If construction does not materially deviate from the plans approved by the director, a statement to that effect shall be filed by the agricultural operation with the director.

Commented [DSL21]: This whole section is redundant...section 320 already identifies what entities are regulated and the recommended BMPs.

- ~~c. Use of chemical or biological additives. (3-31-22)~~
- ~~d. Dilution of wastewater. (3-31-22)~~
- ~~e. Impermeable or permeable storage covers. (3-31-22)~~
- ~~f. Biofilters. (3-31-22)~~
- ~~g. Enhancing dispersion. (3-31-22)~~
- ~~h. Location of wastewater discharge into storage and containment facilities. (3-31-22)~~
- ~~02. Wastewater Collection and Conveyance Systems. (3-31-22)~~
- ~~a. Wastewater Treatment. (3-31-22)~~
- ~~b. Use of chemical or biological additives. (3-31-22)~~
- ~~c. Dilution of wastewater. (3-31-22)~~
- ~~d. Impermeable or permeable covers of collection areas. (3-31-22)~~
- ~~e. Timing of collection and conveyance system operation. (3-31-22)~~
- ~~f. Frequency and duration of collection and conveyance system operation. (3-31-22)~~
- ~~g. Enhancing dispersion. (3-31-22)~~

342. -- 349. (RESERVED)

~~350. — INSPECTIONS.~~

~~The Director or Director's designee is authorized to enter and inspect any agricultural operation, and during normal business hours have access to or copy any facility records deemed necessary to ensure compliance with Subchapter C of these rules. (3-31-22)~~

351. -- 359. (RESERVED)

360. ODOR MANAGEMENT PLANS.

OMP's ~~shall be~~ are designed to work in conjunction with any required NMP and ~~shall~~ must be submitted to the Director in writing, ~~and upon~~ for approval by the Director, ~~signed by owner or operator of the agricultural operation.~~ (3-31-22)

01. **OMP Development.** Within sixty (60) days of receiving a NOV for a first time violation, the owner or operator of the agriculture operation ~~receiving the NOV~~ shall submit an OMP to the Director ~~an OMP~~ for approval. (3-31-22)

02. **Interim Measures.** The Department will work with ~~the owner or operator of an agriculture operation that has received a NOV for a first time violation~~ violators to identify interim measures that can be implemented in a timely manner to begin the process of reducing odors while the OMP is being developed. (3-31-22)

03. **Department Approval.** ~~OMP's submitted to the Department from operators committing a first-time violation The Director will be approved, rejected, or requested to provide additional information, within thirty (30) days of receiving an OMP from the owner or operator of an agricultural operation deemed to have committed a first time violation and provide to the owner or operator of the agricultural operation the approval, rejection, or request for additional information in writing.~~ (3-31-22)

~~a. If the Director rejects an OMP or requests additional information, the owner or operator of the agricultural operation shall submit to the Director the additional information or a rewritten OMP that address the reasons for the rejection within thirty (30) days of receiving written notification from the Director. (3-31-22)~~

~~b. Within fifteen (15) days of receiving the additional information or a rewritten OMP, the Director will approve or reject the OMP. If the OMP is rejected, the Director may issue a subsequent violation under Section 371 of these rules, and assess the penalty provisions specified in Subchapter C, Section 370 of these rules, and Section 25-3808, Idaho Code. (3-31-22)~~

~~c. The Director may, on a case by case basis, grant extensions to the deadlines contained in this section. (3-31-22)~~

~~04. **Implementation.** OMPs shall be implemented as approved by the Director. (3-31-22)~~

~~05. **Review of OMP.** The Department will review OMPs no less than annually for three (3) years after the Director approves the OMP. If the Department determines an approved OMP has not reduced odors to a level associated with accepted agricultural practices after a reasonable period of time, as determined by the Department, the Department will review the OMP with the owner or operator of the agricultural operation and adjust the OMP to meet the goals of the Agriculture Odor Management Act. (3-31-22)~~

361. CONTENTS OF AN ODOR MANAGEMENT PLAN.

~~Contents of an OMP for an agricultural operation shall include all relevant information as required by the Department. may include, but are not limited to the following: (3-31-22)~~

~~01. **Owner's Name.** Name and telephone number of the owner of the operation. (3-31-22)~~

~~02. **Address.** Physical address of the operation. (3-31-22)~~

~~03. **Location.** County in which the operation is located. (3-31-22)~~

~~04. **Operation Description.** A description of the operation that includes, as applicable: (3-31-22)~~

~~a. Type of operation. (3-31-22)~~

~~b. General description of operation. (3-31-22)~~

~~c. Number and type of any animals including age groups. (3-31-22)~~

~~d. Any plans for expansion. (3-31-22)~~

~~e. Type of housing used related to age groups of animals. (3-31-22)~~

~~f. General description of nearby residential areas, public use areas, and pertinent agricultural operations. (3-31-22)~~

~~g. Type of crop and number of acres grown. (3-31-22)~~

~~05. **Scaled Vicinity Map.** A map that shall include all residences, public use areas, roads, general topography of the area, and other pertinent agricultural operations within a two (2) mile radius of the facility. (3-31-22)~~

~~06. **Manure Management System.** A detailed description of the present manure handling systems including timing, frequency, duration, volumes, dimensions, and flow rates where applicable for the following: (3-31-22)~~

Commented [JS22]: Is an OMP on a form provided by the Department? If so, consider striking lists below and inserting something like: "Contents of an OMP for an agricultural operation shall include all relevant information as required by the Department."

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~~a. Manure cleaning systems. (3-31-22)~~

~~b. Manure transfer systems. (3-31-22)~~

~~c. Manure separation systems. (3-31-22)~~

~~07. Scaled Site Plan. A site plan showing all buildings, housing facilities, waste/manure storage areas, piping, feed storage areas, and roadways. (3-31-22)~~

~~08. Land Application System. A detailed description of the present management practices and methods used to make land application including: (3-31-22)~~

~~a. Timing, frequency, and duration of practices. (3-31-22)~~

~~b. Proximity of land application sites to residential and public use areas. (3-31-22)~~

~~09. Climatic Data. A description of the typical climatic conditions for a minimum period of two (2) years that exist in the geographical area of the operation or have been recorded on-site for the operation including: (3-31-22)~~

~~a. Wind Speed and direction(s). (3-31-22)~~

~~b. Temperature range. (3-31-22)~~

~~c. Relative humidity range. (3-31-22)~~

~~d. Precipitation data. (3-31-22)~~

10. **Facility Odor Sources.** A list of all primary odor sources located on the operation with a general ranking of low, moderate, or high with respect to overall odor production along with an explanation of why it is listed as a source and the reasoning for the overall ranking. (3-31-22)

Commented [DSL23]: This language covers all of the deleted sections above

11. **Tiered Implementation.** A three-tier process shall be used to reduce odor production from the facility with each tier containing a list of the primary BMPs and BATs that are going to be implemented by the facility. For each tier BMP and BAT listed, the plan shall include, but not be limited to: (3-31-22)

a. Process of how the BMP or BAT will be designed or managed. (3-31-22)

b. Implementation schedule that defines when the BMP or BAT will be implemented on the facility and justification for why this time frame was chosen. (3-31-22)

c. Monitoring program that will be implemented to evaluate the effectiveness of the BMP or BAT, with quantitative or qualitative reduction goals. (3-31-22)

12. **Public Involvement.** This section shall describe how the public in the area of the facility will be involved in the implementation or evaluation of the OMP. (3-31-22)

13. **Timeframe for Review of OMP.** A designated period of time when each tier of the plan will be evaluated to determine if further implementation is necessary, how each tier will be evaluated, which Department staff will conduct the review, and a period of time in which the agricultural operation will attain full compliance with the plan. (3-31-22)

362. -- 369. (RESERVED)

~~370. FIRST TIME VIOLATIONS. If the Department determines that an agricultural operation is generating odors in excess of levels of odors normally~~

Commented [JS24]: Duplicative of IC 25-3805.

~~associated with accepted agricultural practices, the agricultural operations shall be deemed to have committed a first time violation of Subchapter C. The Department shall require agricultural operations deemed to have committed a first time violation to cooperate with the Department to develop and submit to the Director for approval an OMP.~~
~~(3-31-22)~~

~~**371. — SUBSEQUENT VIOLATIONS.**~~

~~Agricultural operations have committed a subsequent violation if the operation is determined to have committed a subsequent violation within three (3) years, has failed to comply with a required OMP, or the Department determines that the owner or operator of the agriculture operation has not cooperated with the Department by failing to submit an OMP that meets Department approval requirements.~~
~~(3-31-22)~~

Commented [JS25]: Duplicative of IC 25-3808 "Subsequent Violations":

~~**372. — EXCEPTIONS.**~~

~~Events contemplated in Section 25-3805(7), Idaho Code, are not considered violations of this subchapter. Section 25-3805, Idaho Code, is applicable whether or not an agricultural operation is required to have an OMP.~~
~~(3-31-22)~~

Commented [JS26]: 25-3805 contemplates that the organization might not have an odor management plan. Also, 25-3805(7) already says an odor emission caused by an Act of God or mechanical failure is not a violation for purposes of the statutory chapter, which authorizes these rules and regulates these communities.

373. -- 409. (RESERVED)

SUBCHAPTER D – STOCKPILING OF AGRICULTURAL LIVESTOCK WASTE

410. DEFINITIONS.

The following definitions apply: ~~in the interpretation and enforcement of Subchapter D, Sections 410-999:~~ (3-31-22)

01. Agricultural Operation. Facilities that generate or receive and stockpile agricultural livestock waste and that are not regulated under IDAPA 02.04.14, "Rules Governing Dairy Byproduct," or IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (3-31-22)

~~**02. Agricultural Waste.** Agricultural waste means livestock waste.~~ (3-31-22)

03. Duration. The length of time agricultural livestock waste is stockpiled. (3-31-22)

04. Dwelling. The house, residence, abode, or other structure where a person lives. (3-31-22)

05. Livestock. Bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds, and captive waterfowl. (3-31-22)

06. Livestock Waste. Manure that may also contain bedding, spilled feed, feathers, water, process water, feed leachate, or soil or livestock carcasses or parts thereof. ~~It also includes wastes not particularly associated with manure, such as milking center or washing wastes, milk, feed leachate, or livestock carcasses or parts thereof.~~
(3-31-22)

~~**07. Non-Compliance.** A practice or facility condition that does not comply with Section 22-110, Idaho Code, or the provisions of these rules.~~ (3-31-22)

07. Process Water. Water directly or indirectly used or produced in dairy animal rearing or milk production.

08. Public Highway. All highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision. (3-31-22)

09. Responsible Party. A person who generates or receives and stockpiles agricultural waste on property the person owns, leases, or otherwise has permission to use as a stockpile site. (3-31-22)

~~**10. Setbacks for a Stockpile Site.** The distance from a stockpile site to a location identified in Section 420 of Subchapter D.~~ (3-31-22)

11. Stockpile Staging Site. A physical area where stockpiling occurs for a duration of no longer than

thirty (30) days. (3-31-22)

12. **Stockpile Site.** A physical location where ~~agricultural-livestock~~ waste is stockpiled for a duration of more than thirty (30) days and that stockpiles more than fifty (50) cubic yards of ~~agricultural-livestock~~ waste. (3-31-22)

13. **Stockpiling.** The accumulation of ~~agricultural-livestock~~ waste on an agricultural operation. (3-31-22)

~~14. — Surface Waters of the State. All accumulations of surface water, natural and artificial, public and private, or parts thereof that are wholly or partially within, that flow through or border upon the state. — (3-31-22)~~

411. -- 419. (RESERVED)

420. SETBACKS FOR STOCKPILE SITES.

Stockpile sites at agricultural operations must meet the following setback requirements. (3-31-22)

01. **Setback Distances.** Stockpile sites shall maintain the following setbacks: (3-31-22)

a. Three hundred (300) feet from a non-responsible party's dwelling. (3-31-22)

b. Five hundred (500) feet from a hospital, church, or school. (3-31-22)

c. One hundred (100) feet from a domestic or irrigation well. (3-31-22)

d. One hundred (100) feet from surface waters of the State. (3-31-22)

e. Fifty (50) feet from a public highway. (3-31-22)

02. **Responsible Party's Dwellings.** Stockpile sites do not have setbacks from ~~a responsible party's dwelling or~~ dwellings owned by the responsible party. (3-31-22)

03. **Stockpile Staging Sites.** Stockpile staging sites are not subject to the setbacks set forth in Subchapter D. (3-31-22)

421. -- 999. (RESERVED)

Commented [DSL27]: Standardize?

02.04.30 – RULES GOVERNING ENVIRONMENTAL AND NUTRIENT MANAGEMENT

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of~~ Sections 22-110, 22-4903, 25-3802, 25-4012(2), 37-401(1), 37-405, 37-603(1), 67-6529F(4), Idaho Code. (3-31-22)

001. ~~TITLE AND SCOPE.~~

~~01. ~~Title.~~ The title of this chapter is IDAPA 02.04.30, “Rules Governing Environmental and Nutrient Management.”~~ (3-31-22)

02. **Scope.** This rule governs the certification process for soil samplers and nutrient management planners, the process for collecting and handling soil samples, the contents of a request to form a CAFO Site Advisory Team, formation of a CAFO Site Advisory Team, development of a site suitability determination, submission of the suitability determination to the appropriate county officials, the management of odor generated on agricultural operations, except beef cattle animal feeding operations and large swine and poultry operations and the stockpiling of agricultural waste at agricultural operations to safeguard and protect animals, man, and the environment. (3-31-22)

002. – 103. (RESERVED)

SUBCHAPTER A – NUTRIENT MANAGEMENT

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter A, Sections 104-203 only: (3-31-22)

01. **August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised).** This document can be viewed online at <http://www.extension.uidaho.edu/publishing/pdf/EXT/EXT0704.pdf>. (3-31-22)

02. **Nutrient Management Standard (NMS).** (3-31-22)

a. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf. (3-31-22)

b. The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/june_2007_NRCS_590.pdf. (3-31-22)

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/>.

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>. (3-31-22)

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>.

04. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/nrcs_313_Dec_2004.pdf.

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02. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS). This document can be viewed online at <https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17767.wba>.

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105. -- 109. (RESERVED)

110. DEFINITIONS.

~~In addition to the definitions found in Sections 22-4904, 25-4002, and 37-604, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter A, Sections 104-203 only:~~ (3-31-22)

Commented [JS1]: Applicable statutory definitions apply whether referenced in code or not.

01. **Approved Laboratory.** A soil testing laboratory with a valid certification from the North American Proficiency Testing Program under the auspices of the Soil Science Society of America.

Certified Soil Sampler. A person who has completed a Department approved soil sampler certification program and has received written certification from the Department. (3-31-22)

~~02. **Nutrient Management Plan.** A plan prepared in conformance with the Nutrient Management Standard for managing the amount, source, placement, form, and timing of the land application of nutrients and soil amendments for plant production.~~ (3-31-22)

Commented [JS2]: Consider striking. Already defined in both 22-4904 and 25-4002.

~~03. **Nutrient Management Standard.** For dairies and beef cattle animal feeding operations, the Nutrient Management Standard is the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the Director. For poultry concentrated animal feeding operations, the Nutrient Management Standard is the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the director.~~ (3-31-22)

Commented [JS3]: This reads more like a substantive rule about which NMP applies, not a definitional rule.

04. Operation(s). Animal feeding operation(s). (3-31-22)

~~05. **Representative Soil Sample.** A representative soil sample is a soil sample obtained as outlined by the August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised) or other equivalent method as approved by the Department.~~ (3-31-22)

Commented [JS4]: Not used anywhere else in the rule chapter.

06. Resource Concerns. Surface water runoff that leaves the operation from normal storm events, rain or snow, frozen ground or irrigation; and ground water concerns on the operation from a high water table, fractured bedrock, cobbles, gravel, coarse textured soils or other environmental considerations such as tile drains or shallow soils that are conducive for the downward movement of water and associated nutrients. (3-31-22)

111. ABBREVIATIONS.

The following abbreviations apply in the interpretation and enforcement of Subchapter A, Sections 104-203 only: (3-31-22)

01. CNMP. Certified Nutrient Management Planner. (3-31-22)

02. CSS. Certified Soil Sampler. (3-31-22)

03. NMP. Nutrient Management Plan. (3-31-22)

04. NMS. Nutrient Management Standard. (3-31-22)

05. NRCS. United States Department of Agriculture, Natural Resources Conservation Service.

(3-31-22)

06. SSB. August 1997 University of Idaho Soil Sampling Bulletin 704 (revised). (3-31-22)

07. USDA. United States Department of Agriculture. (3-31-22)

112. -- 119. (RESERVED)

120. APPLICABILITY.

These rules apply to nutrient management on the following operations: (3-31-22)

01. Dairies. All Manufactured Grade and Grade A dairies located in Idaho licensed to sell milk for human consumption, pursuant to Title 37, Chapter 6, Idaho Code. (3-31-22)

02. Beef Cattle Animal Feeding Operations. All beef cattle animal feeding operations in Idaho required to implement a NMP pursuant to Title 22, Chapter 49 Idaho Code. (3-31-22)

03. Poultry Concentrated Animal Feeding Operations. All poultry operations required to implement an NMP pursuant to Title 25, Chapter 40, Idaho Code. (3-31-22)

121. -- 129. (RESERVED)

130. NUTRIENT MANAGEMENT PLANS.

All NMPs required by IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," ~~and~~ IDAPA 02.04.32, "Rules Governing Poultry Operations," and IDAPA 02.04.23, "Rules Governing Commercial Livestock Truck Washing Facilities" must be approved by the Department and written by certified nutrient management planners, who have been certified by the Department. (3-31-22)

131. STORAGE AND CONTAINMENT FACILITY CRITERIA

All facilities required to maintain an NMP, pursuant to these rules, shall construct, operate and maintain all storage and containment facilities as follows:

01. 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. Process water and containment structures that are not the secondary or final storage for effluent shall have a minimum one (1) vertical feet of freeboard.

b. Earthen storage and containment facilities less than ten (10) vertical feet high with a maximum high water line of eight (8) vertical feet shall have a top embankment width of at least eight (8) feet. The combined embankment slopes must be at least five (5) horizontal to one (1) vertical, and shall not exceed two (2) horizontal to one (1) vertical slope. Earthen storage and containment facilities 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. (3-31-22)

c. The inside bottom of the 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 storage and containment facility, a soil liner shall be installed such that the specific discharge rate of the containment structure meet 1 x 10⁻⁶ cm³/cm²/sec or less. Concrete or synthetic liners must be constructed to ASAE and Appendix 10D specifications. (3-31-22)

d. Storage areas for byproduct, including compost and solid manure storage areas, shall be located on approved soils and appropriately protected to prevent run on, run off, and contamination of ground and surface water. (3-31-22)

e. Total containment volume shall be sufficient to contain:

- i. The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and
- ii. Either three (3) inches of runoff from the accumulation of winter precipitation or the amount

Commented [JS5]: Were these rules promulgated to the relevant statutory sections? If so, likely not necessary here if statutory authority grants rulemaking authority to carry out the statutory chapter.

Commented [JS6]: For example of above, IC 25-4012(2) gives authority to the Director to "... modify the department's administrative rules and to make new rules for permitting and regulating poultry AFOs. "

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of runoff from the accumulation of precipitation from a one-in-five (1 in 5) year winter

f. All substances entering wastewater storage and containment facilities shall be composed of manure and process wastewater from the operation of the dairy, beef, poultry or commercial truck wash facility. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to, human waste, is prohibited.

g. Maintenance is sufficient to allow regular inspection of the integrity of the systems.

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131. -- 139. (RESERVED)

140. NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

All persons who develop NMPs pursuant to Subchapter A must be a certified nutrient management planner through via the Department Certification Program. The Department may require a CNMP to complete continuing education training to ensure compliance with Subchapter A. If a CNMP fails to follow the criteria in Subchapter A, the Department may revoke their certification.

(3-31-22)

01. Certification. The Nutrient Management Planner Certification will be valid unless revoked by the Department. (3-31-22)

02. Development. Any person may develop an NMP for his own operation provided the person possesses a valid Nutrient Management Planner Certification issued by the Department. (3-31-22)

Commented [DSL9]: Redundant....whether the NMP is for your own farm or someone else's, they must be a CNMP.

03. Continuing Education. The Department may require a CNMP to complete periodic continuing education training to retain certification. (3-31-22)

141. REVOCATION OF NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

CNMP Certification may be revoked by the Department if the CNMP fails to abide by the requirements of this chapter. (3-31-22)

Commented [JS10]: More concise.

~~01. Submits Inaccurate Information. Submits NMPs that contain falsified or materially inaccurate information.~~ (3-31-22)

~~02. Fails to Submit Plans. Fails to submit an NMP to the ISDA within thirty (30) days after being paid by a producer.~~ (3-31-22)

~~03. Fails to Follow Provisions. Fails to meet any requirement in Subchapter A of this rule.~~ (3-31-22)

142. -- 149. (RESERVED)

150. SOIL SAMPLES.

Dairies, beef cattle operations, and poultry operations implementing nutrient management plans pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," Facilities required to maintain an NMP pursuant to these rules, must have soil samples collected each year from all fields owned or operated by the dairy, beef, or poultry or commercial truck wash operation to which livestock waste, manure, or process wastewater from the operation was land applied. In addition, a poultry operation must have soil samples collected each year from all fields owned or operated by the poultry operation to which soil amendments from the operation were land applied. Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with this subchapter. (3-31-22)

Commented [JS11]: Is this soil sample collection already required by these rules? If so, this section seems redundant.

151. SOIL SAMPLE COLLECTION.

01. CSS. All soil samples collected pursuant to this chapter must be representative samples that are collected by a CSS at the depth indicated by the approved NMP for each facility. Samples shall be collected

pursuant to SSB approved methods and submitted to an approved laboratory. If resource concerns require an alternate sampling depth be used, the CSS must indicate the alternate depths on all samples and lab submission forms. collected by a CSS. (3-31-22)

02. Representative Samples. All soil samples collected by a CSS must be representative samples pursuant to the provisions of the SSB. (3-31-22)

03. Sampling Depth. The soil samples shall be obtained from depths outlined in each operation's NMP unless soil survey data or site-specific situations warrant alternative sampling depths. (3-31-22)

04. Alternative Sampling Depths. If the CSS determines that an alternative sampling depth is necessary due to resource concerns, the CSS must indicate such deviation in sampling depths on soil samples and laboratory soil sample submission forms. (3-31-22)

152. SOIL SAMPLE SUBMISSION.

All soil samples collected pursuant to this chapter must be appropriately handled to protect the integrity of the sample and submitted to an approved laboratory by the CSS who collected the soil sample. (3-31-22)

152. SOIL SAMPLER CERTIFICATION

All persons who collect soil samples pursuant to Subchapter A must be a certified soil sampler via the Department Certification Program. The Department may require a CSS to complete continuing education training to ensure compliance with Subchapter A. If a CSS fails to follow the criteria in Subchapter A, the Department may revoke their certification.

153. -- 159. (RESERVED)

160. APPROVED LABORATORIES.

Only laboratories that hold a current valid certification from the North American Laboratory Proficiency Testing Program or equivalent method approved by the Department are approved laboratories for the purposes of this chapter. (3-31-22)

161. RECORDS OF NUTRIENT ANALYSIS.

Owners or operators of facilities who are required to implement NMPs pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," must retain All nutrient management records and nutrient analysis data of nutrient analysis required under this chapter must be complete, readily available to the Director for inspection or copy, identified to the fields listed in the facility's NMP, retained for a minimum of five (5) years and available to the Department upon request. Required records include the following:

01. Annual Soil Analysis. Producer annual soil tests conducted as set forth in this subchapter, tested at an approved laboratory; and

02. Land Applications. Date and amount of nutrients, byproduct and commercial fertilizer applied to fields owned or operated by the approved NMP facility; (3-31-22)

03. Third-Party Exports. Date(s) of exported nutrients or byproduct, number of acres applied, amount of nutrients or byproduct exported, and to whom nutrients or byproduct was exported; and

04. Crop Yields. Actual crop yields on all fields owned or operated by the approved NMP facility.

05. IPDES permits. Dairy, beef, poultry or commercial truck facilities governed by the IPDES program are not required to submit an NMP to the Department.

01. Complete Records. Records must be complete, readily available, and identified to the fields listed in the facility's NMP. (3-31-22)

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Commented [DSL12]: Redundant - already defined above.

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~~02. Available to the Director. Records must be made available to the director for inspection and copying upon request. (3-31-22)~~

~~162. – 169. (RESERVED)~~

~~170. SOIL SAMPLER CERTIFICATION.~~

~~All persons who collect soil samples pursuant to Subchapter A must be certified through the Department Certification Program. Any certification may be revoked by the Department if the person fails to meet the criteria in Subchapter A. (3-31-22)~~

~~01. Certification. The Soil Sampler Certification will be valid unless revoked by the Department. (3-31-22S)~~

~~02. Sampling. Any person may sample their own operation as outlined in Subchapter A of these rules provided the person possesses a valid Soil Sampler Certification issued by the Department. (3-31-22)~~

~~03. Continuing Education. The Department may require CSS to complete continuing education training to ensure compliance within the provisions of this chapter. (3-31-22)~~

~~171. REVOCATION OF SOIL SAMPLER CERTIFICATION.~~

~~Soil Sampler Certification is subject to revocation by the Department if the Certified Soil Sampler fails to meet the soil sampling criteria set forth in Subchapter A. (3-31-22)~~

~~172. – 179. (RESERVED)~~

~~180. PENALTIES.~~

~~Any person violating any of the provisions of Subchapter A may be subject to the penalty provisions of Title 22, Chapter 1 and 49, Title 37, Chapter 4 and 6, and Title 25, Chapter 40, Idaho Code. (3-31-22)~~

~~01. Monetary Penalties. The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires. (3-31-22)~~

~~02. Minor Violations. The Director may issue suitable warnings or other administrative actions for minor violations. (3-31-22)~~

~~181. – 203. (RESERVED)~~

SUBCHAPTER B – CAFO SITE ADVISORY TEAM

204. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter B, Sections 204-303: (3-31-22)

01. Nutrient Management Standard (NMS). (3-31-22)

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a. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at <https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient-Management-code-590.pdf>. (3-31-22)

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b. The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at <https://agri.idaho.gov/main/wp-content/uploads/2017/10/june-2007-NRCS-590.pdf>. (3-31-22)

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205. -- 209. (RESERVED)

210. DEFINITIONS.

~~In addition to the definitions found in Section 67-6529C, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter B, Sections 204-303:~~ (3-31-22)

Commented [JS14]: See above. Statute already applies.

01. **Best Management Practices.** Practices, techniques, or measures that are determined by the Department to be a cost-effective and practicable means of preventing or reducing pollutants from point or non-point sources from entering waters of the state and managing odor generated on an agriculture operation to a level associated with accepted agriculture practices. (3-31-22)

02. **Land Application.** The spreading on, or incorporation into the soil of agricultural by-products such as manure, process wastewater, compost, cull potatoes, cull onions, or crop residues into the soil primarily for beneficial purposes. (3-31-22)

03. **Nutrient Management Plan.** A plan prepared in conformance with the nutrient management standard. (3-31-22)

04. **Nutrient Management Standard.** For dairies and beef cattle animal feeding operations, the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. For poultry concentrated animal feeding operations, the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. (3-31-22)

05. **Odor Management Plan.** A site-specific plan approved by the Director to manage odor from a CAFO to a level associated with accepted agricultural practices by utilizing best management practices. (3-31-22)

211. ABBREVIATIONS.

The following abbreviations apply in the interpretation and enforcement of Subchapter B, Sections 204-303: (3-31-22)

01. **BMP.** Best Management Practices. (3-31-22)

02. **CAFO.** Concentrated Animal Feeding Operation. (3-31-22)

~~03. **DEQ.** Idaho Department of Environmental Quality. (3-31-22)~~

~~04. **FEMA.** Federal Emergency Management Agency. (3-31-22)~~

~~05. **IDWR.** Idaho Department of Water Resources. (3-31-22)~~

~~06. **NRCS.** The United States Department of Agriculture, Natural Resources Conservation Service. (3-31-22)~~

07. **NMP.** Nutrient Management Plan. (3-31-22)

08. **OMP.** Odor Management Plan. (3-31-22)

~~09. **USGS.** United States Geological Survey. (3-31-22)~~

212. -- 219. (RESERVED)

220. APPLICABILITY.

01. **Site for a Proposed CAFO.** A CAFO site advisory team shall review and make a site suitability

determination for all proposed CAFO sites, as defined in Subchapter B of these rules, submitted by a board of county commissioners pursuant to Subchapter B. (3-31-22)

02. Sites That Do not Meet the Definition of a CAFO. The Director may form a CAFO site advisory team, as requested by a board of county commissioners, for a site that does not meet the animal numbers in the definition of a CAFO provided that: (3-31-22)

a. The county demonstrates that the site is in an environmentally sensitive area or is in close proximity to streams, lakes, or other bodies of surface water; or (3-31-22)

b. The state agencies have personnel and other resources available to conduct the site suitability determination. (3-31-22)

221. -- 229. (RESERVED)

230. FORMATION OF A SITE ADVISORY TEAM.

~~A board of county commissioners may request the formation of a CAFO site advisory team to provide a site suitability determination by submitting to the Director a written request supported by the adoption of a resolution by the county. (3-31-22)~~

~~01. Designation of the Team Leader. Upon receipt of a request to form a site advisory team, the Director shall designate a team leader. (3-31-22)~~

~~02. Notification of Team Members. The team leader shall provide a copy of the request to form a site advisory team to DEQ and IDWR. After receiving notification, DEQ and IDWR shall notify the Team Leader of their respective representatives to the team. (3-31-22)~~

231. -- 239. (RESERVED)

240. CAFO SITE ADVISORY TEAMS

A CAFO site advisory team will make determinations of suitability on all proposed CAFO sites, as defined in Subchapter B, following a written request to the Director by a board of county commissioners. The team leader, designated by the Director, will notify DEQ and IDWR of all requests.

~~01. Site for a Proposed CAFO. A CAFO site advisory team shall review and make a site suitability determination for all proposed CAFO sites, as defined in Subchapter B, submitted by a board of county commissioners pursuant to this Subchapter. (3-31-22)~~

~~02. Non-CAFO Sites That Do not Meet the Definition of a CAFO. The Director may form a CAFO site advisory teams may be formed, as requested by a board of county commissioners, for a site that does not meet the animal numbers in the definition of a CAFO definitions provided that: (3-31-22)~~

a. The county demonstrates that the site is in an environmentally sensitive area or is in close proximity to streams, lakes, or other bodies of surface water; or (3-31-22)

b. The state agencies have personnel and other resources available to conduct the site suitability determination. (3-31-22)

241. FORMATION OF A SITE ADVISORY TEAM.

~~A board of county commissioners may request the formation of a CAFO site advisory team to provide a site suitability determination by submitting to the Director a written request supported by the adoption of a resolution by the county. (3-31-22)~~

~~01. Designation of the Team Leader. Upon receipt of a request to form a site advisory team, the Director will designate a team leader. (3-31-22)~~

Commented [JS15]: Duplicative of Statute. See IC 67-6529E:

(1) A board of county commissioners shall submit its request for a suitability determination by a site advisory team in writing to the director of the department of agriculture and shall support its request by the adoption of a resolution.

~~02. Notification of Team Members. The team leader will provide a copy of the request to form a site advisory team to DEQ and IDWR. After receiving notification, DEQ and IDWR will notify the Team Leader of their respective representatives to the team. (3-31-22)~~

~~242. CONTENTS OF A REQUEST TO FORM A SITE ADVISORY TEAM.~~

~~The information contained in a request includes, but is not limited to, the following: (3-31-22)~~

~~01. County Definition of CAFO. The county's definition of "CAFO" as set forth in any applicable county ordinance. (3-31-22)~~

~~02. Legal Description and Address. Legal description and address of the proposed CAFO. (3-31-22)~~

~~03. One-Time Unit Capacity. The one-time animal capacity of the proposed CAFO. (3-31-22)~~

~~04. Type of Animals. The type of animals to be confined at the proposed CAFO. (3-31-22)~~

~~05. Water Right Information. All requests shall include one (1) of the following: (3-31-22)~~

~~a. Evidence that a valid water right exists to supply adequate water for the operation of the proposed CAFO; or (3-31-22)~~

~~b. A copy of an application for a permit to appropriate water that has been filed with IDWR, that if approved, will supply adequate water for operation of the proposed CAFO; or (3-31-22)~~

~~c. A copy of an application to change the point of diversion, place, period, and nature of use of an existing water right that has been filed with IDWR, that if approved, will supply adequate water for the operation of the proposed CAFO. (3-31-22)~~

~~06. Vicinity Map with Site Location. A detailed sketch of the proposed CAFO site location, on an aerial photograph if available, that includes the following: (3-31-22)~~

~~a. Building locations; (3-31-22)~~

~~b. Waste storage facilities and general areas for any land application including a narrative description of the waste system; (3-31-22)~~

~~c. FEMA flood zones or other appropriate flood data for the proposed CAFO site and land application sites owned or leased by the applicant; (3-31-22)~~

~~d. Private and community domestic water wells, irrigation wells, existing monitoring wells, and existing injection wells as documented by IDWR or other sources, including the associated well logs if available, that are within a one (1) mile radius of the proposed CAFO; (3-31-22)~~

~~e. Irrigation canals, irrigation laterals, rivers, streams, springs, lakes, reservoirs, and designated wetlands, that are within a one (1) mile radius of the proposed CAFO. (3-31-22)~~

~~07. Site Characterization. A characterization of the proposed CAFO site and any land application sites owned or leased by the applicant, that includes the following information, if available: (3-31-22)~~

~~a. Annual precipitation and prevailing wind direction as contained in the Idaho Waste Management Guidelines, 1997; (3-31-22)~~

~~b. Soil characteristics from NRCS; (3-31-22)~~

~~c. Hydrologic characteristics from IDWR and USGS including: (3-31-22)~~

Commented [JS16]: Duplicative of 67-6529E(2). Site Advisory Team already authorized to seek any other relevant information:

(2) Information in the request shall include, but not be limited to, the county's definition of "CAFO" as set forth in any applicable county ordinance, the relevant legal description and address of a proposed facility, the actual animal capacity of the facility, the types of animals to be confined at the proposed facility, all information related to water and water rights of the facility, any relevant vicinity maps and **any other information relevant to the site that will assist the site advisory team in issuing its suitability determination.** The board of county commissioners shall also provide the site advisory team with a copy of the odor management plan for the CAFO, if required to be submitted by the site applicant at the time of application.

- ~~i. Depth to first water yielding zone and first encountered water; (3-31-22)~~
 - ~~ii. Direction of ground water movement and gradient; (3-31-22)~~
 - ~~iii. Sources and estimates of recharge; (3-31-22)~~
 - ~~iv. Seasonal variations in water level and recharge characteristics; (3-31-22)~~
 - ~~v. Susceptibility to contamination; and (3-31-22)~~
 - ~~vi. Relation of ground water to surface water. (3-31-22)~~
 - ~~d. Water quality data from DEQ, the Department, IDWR, or USGS, including: (3-31-22)~~
 - ~~i. Microorganisms; (3-31-22)~~
 - ~~ii. Nutrients; and (3-31-22)~~
 - ~~iii. Pharmaceuticals and organic compounds. (3-31-22)~~
- ~~08. Required OMPs or NMPs. Any OMPs or NMPs that are required by the county to be submitted by the applicant at the time of application. (3-31-22)~~

243. -- 249. (RESERVED)

250. REVIEW OF REQUEST.

Team members will review the information provided in the requests for the formation of a site advisory team to determine if ~~it includes the all~~ required elements of Section 67-6520E(2), Idaho Code~~Section 242 are included and to schedule the date and time of the onsite visit. If the request is incomplete, the team leader will contact the county and request additional information.~~ (3-31-22)

~~01. Insufficient Information. If the team determines that the information provided by the county does not include the required elements of Section 242Section 67-6520E(2), Idaho Code, the team leader will contact the county and request additional information. (3-31-22)~~

~~02. Sufficient Information. When the team has determined that the information submitted by the county contains the required elements of Section 67-6520E(2), Idaho Code, Section 242, the team leader schedules an onsite review of the information with the team members. The team leader informs the county requesting the formation of the site advisory team of the date and time of the onsite review and the county may have a representative present. (3-31-22)~~

251. -- 259. (RESERVED)

260. SITE SUITABILITY DETERMINATION.

Within thirty (30) days of receiving a request for the formation of a CAFO site advisory team that includes the required elements of Section 67-6520E(2), Idaho Code~~Section 242~~, the team will develops and submits to the county a site suitability determination, ~~based on the elements of Section 67-6520E(2), Idaho Code, Section 242 or other relevant information~~, that contains: (3-31-22)

- 01. Risk Category.** A determination of an environmental risk category: high, moderate; low; or insufficient information to make a determination; (3-31-22)
- 02. Description of Factors.** A description of the factors that contribute to the environmental risks; (3-31-22)
- 03. Mitigation.** Any possible mitigation of the environmental risks. (3-31-22)

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261. -- 303. (RESERVED)

SUBCHAPTER C – AGRICULTURE ODOR MANAGEMENT

304. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter C, Sections 304-409 only: (3-31-22)

01. Idaho NRCS Nutrient Management Standard 590, June 1999. (3-31-22)

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02. Best Management Practices listed in the "Idaho Agricultural Pollution Abatement Plan," August 2001. (3-31-22)

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03. ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997. (3-31-22)

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04. NRCS Conservation Practice Standard 317, March 2001. (3-31-22)

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305. -- 309. (RESERVED)

310. DEFINITIONS.

In addition to the definitions found in Section 25-3803, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter C, Sections 304-409: (3-31-22)

01. Animal. Livestock and agricultural animals. (3-31-22)

02. BAT. The best application of science that is accessible and obtainable to achieve a desired objective. (3-31-22)

03. Beef Cattle. All cattle except those located on a dairy farm that have been permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct." (3-31-22)

Commented [DSL17]: Redundant and unnecessary

04. Beef Cattle Animal Feeding Operation. Those operations regulated pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (3-31-22)

05. Compost. A biologically stable material derived from the biological aerobic decomposition of organic matter. (3-31-22)

06. Composting. The aerobic degradation of manure and other organic material to a biologically stable form. (3-31-22)

07. Land Application. The spreading on, or incorporation into the soil of agricultural by-products including, but not limited to, manure, wastewater, compost, cull potatoes, cull onions, or crop residues. (3-31-22)

08. Large Swine And Poultry Operations. Those swine operations regulated pursuant to IDAPA 58.01.09, "Rules Regulating Swine Facilities," and those poultry operations regulated pursuant to IDAPA 02.04.32, "Rules Governing Poultry Operations." (3-31-22)

09. Liquid-Solid Separation. The removal of solid manure from water through mechanical or settling means. (3-31-22)

10. Waste Collection and Conveyance Systems. The areas and systems used in the collection and transfer of manure from the point of generation to the wastewater storage and containment facilities, prior to land application. (3-31-22)

11. Wastewater Treatment. A process by which wastewater is treated through aerobic or anaerobic degradation or other means. (3-31-22)

311. ABBREVIATIONS.

The following abbreviations apply in the interpretation and enforcement of Subchapter C, Sections 304-409:

- 01. ~~ASAE. American Society of Agricultural Engineers.~~ (3-31-22)
- 02. **BAT.** Best Available Technology. (3-31-22)
- 03. **BMP.** Best Management Practice. (3-31-22)
- 04. ~~DEQ. Idaho Department of Environmental Quality.~~ (3-31-22)
- 05. **NMP.** Nutrient Management Plan. (3-31-22)
- 06. ~~NOV. Notice Of Violation.~~ (3-31-22)
- 07. ~~NRCS. The United States Department of Agriculture, Natural Resources Conservation Service.~~ (3-31-22)
- 08. **OMP.** Odor Management Plan. (3-31-22)

312. -- 319. (RESERVED)

320. ACCEPTED AGRICULTURAL PRACTICES.

Management practices conducted in accordance with applicable laws, rules and best management practices, ~~as referenced in Subsections 320.01 and 320.02, or in the absence of referenced best management practices, management practices conducted~~ in a manner that demonstrates reasonable efforts to minimize odors, are considered accepted agricultural practices for purposes of ~~Subchapter C~~ this rule. (3-31-22)

- 01. **Applicable Rules.** The following are applicable rules for the purpose of Section 320: (3-31-22)
 - a. IDAPA 02.04.14, "Rules Governing Dairy Byproduct." (3-31-22)
 - b. IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." (3-31-22)
 - c. IDAPA 02.06.17, "Rules Concerning Disposal of Cull Onion and Potatoes." (3-31-22)
 - d. IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." (3-31-22)

~~02. **Applicable Best Management Practices.** The following practices, or other management practices approved by the Director that are conducted in a manner that demonstrates reasonable efforts to minimize odors are considered accepted agricultural practices for purposes of this rule.~~ (3-31-22)

- ~~a. Idaho NRCS Nutrient Management Standard 590, June 1999. (3-31-22)~~
- ~~b. Best Management Practices listed in the "Idaho Agricultural Pollution Abatement Plan," August 2001. (3-31-22)~~
- ~~c. "Control of Manure Odors," ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997. (3-31-22)~~
- ~~d. "Composting Facility," NRCS Conservation Practice Standard 317, March 2001. (3-31-22)~~

03. Excess Odors. An agricultural operation using an accepted agricultural practice that generates odors in excess of levels normally associated with such practice, as determined by the Department on a site specific

Commented [DSL18]: Is this necessary? We would not do an odor management plan for dead animals... either they are managing their deads correctly or they're not.

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basis, shall develop and submit an odor management plan to the Director in accordance with Section 360. (3-31-22)

321. -- 329. (RESERVED)

330. APPLICABILITY.

Subchapter C applies to all agricultural operations, except: (3-31-22)

01. Beef Cattle. Beef cattle animal feeding operations regulated pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (3-31-22)

02. Swine and Poultry. Large swine operations regulated pursuant to IDAPA 58.01.09, "Rules Regulating Swine Facilities," and large poultry operations regulated pursuant to IDAPA 02.04.32, "Rules Governing Poultry Operations." (3-31-22)

331. -- 339. (RESERVED)

~~340. LIQUID WASTE SYSTEMS.~~

~~No person shall begin construction of a new or modified liquid waste system prior to approval of such system by the Director. (3-31-22)~~

~~01. Department Review. The Director may order the construction to cease if the construction of a new or modified liquid waste system has commenced prior to the Director's approval. In doing so, the Director will consider a review and assessment of such systems made by Department staff. (3-31-22)~~

~~02. Design Requirements. All new or modified liquid waste systems shall be designed by licensed professional engineers, approved in writing by the Director, and constructed in accordance with standards and specifications approved by the Director for management of odors. (3-31-22)~~

~~a. If construction is commenced prior to the Director's written approval, the Director may order construction activities to be ceased. (3-31-22)~~

~~b. Material deviations from the approved plans and specifications are not allowed without the prior written approval of the director. (3-31-22)~~

~~c. Within thirty (30) days of completion of construction, alteration or modification of any new or modified liquid waste system, complete and accurate plans and specifications depicting the actual construction, alteration, or modification performed must be submitted by the operator to the Director. (3-31-22)~~

~~d. If construction does not materially deviate from the plans approved by the Director, a statement to that effect shall be filed by the agricultural operation with the Director. (3-31-22)~~

~~341. STANDARDS AND SPECIFICATIONS FOR LIQUID WASTE SYSTEMS.~~

~~All new or modified liquid waste systems shall be designed and constructed in accordance with applicable laws and rules, and for the purpose of managing odors. The Director shall require techniques and management practices as standards and specifications of liquid waste systems for the management of odors. These techniques and management practices may include but are not be limited to the following: (3-31-22)~~

~~01. Wastewater Storage and Containment Facilities: (3-31-22)~~

~~a. Liquid-solid separation. (3-31-22)~~

~~b. Wastewater treatment. (3-31-22)~~

~~c. Use of chemical or biological additives. (3-31-22)~~

~~d. Dilution of wastewater. (3-31-22)~~

Commented [JS20]: Duplicative of IC 25-3804:

All new or modified liquid waste systems shall be designed by licensed professional engineers, approved by the director of the department of agriculture for compliance with the provisions of this chapter, and constructed in accordance with standards and specifications either approved by the director for management of odors or in accordance with any existing relevant memorandums of understanding with the department of environmental quality. Provided however, that all persons shall submit plans and specifications for new or modified liquid waste systems to the director for approval and shall not begin construction of a liquid waste system prior to approval of plans and specifications by the director. If construction is commenced prior to receiving necessary approval, the director may order construction activities to be ceased. No material deviation shall be made from the approved plans and specifications without the prior written approval of the director. Within thirty (30) days of completion of construction, alteration or modification of any new or modified liquid waste system, complete and accurate plans and specifications depicting the actual construction, alteration or modification performed must be submitted by the operator to the director. If construction does not materially deviate from the plans approved by the director, a statement to that effect shall be filed by the agricultural operation with the director.

Commented [DSL21]: This whole section is redundant...section 320 already identifies what entities are regulated and the recommended BMPs.

- e. Impermeable or permeable storage covers. (3-31-22)
- f. Biofilters. (3-31-22)
- g. Enhancing dispersion. (3-31-22)
- h. Location of wastewater discharge into storage and containment facilities. (3-31-22)
- 02. ~~Wastewater Collection and Conveyance Systems.~~ (3-31-22)
- a. Wastewater Treatment. (3-31-22)
- b. Use of chemical or biological additives. (3-31-22)
- c. Dilution of wastewater. (3-31-22)
- d. Impermeable or permeable covers of collection areas. (3-31-22)
- e. Timing of collection and conveyance system operation. (3-31-22)
- f. Frequency and duration of collection and conveyance system operation. (3-31-22)
- g. Enhancing dispersion. (3-31-22)

342. -- 349. (RESERVED)

350. — INSPECTIONS.

~~The Director or Director's designee is authorized to enter and inspect any agricultural operation, and during normal business hours have access to or copy any facility records deemed necessary to ensure compliance with Subchapter C of these rules. (3-31-22)~~

351. -- 359. (RESERVED)

360. ODOR MANAGEMENT PLANS.

~~OMP's shall be are designed to work in conjunction with any required NMP and shall must be submitted to the Director in writing, and upon for approval by the Director, signed by owner or operator of the agricultural operation. (3-31-22)~~

01. OMP Development. Within sixty (60) days of receiving a NOV for a first time violation, the owner or operator of the agriculture operation ~~receiving the NOV~~ shall submit an OMP to the Director ~~an OMP~~ for approval.

(3-31-22)

02. Interim Measures. The Department will work with ~~the owner or operator of an agriculture operation that has received a NOV for a first time violation~~ violators to identify interim measures that can be implemented in a timely manner to begin the process of reducing odors while the OMP is being developed. (3-31-22)

03. Department Approval. ~~OMP's submitted to the Department from operators committing a first-time violation The Director will be approved, rejected, or requested to provide additional information, within thirty (30) days of receiving an OMP from the owner or operator of an agricultural operation deemed to have committed a first-time violation and provide to the owner or operator of the agricultural operation the approval, rejection, or request for additional information in writing.~~ (3-31-22)

a. ~~If the Director rejects an OMP or requests additional information, the owner or operator of the agricultural operation shall submit to the Director the additional information or a rewritten OMP that address the~~

~~reasons for the rejection within thirty (30) days of receiving written notification from the Director. (3-31-22)~~

~~b. Within fifteen (15) days of receiving the additional information or a rewritten OMP, the Director will approve or reject the OMP. If the OMP is rejected, the Director may issue a subsequent violation under Section 371 of these rules, and assess the penalty provisions specified in Subchapter C, Section 370 of these rules, and Section 25-3808, Idaho Code. (3-31-22)~~

~~c. The Director may, on a case by case basis, grant extensions to the deadlines contained in this section. (3-31-22)~~

~~04. Implementation. OMPs shall be implemented as approved by the Director. (3-31-22)~~

05. Review of OMP. The Department will review OMPs no less than annually for three (3) years after the Director approves the OMP. If the Department determines an approved OMP has not reduced odors to a level associated with accepted agricultural practices after a reasonable period of time, as determined by the Department, the Department will review the OMP with the owner or operator of the agricultural operation and adjust the OMP to meet the goals of the Agriculture Odor Management Act. (3-31-22)

361. CONTENTS OF AN ODOR MANAGEMENT PLAN.

~~Contents of an OMP for an agricultural operation shall include all relevant information as required by the Department, may include, but are not limited to the following: (3-31-22)~~

~~01. Owner's Name. Name and telephone number of the owner of the operation. (3-31-22)~~

~~02. Address. Physical address of the operation. (3-31-22)~~

~~03. Location. County in which the operation is located. (3-31-22)~~

~~04. Operation Description. A description of the operation that includes, as applicable: (3-31-22)~~

~~a. Type of operation. (3-31-22)~~

~~b. General description of operation. (3-31-22)~~

~~c. Number and type of any animals including age groups. (3-31-22)~~

~~d. Any plans for expansion. (3-31-22)~~

~~e. Type of housing used related to age groups of animals. (3-31-22)~~

~~f. General description of nearby residential areas, public use areas, and pertinent agricultural operations. (3-31-22)~~

~~g. Type of crop and number of acres grown. (3-31-22)~~

05. Scaled Vicinity Map. A map that shall include all residences, public use areas, roads, general topography of the area, and other pertinent agricultural operations within a two (2) mile radius of the facility. (3-31-22)

~~06. Manure Management System. A detailed description of the present manure handling systems including timing, frequency, duration, volumes, dimensions, and flow rates where applicable for the following: (3-31-22)~~

~~a. Manure cleaning systems. (3-31-22)~~

~~b. Manure transfer systems. (3-31-22)~~

Commented [JS22]: Is an OMP on a form provided by the Department? If so, consider striking lists below and inserting something like: "Contents of an OMP for an agricultural operation shall include all relevant information as required by the Department."

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~~c. Manure separation systems. (3-31-22)~~

~~07. Sealed Site Plan. A site plan showing all buildings, housing facilities, waste/manure storage areas, piping, feed storage areas, and roadways. (3-31-22)~~

~~08. Land Application System. A detailed description of the present management practices and methods used to make land application including: (3-31-22)~~

~~a. Timing, frequency, and duration of practices. (3-31-22)~~

~~b. Proximity of land application sites to residential and public use areas. (3-31-22)~~

~~09. Climatic Data. A description of the typical climatic conditions for a minimum period of two (2) years that exist in the geographical area of the operation or have been recorded on-site for the operation including: (3-31-22)~~

~~a. Wind Speed and direction(s). (3-31-22)~~

~~b. Temperature range. (3-31-22)~~

~~c. Relative humidity range. (3-31-22)~~

~~d. Precipitation data. (3-31-22)~~

10. **Facility Odor Sources.** A list of all primary odor sources located on the operation with a general ranking of low, moderate, or high with respect to overall odor production along with an explanation of why it is listed as a source and the reasoning for the overall ranking. (3-31-22)

Commented [DSL23]: This language covers all of the deleted sections above

11. **Tiered Implementation.** A three-tier process shall be used to reduce odor production from the facility with each tier containing a list of the primary BMPs and BATs that are going to be implemented by the facility. For each tier BMP and BAT listed, the plan shall include, but not be limited to: (3-31-22)

a. Process of how the BMP or BAT will be designed or managed. (3-31-22)

b. Implementation schedule that defines when the BMP or BAT will be implemented on the facility and justification for why this time frame was chosen. (3-31-22)

c. Monitoring program that will be implemented to evaluate the effectiveness of the BMP or BAT, with quantitative or qualitative reduction goals. (3-31-22)

12. **Public Involvement.** This section shall describe how the public in the area of the facility will be involved in the implementation or evaluation of the OMP. (3-31-22)

13. **Timeframe for Review of OMP.** A designated period of time when each tier of the plan will be evaluated to determine if further implementation is necessary, how each tier will be evaluated, which Department staff will conduct the review, and a period of time in which the agricultural operation will attain full compliance with the plan. (3-31-22)

362. -- 369. (RESERVED)

~~370. FIRST TIME VIOLATIONS.~~

~~If the Department determines that an agricultural operation is generating odors in excess of levels of odors normally associated with accepted agricultural practices, the agricultural operations shall be deemed to have committed a first time violation of Subchapter C. The Department shall require agricultural operations deemed to have committed a first time violation to cooperate with the Department to develop and submit to the Director for approval an OMP.~~

Commented [JS24]: Duplicative of IC 25-3805.

(3-31-22)

~~371. SUBSEQUENT VIOLATIONS.~~

~~Agricultural operations have committed a subsequent violation if the operation is determined to have committed a subsequent violation within three (3) years, has failed to comply with a required OMP, or the Department determines that the owner or operator of the agriculture operation has not cooperated with the Department by failing to submit an OMP that meets Department approval requirements. (3-31-22)~~

Commented [JS25]: Duplicative of IC 25-3808 "Subsequent Violations":

~~372. EXCEPTIONS.~~

~~Events contemplated in Section 25-3805(7), Idaho Code, are not considered violations of this subchapter. Section 25-3805, Idaho Code, is applicable whether or not an agricultural operation is required to have an OMP. (3-31-22)~~

Commented [JS26]: 25-3805 contemplates that the organization might not have an odor management plan. Also, 25-3805(7) already says an odor emission caused by an Act of God or mechanical failure is not a violation for purposes of the statutory chapter, which authorizes these rules and regulates these communities.

373. -- 409. (RESERVED)

SUBCHAPTER D – STOCKPILING OF ~~AGRICULTURAL LIVESTOCK~~ WASTE

410. DEFINITIONS.

The following definitions apply: ~~in the interpretation and enforcement of Subchapter D, Sections 410-999: (3-31-22)~~

01. **Agricultural Operation.** Facilities that generate or receive and stockpile ~~agricultural livestock~~ waste and that are not regulated under IDAPA 02.04.14, "Rules Governing Dairy Byproduct," or IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (3-31-22)

~~02. Agricultural Waste. Agricultural waste means livestock waste. (3-31-22)~~

03. **Duration.** The length of time ~~agricultural livestock~~ waste is stockpiled. (3-31-22)

04. **Dwelling.** The ~~house, residence, abode, or other~~ structure where a person lives. (3-31-22)

05. **Livestock.** Bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds, and captive waterfowl. (3-31-22)

06. **Livestock Waste.** Manure that may also contain bedding, spilled feed, feathers, water, ~~process water, feed leachate, or soil or livestock carcasses or parts thereof. It also includes wastes not particularly associated with manure, such as milking center or washing wastes, milk, feed leachate, or livestock carcasses or parts thereof.~~ (3-31-22)

~~07. Non-Compliance. A practice or facility condition that does not comply with Section 22-110, Idaho Code, or the provisions of these rules. (3-31-22)~~

~~07. Process Water. Water directly or indirectly used or produced in dairy animal rearing or milk production.~~

08. **Public Highway.** All highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision. (3-31-22)

09. **Responsible Party.** A person who generates or receives and stockpiles agricultural waste on property the person owns, leases, or otherwise has permission to use as a stockpile site. (3-31-22)

~~10. Setbacks for a Stockpile Site. The distance from a stockpile site to a location identified in Section 420 of Subchapter D. (3-31-22)~~

11. **Stockpile Staging Site.** A physical area where stockpiling occurs for a duration of no longer than thirty (30) days. (3-31-22)

12. **Stockpile Site.** A physical location where ~~agricultural livestock~~ waste is stockpiled for a duration of more than thirty (30) days and that stockpiles more than fifty (50) cubic yards of ~~agricultural livestock~~ waste. (3-31-22)

13. **Stockpiling.** The accumulation of ~~agricultural livestock~~ waste on an agricultural operation. (3-31-22)

~~14. **Surface Waters of the State.** All accumulations of surface water, natural and artificial, public and private, or parts thereof that are wholly or partially within, that flow through or border upon the state. (3-31-22)~~

411. -- 419. (RESERVED)

420. SETBACKS FOR STOCKPILE SITES.

Stockpile sites at agricultural operations must meet the following setback requirements. (3-31-22)

01. **Setback Distances.** Stockpile sites shall maintain the following setbacks: (3-31-22)

a. Three hundred (300) feet from a non-responsible party's dwelling. (3-31-22)

b. Five hundred (500) feet from a hospital, church, or school. (3-31-22)

c. One hundred (100) feet from a domestic or irrigation well. (3-31-22)

d. One hundred (100) feet from surface waters of the State. (3-31-22)

e. Fifty (50) feet from a public highway. (3-31-22)

02. **Responsible Party's Dwellings.** Stockpile sites do not have setbacks from ~~a responsible party's dwelling or~~ dwellings owned by the responsible party. (3-31-22)

03. **Stockpile Staging Sites.** Stockpile staging sites are not subject to the setbacks set forth in Subchapter D. (3-31-22)

421. -- 999. (RESERVED)

Commented [DSL27]: Standardize?

02.04.14.004 – RULES GOVERNING DAIRY BYPRODUCT

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004. INCORPORATION BY REFERENCE. The following documents are incorporated by reference into this chapter.

02. Nutrient Management Standard (NMS).

a. **Idaho NRCS Nutrient Management Standard 590.** The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590 (**Idaho NRCS Nutrient Management Standard 590**). This document is available online at https://agri.idaho.gov/main/wpcontent/uploads/2017/08/nutrient_Management_code_590.pdf; or-

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

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031. PHOSPHORUS MANAGEMENT.

Dairy farms shall utilize either Phosphorus Indexing (Section 031.01) **in accordance with the Idaho Phosphorous Site Index**, or the Phosphorus Threshold (Section 031.02) **in accordance with the 1999 Idaho NRCS Nutrient Management Standard 590** to manage nutrient application. (3-31-22)

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. (3-31-22)

- 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. (3-31-22)

-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

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 1999 Idaho NRCS Nutrient Management Standard 590](#)~~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.

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Director, pursuant to Idaho Code § 37-606(2).

Notes/Considerations:

- May need to add definition/incorporation by reference throughout the Environmental planning rule if those sections are left in (odor management section, cafo site advisory section, etc.)—they are currently highlighted and I was unsure what was planned for them.

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June 29, 2023

Deputy Director Lloyd Knight
Rules Review Officer,

Mr. Knight

The Idaho Dairymen's Association is submitting comments on two rules that are currently open for negotiated rulemaking: 02.04.114—Rules Governing Dairy Byproduct, and 02.04.30—Rules Governing Environmental and Nutrient Management.

After reviewing these rules, it came to our attention that the rules have not been sufficiently updated to reflect recent changes to the Dairy Environmental Control Act, namely Idaho Code 37-606(2). The changes that we are proposing are technical in nature, with the goal of making the rules conform to Idaho Code. Please see attached for a redlined word document that details sections of the rules that we believe should be revised to conform to the statute.

Please do not hesitate to contact us if you need further clarification.

Sincerely,

A handwritten signature in black ink that reads "Bob Naerebout". The signature is written in a cursive style with a long, sweeping underline.

Bob Naerebout
Government Affairs Director
Idaho Dairymen's Association

195 River Vista Place
Twin Falls, Idaho 83301
208.736.1953
www.idahodairymens.org

***Idaho State Department of Agriculture
02.04.30 Rules Governing Dairy Byproduct***

May 10, 2023, 1:00 p.m.

Lloyd Knight, Dr. Scott Leibsle, Hosts/Facilitators

Present: Chanel Tewalt, ISDA; Dallas Burkhalter, Office of Attorney General – ISDA; Mitch Vermeer, ISDA; Bob Naerebout, Idaho Dairyman’s Association; Marv Patten, Milk Producers of Idaho, Russ Hendricks, Farm Bureau; Will Tiedemann, Idaho Conservation League; Josh Scholer, DFM; Katie Van Vliet, Idaho Dairyman’s Association; Johnathan Oppenheimer, Idaho Conservation League; Kyle Wilmot, ISDA; Roland Wood, NPK Planning; Scott Campbell, Office of Attorney General. Liz Hatter, Veritas.

AGENDA ITEMS

WELCOME:

Lloyd Knight started the meeting at 1:02 p.m. via teleconference and audio recorded the meeting. Mr. Knight introduced himself and announced that this was negotiated rulemaking for the environmental management rule.

Mr. Knight then offered to let Dr. Leibsle to take the floor to start the discussion of the nutrient management rule.

Dr. Leibsle introduced himself and continued to start the discussion and negotiation of the rules governing environmental and nutrient management. He referenced how some of the changes that he mentioned were also discussed in the Dairy Byproduct meeting held earlier in the day. Dr. Leibsle started going over the proposed changes and indicated the red line changes are strictly for reorganization and clarification and consolidation. No substantive changes to the programs have been made. Dr. Leibsle asked the group if they had any questions.

No one responded.

Dr. Leibsle reviewed the definitions and the simplification of the rules and asked if anyone had questions about definitions.

Mr. Naerebout wanted to go over the red line reduction on the rules shown and wanted to verify the definitions that are shown and started reading the rules.

Dr. Leibsle stated that any changes that have been made were currently being shown in the document presented via teleconference.

Mr. Oppenheimer spoke on how the rules also need to be in statute, so they are easily decipherable. Dr. Leibsle stated that the agency directive was to remove anything duplicative in rule.

Dr. Leibsle asked the group if anyone had a problem, if we were to simplify and remove verbiage.

Mr. Naerebout indicated we should keep it and does not see a downside in having the verbiage in two locations.

Mr. Patten added that he agreed as well.

Jonathan Oppenheimer referenced that DFM has a strict interpretation on rules and statute but he understood the procedural standpoint.

Dr. Leibsle invited Director Tewalt to comment.

Chanel Tewalt stated that DFM has worked hard with ISDA and communicated that this is just a starting point. She indicated an open effort has been made from both sides and we are here to listen to the group's efforts.

Mr. Knight asked Josh Scholer if he had any thoughts to offer for any consistency on the rule.

Mr. Scholer gave his context on the rules and statute and said he appreciates the feedback and thanked the group for letting him add a little more context.

Mr. Tiedemann thanked Mr. Scholer for clarifying and continued by stating there is a tendency to keep things consistent and maybe every rule does not have to be the same and maybe that includes more definitions. He indicated that the argument could go either way.

Mr. Knight asked if it will make sense for the regulatory industry to see the definitions, even if it is a duplication. Mr. Knight also questioned the bigger concern of the agency and the differences in definitions in rules and statute.

Dr. Leibsle stated the rules governing nutrient management are unique because they address regulations from multiple different species that are governed by multiple different statutes. He added that these definitions are close and believed that they are not conflicting. Mr. Leibsle added that this is meant to consolidate and add an easier interpretation for all livestock environmental regulations.

Mr. Scholer agreed that was a compelling argument and understood the comments being made by the group.

Dr. Leibsle discussed the new language being added to commercial truck wash and went over the other new language that had been removed from the other rules and moved to the NMP rules.

No questions from the group.

Dr. Leibsle discussed nutrient management planner certification and the qualifying criteria for it as well as soil sampler certification language was all transplanted from the individual rules into this rule.

No comment from the group.

Dr. Leibsle stated the nutrient soil analysis language was also redundant in the individual rules and had been moved to this rule.

No comment from the group.

Dr. Leibsle started the conversation of CAFO site advisory teams and indicated that nothing had changed and that the language was redundant in the statute and would be removed.

Mr. Naerebout asked how often the siting advisory team has been used?

Mitch stated that it varies, but last year there were roughly a dozen.

Dr. Leibsle confirmed there were no changes to the scope of this subchapter.

No comments from the group.

Dr. Leibsle reiterated the strawman is available on the ISDA website.

Dr. Leibsle started going over the odor management subchapter and clarified no changes have been made, just simplifying language. Dr. Leibsle brought up the issue of excess odors. He commented that this is one of the most controversial sections of rules in Animal Industries due to its subjectivity. Dr. Leibsle asked if there were any changes or clarifications the group would like to make to this language?

Mr. Patten asked what does the rule define as a liquid waste system and if there was a specific percentage of moisture that should be defined as “liquid” waste?

Mr. Scholer indicated that it’s appropriate to define primaries.

Dr. Leibsle asked Mitch Vermeer how often he runs into questions or interpretation problems regarding liquid or solid waste.

Mr. Vermeer confirmed it comes up fairly frequently.

Dr. Leibsle asked if there was ever a debate about the interpretation of solid or liquid.

Mr. Vermeer indicated it has been questioned several times in the last year, but normally we can come up with an answer, but it would be nice if we could define it.

Dr. Leibsle asked if anyone had thoughts on it.

No comment from the group.

Dr. Leibsle concluded the discussion of odor management.

There were no further comments from the group.

Dr. Leibsle began the stock piling of agricultural waste subchapter.

Mr. Patten referenced the Idaho Waste Management Guideline document and mentioned it might be worth mentioning as an incorporation by reference.

Dr. Leibsle mentioned that ISDA had no recommendations...further additions or changes would be at the discretion of stakeholders.

Mr. Oppenheimer asked the group if the measurements could be clarified of exactly where a setback distance to the actual pile agricultural waste would be measured.

Dr. Leibsle asked Mr. Oppenheimer to submit a suggestion for how he felt the language could be improved or clarified.

Mr. Naerebout asked why the title of the subchapter was being changed from agricultural waste to livestock waste.

Dr. Leibsle re-read the definitions and the title of the rule.

Dr. Leibsle ended the presentation and opened the discussion up for anyone in the group to add any comments or questions.

No one from the group responded.

Dr. Leibsle thanked the group for their participation and mentioned the rules, minutes, and comments and how they will be posted on the website and turned the meeting over to Mr. Knight.

Mr. Knight summarized the red tape reduction efforts and stated ISDA will look to provide more clarity at the next group of meetings in 2 weeks. He mentioned that he appreciated everyone's input and will look for comments. Mr. Knight ended the meeting at 2:10pm.

***Idaho State Department of Agriculture
02.04.30 Rules Governing Nutrient Management
May 24th, 2023, 1:00 p.m.
Lloyd Knight, Dr. Scott Leibsle, Hosts/Facilitators***

Present: Dallas Burkhalter, Office of Attorney General – ISDA; Mitch Vermeer, ISDA; Bob Naerebout, Idaho Dairymen’s Association; Marv Patten, Milk Producers of Idaho, Will Tiedemann, Idaho Conservation League; Katie Van Vliet, Idaho Dairymen’s Association; Emily Courter, ISDA.

AGENDA ITEMS

WELCOME:

Lloyd Knight started the meeting at 1:03 p.m. via teleconference and audio recorded the meeting. Mr. Knight introduced himself and announced that this was the negotiated rulemaking meeting for the environmental management rule and that comments are appreciated and welcomed until June 30th and the meeting was turned over to Dr. Leibsle.

Dr. Leibsle took the floor and discussed the definitions and went over some clarifications about the rule. He opened the floor for comments.

Mr. Tiedemann stated he did not have any questions.

Dr. Leibsle indicated that no changes have been made to the rule and that language has just been moved and that there is removal of duplicative language. Dr. Leibsle stated if there were no further questions, he would move on to CAFO Site Advisory and mention the removal of duplicative language and asked if anyone had any questions.

Mr. Patten asked about the incorporations by reference for CAFO advisory and wondered if we need to incorporate phosphate indexing.

Dr. Leibsle mentioned the purpose of a CAFO site is not to measure phosphorus but to measure the risk a livestock facility would pose to the environment in each location. Dr. Leibsle referred to Mr. Vermeer to comment.

Mr. Vermeer indicated he would need to look at a CAFO siting to see if it is appropriate to add.

Dr. Leibsle asked Mr. Patten if he could explain the purpose of adding it.

Mr. Patten added to assess the risk at the request of the county.

Dr. Leibsle indicated it was a good point and asked if anyone else had thoughts.

No comments were made by the group.

Dr. Leibsle asked if anyone had any questions about odor management.

No comments were made by the group.

Dr. Leibsle moved to the topic of stockpiling waste and went over the name change.

Mr. Patten asked a question about liquid waste and indicated a better definition would be helpful.

Dr. Leibsle indicated he was open to hearing some language.

Mr. Patten mentioned how to possibly regulate liquid waste.

Dr. Leibsle read the rule as it currently states and stated he was open to more language. He added that it was already in statute, and it could be duplicative to add it in rule.

Mr. Patten mentioned the statute was not very clear.

Dr. Leibsle stated he didn't disagree and asked Mr. Knight or Mr. Burkhalter if they had any thoughts.

Mr. Knight indicated that they needed to go off the definitions in statute.

Mr. Patten mentioned that it sounds like its referring to all dairy farmers and stated he did not think that is what it meant. Mr. Patten indicated he was fine with it, but it should be clarified, and that the interpretation would be a problem for producers.

Mr. Knight indicated he was reluctant to add further clarification in the rule and that legislature needs to do it in statute. He indicated that the agency would make some judgement calls when the situation arises.

Mr. Patten stated he agreed and that he is okay not playing with it.

Dr. Leibsle asked the group if there were any other questions and moved on to stockpiling. He mentioned no changes and just red tape reduction.

No comments were added.

Dr. Leibsle mentioned the comment period would be open until June 30th, 2023.

Meeting ended at 1:27 pm.