



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

**Nutrient Management Plans
Statutes & Regulations**

Idaho

www.NationalAgLawCenter.org



Nutrient Management Plans

STATE OF IDAHO

- 1) Idaho Code §§ 22-110, 22-4903, 25-4012(2), 37-405, 37-603(1), 67-6529 F (4); IDAPA §§ 02.04.30.020, 100, 150, 190, 200, 220, 230, 300, 400, 500, 900
- 2) Idaho Code §§ 22-4906, 10; IDAPA 02.04.15.030, .031, .032, .040
- 3) Idaho Code § 25-4007; IDAPA 02.04.32.100, .150, .250–.253
- 4) Idaho Code § 37-401; IDAPA 02.04.14.030, .031
- 5) Idaho Code § 39-104A; IDAPA 58.01.09.200
- 6) Idaho Code §§ 39-175A, 175B, 175C; IDAPA 58.01.25(105)(200)(250(400)(09)

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Idaho Legislative Services Office.

1) Idaho Code §§ 22-110, 22-4903, 25-4012(2), 37-405, 37-603(1), 67-6529 F (4); IDPA §§ 02.04.30.020, 100, 150, 190, 200, 220, 230, 300, 400, 500, 900

§ 22-110 Authority and Duties of Director Concerning Agricultural Waste.

- (1) In addition to other powers and duties, the director of the state department of agriculture shall have authority to regulate agricultural solid waste, agricultural composting and other similar agricultural activities to safeguard and protect animals, man and the environment. The director may promulgate rules in compliance with chapter 52, title 67, Idaho Code, that may be necessary for the efficient enforcement of the provisions of this section. The director may collaborate with any state agency, federal agency or other governmental entity in the development of rules promulgated pursuant to this section.
- (2) The director may, by rule, establish a schedule of fees for services performed by the department in the administration of this section and rules promulgated pursuant thereto. Receipts of these fees shall be deposited in the agricultural inspection fund pursuant to section 22-104, Idaho Code, and shall be used, subject to annual

appropriation of the legislature, to pay the cost of administering the provisions of this section and rules promulgated pursuant thereto.

- (3) Any person violating the provisions of this section or rules promulgated pursuant thereto may be assessed a civil penalty by the department or its duly authorized agent of not more than three thousand dollars (\$3,000) for each offense and shall be liable for reasonable attorney's fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged has been given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code. If the department is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under this section may, within twenty-eight (28) days of the final agency action making the assessment, seek judicial review of the assessment in accordance with the provisions of chapter 52, title 67, Idaho Code. Moneys collected for violations of this section or rules promulgated thereunder shall be deposited in the state treasury and credited to the agricultural inspection fund. When the director identifies items of noncompliance with the rules promulgated pursuant to this section, appropriate corrective actions will be identified. The director may develop a formal compliance schedule as appropriate to correct deficiencies. The director may, through the formal compliance schedule, allow all or part of the value of assessed civil penalties to be applied toward correction of deficiencies.

§ 22-4903. Authority and duties of Director concerning beef cattle animal feeding operations.

- (1) The director of the department of agriculture through the division of animal industries is authorized to regulate beef cattle animal feeding operations to protect state natural resources, including surface water and ground water. The department is authorized to adopt rules to implement the provisions of this chapter.
- (2) Nothing in this chapter shall affect the authority of the department of environmental quality to administer and enforce an Idaho NPDES program for beef cattle feeding operations, including without limitation, the authority to issue permits, access records, conduct inspections and take enforcement action, as set forth in chapter 1, title 39, Idaho Code, and the rules adopted pursuant thereto. The provisions of this chapter do not alter the requirements, liabilities and authorities with respect to or established by an Idaho NPDES program.
- (3) The director of the department of environmental quality and the director of the department of agriculture shall, as appropriate, establish an agreement relating to the administration of an Idaho NPDES program that recognizes the expertise of the department of agriculture. The director shall have the authority to exercise any other authorities delegated by the director of the department of environmental quality regarding the protection of ground water, surface water and other natural resources associated with beef cattle feeding operations, and this shall be the authority for the director of the department of environmental quality to so delegate.

- (4) The director of the department of environmental quality shall consult with the director of the department of agriculture before certifying discharges from beef cattle animal feeding operations as provided under 33 U.S.C. section 1341.

§ 25-4012(2). Authority to promulgate rules.

- (2) The director is authorized to modify the department's administrative rules and to make new rules for permitting and regulating poultry AFOs. Such regulations may include, but are not limited to, the information required on a permit application and the conditions for the issuance and maintenance of a permit, as the director deems necessary.

§ 37-405. Department may make rules and orders. The department of agriculture is hereby invested with authority to make rules and orders as may be necessary or desirable for carrying out its various functions and the intent and purpose of this act.

§ 37-603 (1). Authority and duties of director and agency coordination.

- (1) The director of the department shall be solely responsible for approving and enforcing dairy environmental management plans. The department is authorized to adopt rules to implement the provisions in this chapter.

§ 67-6529 F (4). Department responsibilities – authority to adopt rules and contract with other agencies.

- (4) Any director responsible for carrying out the purposes of this act may adopt administrative rules necessary or helpful to carry out those purposes.

§ 02.04.30.020 – APPLICABILITY

These rules apply to nutrient management on the following operations: (3-29-12)

01. Dairies. All Manufactured Grade and Grade A dairies located in Idaho licensed to sell milk for human consumption. (3-29-12)

02. Beef Cattle Animal Feeding Operations. All beef cattle animal feeding operations in Idaho required to implement a NMP pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (4-2-08)

03. Poultry Concentrated Animal Feeding Operations. All poultry operations required to implement an NMP pursuant to Title 25, Chapter 40, Idaho Code. (3-29-12)

§ 02.04.30.100 – 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,” must be written by nutrient management planners who have been certified by the Department. (3-29-12)

§ 02.04.30.150 – NUTRIENT MANAGEMENT PLANNER CERTIFICATION

All persons who develop NMPs must be certified through the Department Certification Program. (4-2-08)

01. Certification. The Nutrient Management Planner Certification will be valid unless revoked by the Department. (4-2-08)

02. Development. Nothing shall prohibit any person from developing an NMP for his own operation provided the person possesses a valid Nutrient Management Planner Certification issued by the Department. (4-2-08)

03. Continuing Education. The Department may require a CNMP to complete periodic continuing education training to retain certification. (4-2-08)

§ 02.04.30.190 – REVOCATION OF NUTRIENT MANAGEMENT PLANNER CERTIFICATION

Nutrient Management Planner Certification may be revoked by the Department if the CNMP: (4-2-08)

01. Submits Inaccurate Information. Submits NMPs that contain falsified or materially inaccurate information. (4-2-08)

02. Fails to Submit Plans. Fails to submit an NMP to the ISDA within thirty (30) days after being paid by a producer. (4-2-08)

03. Fails to Follow Provisions. Fails to meet any requirement of this rule. (4-2-08)

§ 02.04.30.200 - SOIL SAMPLES

The owners or operators of all dairies, beef cattle operations, and poultry operations required to implement 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," must have soil samples collected each year from all fields owned or operated by the dairy, beef, or poultry 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. (3-29-12)

§ 02.04.30.220 - SOIL SAMPLE COLLECTION

01. CSS. All soil samples required to be collected pursuant to this chapter must be collected by a CSS. (4-2-08)

02. Representative Samples. All soil samples collected by a CSS must be representative samples pursuant to the provisions of the SSB. (4-2-08)

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. (4-2-08)

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. (4-2-08)

§ 02.04.30.230 - SOIL SAMPLE SUBMISSION

All soil samples collected pursuant to this chapter must be appropriately handled to protect the integrity of the sample and must be submitted to an approved laboratory by the CSS who collected the soil sample. (4-2-08)

§ 02.04.30.300 - 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. (3-29-12)

§ 02.04.30.400 - 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 records of nutrient analysis for a minimum of five (5) years. (3-29-12)

01. Complete Records. Records must be complete, readily available, and identified to the fields listed in the facility's NMP. (4-2-08)

02. Available to the Director. Records must be made available to the director for inspection and copying upon request. (4-2-08)

§ 02.04.30.500 – SOIL SAMPLER CERTIFICATION

All persons who collect soil samples from operations that are required to sample and test soil for nutrients pursuant to this chapter must be certified through the Department Certification Program. (4-2-08)

01. Certification. The Soil Sampler Certification will be valid unless revoked by the Department. (4-2-08)

02. Sampling. Nothing shall prohibit any person from sampling their own operation as outlined in these rules provided the person possesses a valid Soil Sampler Certification issued by the Department. (4-2-08)

03. Continuing Education. The Department may require CSS to complete continuing education training to ensure compliance within the provisions of this chapter. (4-2-08)

§ 02.04.30.900 - 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 these rules. (4-2-08)

2) Idaho Code §§ 22-4906, 10; IDAPA 02.04.15.030, .031, .032, .040

§ 22-4906. Nutrient management plan.

Each beef cattle animal feeding operation shall submit a nutrient management plan to the director for approval. Beef cattle animal feeding operations that are operating on or before July 1, 2000, shall submit a nutrient management plan to the director for approval no later than January 1, 2005. Any new operation commencing operations after July 1, 2000, shall not operate prior to the director's approval of a nutrient management plan. An approved nutrient management plan shall be implemented and considered a best management practice. Following department review and approval, the plan, and all copies of the plan, shall be returned to the operation and maintained on site. Such plans shall be available to the administrator on request.

§ 22-4910. Safe harbor.

All beef cattle animal feeding operations operating in compliance with this act and approved best management practices shall not be subject to state enforcement action due to violations of state water quality standards or state ground water quality standards except in the event of imminent and substantial danger as provided in chapter 1, title 39, Idaho Code. However, the department shall evaluate and modify such best management practices as necessary.

030. NUTRIENT MANAGEMENT.

Each beef cattle animal feeding operation shall submit a nutrient management plan for land owned or controlled by the operator, which conforms to the nutrient management standard and addresses odors generated in excess of odors normally associated with

raising beef cattle in Idaho, to the Director for approval. Following department review and approval, the plan, and all copies of the plan, shall be returned to the operation and maintained on site. Effective date (4-6-05)

01. Existing Beef Cattle Animal Feeding Operations. Beef cattle animal feeding operations that are operating on or before July 1, 2000 shall submit a NMP to the director for approval no later than January 1, 2005. The Director shall respond to or approve such plan in writing within forty-five (45) days of submission. Effective date (4-6-05)

02. New Beef Cattle Animal Feeding Operations. Any new beef cattle animal feeding operation commencing operations after July 1, 2000, shall not operate prior to the Director's approval of a NMP. The Director shall respond to or approve such plan within forty-five (45) days of submission. Effective date (4-6-05)

03. Implementation of a Nutrient Management Plan. Failure to implement an approved NMP is a violation of these rules. Effective date (4-6-05)

031. NUTRIENT MANAGEMENT PLAN RETENTION.

All approved NMPs shall be maintained on site at the beef cattle animal feeding operation and available to the Administrator upon request. Effective date (4-6-05)

032. NUTRIENT MANAGEMENT RECORDS.

The operators of beef cattle animal feeding operations shall keep complete and accurate records of: Effective date (4-6-05)

01. Land Application. The dates and amounts of any manure or process wastewater applied on land owned or controlled by the operator. Effective date (4-6-05)

02. Manure Transferred to Another Person. The name and address of any third party that receives manure or process wastewater from the operation, including the dates of the transfer and the amount of manure or process wastewater transferred. Effective date (4-6-05)

03. Records Retention. All records shall be maintained for a period of five (5) years and presented to the Administrator upon request. Effective date (4-6-05)

040. DESIGNATION OF BEEF CATTLE ANIMAL FEEDING OPERATIONS.

01. Designation of Animal Feeding Operations. The Director, on a case by case basis, may designate any animal feeding operation that confines slaughter and feeder cattle as a beef cattle animal feeding operation if, after an inspection, the Director determines that

the animal feeding operation is a significant contributor of pollution to waters of the state. The designation shall be provided to the operator of the animal feeding operation in writing setting forth the basis for the Director's decision. When designated, these operations shall be considered existing beef cattle animal feeding operations. The Director shall consider the following factors when making such designation: Effective date (4-6-05)

- a. Size of the animal feeding operation and the amount of manure, process wastewater, and runoff reaching waters of the state; Effective date (3-15-02)
- b. Location of the animal feeding operation relative to waters of the state; Effective date (3-15-02)
- c. Means of conveyance of manure, process wastewater, and runoff into waters of the state; and Effective date (3-15-02)
- d. Slope, vegetation, precipitation, and other factors affecting the likelihood or frequency of discharge of manure, process wastewater, or runoff into waters of the state. Effective date (3-15-02)

02. Redesignation of a Beef Cattle Animal Feeding Operation. Upon request by the operator, the Director shall redesignate a facility previously designated under Section 040, if the facility is no longer a significant contributor of pollution to waters of the state. Such redesignation shall be provided to the operator in writing. Effective date (3-15-02)

3) Idaho Code § 25-4007; IDAPA 02.04.32.100, .150 .250-.253

§ 25-4007. Nutrient management plans.

- (1) All permitted CAFOs shall have and implement a nutrient management plan that has been reviewed and approved by the department.
- (2) Nutrient management plans shall be amended if modifications to the CAFO, as outlined in the nutrient management standard or other conditions, warrant the amendment.
- (3) Annual soil tests shall be conducted on all land application sites owned or leased by the permittee every year to determine compliance with the nutrient management plan and nutrient management standard. The director may require more frequent soil tests if deemed necessary.

100. PERMIT REQUIRED.

No person may construct, operate, or expand a poultry CAFO after April 6, 2011, without first obtaining a permit issued by the director as provided in these rules. Effective date (3-21-12)

01. Common Control. Two (2) or more poultry CAFOs under common control of the same person may be considered, for purposes of permitting, to be a single facility, even though separately their capacity is less than a large or medium poultry CAFO, if they use a common animal waste system or land application site. Effective date (3-21-12)

02. Existing Poultry Facilities. Poultry operations that existed on or before April 6, 2011, are not required to obtain a permit unless the facility is expanding to the extent that it will meet the definition of a poultry CAFO. Existing poultry facilities must register and submit an NMP in accordance with Section 170 of these rules, and must otherwise comply with these rules. Effective date (3-21-12)

150. NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

All persons who develop NMPs must be certified through the Department Certification Program. Effective Date (4-2-08)

01. Certification. The Nutrient Management Planner Certification will be valid unless revoked by the Department. Effective Date (4-2-08)

02. Development. Nothing shall prohibit any person from developing an NMP for his own operation provided the person possesses a valid Nutrient Management Planner Certification issued by the Department. Effective Date (4-2-08)

03. Continuing Education. The Department may require a CNMP to complete periodic continuing education training to retain certification. Effective Date (4-2-08)

250. NUTRIENT MANAGEMENT.

Each poultry CAFO must submit an NMP for land owned or controlled by the operator to the director for approval. The NMP must conform to the NMS and address odors generated in excess of odors normally associated with raising poultry in Idaho. Effective date (3-21-12)

01. Existing Poultry CAFOs. Poultry CAFOs that are operating on or before April 6, 2011, must submit an NMP to the director for approval no later than April 6, 2012. Effective date (3-21-12)

02. New Poultry CAFOs. Any poultry CAFO which commences operations after April 6, 2011, must not operate prior to the director's approval of the NMP. Effective date (3-21-12)

03. Designated Poultry CAFOs. Any poultry AFO which is designated as a CAFO by the department in accordance with Section 400 must submit an NMP within forty-five (45) days of designation. Effective date (3-21-12)

04. NMP Approval. The director will respond to or approve an NMP in writing within forty-five (45) days of submission. Effective date (3-21-12)

05. NMP Updates or Amendments. Nutrient management plans must be updated as needed to accurately reflect the facility and its nutrient management system. Effective date (3-21-12)

251. NUTRIENT MANAGEMENT PLAN RETENTION.

All NMPs which have been approved by the department and returned to the CAFO must be maintained on site at the CAFO and available to the department upon request. The department will retain a copy of the NMP. Effective date (3-21-12)

252. NUTRIENT MANAGEMENT RECORDS.

01. Required Nutrient Management Records. The CAFO operator must keep complete and accurate records of: Effective date (3-21-12)

a. Land application records, consisting of, at a minimum: Effective date (3-21-12)

i. The dates, methods and approximate amounts of any manure or process wastewater applied on land owned or controlled by the operator. Effective date (3-21-12)

ii. Weather conditions and soil moisture at the time of application. Effective date (3-21-12)

iii. The lapsed time to manure incorporation, rainfall or irrigation event. Effective date (3-21-12)

iv. Documentation of the actual rate at which nutrients were applied. When the actual rate used differs from the recommended and planned rates, nutrient management records must indicate the rationale for the difference. Effective date (3-21-12)

b. The name and address of any third party receiving manure or process wastewater from the facility, including the dates of the transfer and the amount of manure or process wastewater transferred. Effective date (3-21-12)

c. Nutrient Application. The quantities, analyses and sources of nutrients applied. Effective date (3-21-12)

d. Soil Analysis. Complete soil analysis to create nutrient budget. Effective date (3-21-12)

e. Crops. Crops planted, planting and harvest dates, yields and crop residues removed. Effective date (3-21-12)

f. Record Review. Dates of annual review, person performing the review, and recommendations determined from the review. Effective date (3-21-12)

02. Records Retention. All nutrient management records must be maintained for a period of five (5) years and provided to the department upon request. Effective date (3-21-12)

253. NMP VIOLATIONS.

The failure to implement an approved NMP, failure to retain and maintain an NMP at the CAFO, or failure to retain nutrient management records is a violation of these rules. Effective date (3-21-12)

4) Idaho Code § 37-401; IDAPA 02.04.14.030, .031

§ 37-401. Inspections, examinations and tests by department of agriculture – Dairy farms – Nutrient management plans required – Certain evidence required.

[...]

(4) All dairy farms shall have a nutrient management plan approved by the department. The nutrient management plan shall cover the dairy farm site and other land owned and operated by the dairy farm owner or operator. Nutrient management plans submitted to the department by the dairy farm shall include the names and addresses of each recipient of that dairy farm's livestock waste, the number of acres to which the livestock waste is applied and the amount of such livestock waste received by each recipient. The information provided in this subsection shall be available to the county in which the dairy farm, or the land upon which the livestock waste is applied, is located. If livestock waste is converted to compost before it leaves the dairy farm, only the first recipient of the compost must be listed in the nutrient management plan as a recipient of livestock waste from the dairy farm. Existing dairy farms shall submit a nutrient management plan to the department on or before July 1, 2001.

(5) Any new dairy farms or dairy farms that change owners or operators shall have an approved nutrient management plan on file with the department prior to the issuance of the milk permit for that dairy. The nutrient management plan shall be implemented upon approval of the plan by the department.

[...]

(8) The nutrient management plan, and all information generated by the dairy as a result of such plan, shall be deemed to be trade secrets, production records or other proprietary information, shall be kept confidential and shall be exempt from disclosure pursuant to section 74-107, Idaho Code.

030. DAIRY ENVIRONMENTAL MANAGEMENT PLAN APPROVAL.

The Department is authorized to approve environmental management plans, as provided in Section 37-606A, Idaho Code. Effective date (3-29-17)

01. Dairy Storage and Containment Facility Criteria. Effective date (3-29-17)

a. Dairy storage and containment facilities shall be constructed to meet a minimum of one hundred eighty (180) days of holding capacity. Process water containment structures that are utilized as the secondary or final storage for effluent shall have a minimum two (2) vertical feet of freeboard. Effective date (3-29-17)

b. Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with Section 031 and with IDAPA 02.04.30, "Rules Governing Nutrient Management." Effective date (3-28-18)

c. Accurate DNMP records shall be maintained. These records shall include at a minimum: Effective date (3-29-17)

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

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

iii. Date and amount of dairy byproduct and commercial fertilizer applied to individual dairy owned or operated fields; Effective date (3-29-17)

iv. Date(s) of exported dairy byproduct, number of acres applied, amount of dairy byproduct exported, and to whom dairy byproduct was exported; and Effective date (3-29-17)

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

vi. A nitrogen management plan worksheet (pages 35-36 of the 2017 Idaho Phosphorus Site Index Standards) shall be completed for all fields and pastures receiving land application of nutrients. Effective date (3-28-18)

d. Pasturing. Pastures utilized for grazing of dairy animals, and other animals owned, leased or otherwise under the control of a producer within the same pasture, shall be incorporated in and subject to the DNMP. These pastures are also subject to the following requirements: Effective date (3-29-17)

i. Soil testing. Soil tests shall be conducted pursuant to the NMS and Section 031 on all lands utilized as pasture. Effective date (3-28-18)

ii. Surface water access. If pastured animals have access to surface water within a pasture, the producer may be required to implement one (1) or more NRCS conservation practice standards to minimize adverse impact on surface water quality. Effective date (3-29-17)

iii. Land application. If land application occurs within a pasture, soil tests shall be conducted annually on that pasture. Effective date (3-29-17)

iv. Confinement areas. Confinement areas shall not be considered part of a pasture. Effective date (3-29-17)

031. PHOSPHORUS MANAGEMENT.

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

(3-28-18)

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. (3-28-18)

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.

(3-28-18)

b. The Department may award zero (0) or partial BMP Coefficient credit when a dairy farm implements a best management practice designed to reduce phosphorus loss from fields that does not fully conform to NRCS standards or the standards set forth in the 2017 Idaho Phosphorus Site Index Standards BMP definition section. (3-28-18)

02. Phosphorus Threshold. If the regulatory or producer soil tests reveal that phosphorus thresholds on fields and pastures have exceeded the levels established in the NMS, the producer shall only apply phosphorus at the appropriate phosphorus crop uptake rate. Subsequent regulatory soil test(s) on fields and pastures that were identified as exceeding the phosphorus threshold will be conducted. If two (2) out of three (3) tests reveal the phosphorus index continues to trend upward, the producer will be penalized as provided in these rules. These tests shall be taken in the top one (1) foot of soil. (3-28-18)

§ 39-104A. Authority to make rules regulating large swine feeding operations – Financial assurances.

(1) The state of Idaho is experiencing the development of large swine feeding operations which are inadequately controlled through existing state regulatory mechanisms. If not properly regulated, these facilities pose a threat to the state's surface and ground water resources. Due to existing rulemaking authority, the department of environmental quality is in the best position of all state agencies to modify its present rules and to make new rules to develop an adequate regulatory framework for large swine feeding operations.

(2) The department of environmental quality is authorized to modify its existing administrative rules and to make new rules regulating large swine feeding operations, as they shall be defined by the department. The department is authorized to work with the Idaho department of agriculture in the development of such rules.

(3) Owners and operators of swine facilities required to obtain a permit from the department of environmental quality to construct, operate, expand or close the facilities shall provide financial assurances demonstrating financial capability to meet requirements for operation and closure of the facilities and remediation. Requirements for financial assurances shall be determined by the agency as set forth in rule. Financial assurances may include any mechanism or combination of mechanisms meeting the requirements established by agency rule including, but not limited to, surety bonds, trust funds, irrevocable letters of credit, insurance and corporate guarantees. The mechanism(s) used to demonstrate financial capability must be legally valid, binding and enforceable under applicable law and must ensure that the funds necessary to meet the costs of closure and remediation will be available whenever the funds are needed. The director may retain financial assurances for up to five (5) years after closure of a facility to ensure proper closure and remediation, as defined by rule.

(4) Those swine facilities described in section 39-7905, Idaho Code, shall meet the requirements of section 39-7907, Idaho Code, in addition to the requirements of this chapter and the department of environmental quality's rules regulating swine facilities, prior to the issuance of a final permit by the director. The director shall require that swine facilities be constructed in a phased manner over a period of time and that no additional facilities be constructed until the director approves the associated waste treatment system.

(5) Nothing in this section prohibits the boards of county commissioners of any county or the governing body of any city from adopting regulations that are more stringent or that require greater financial assurances than those imposed by the department of environmental quality. A board of county commissioners of a county or a governing body of a city in which a swine facility is located may choose to determine whether the facility is properly closed according to imposed standards or may leave that determination to the department. This choice shall be communicated to the director in writing when closure begins; provided that determinations of closure by a board of county commissioners of a

county or a governing body of a city in which the swine facility is located shall not permit closure under less stringent requirements than those imposed by the department.

(6) As used in this section:

(a) "Animal unit" means a unit equaling two and one-half (2.5) swine, each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds), or ten (10) weaned swine, each weighing under twenty-five (25) kilograms. Total animal units are calculated by adding the number of swine weighing over twenty-five (25) kilograms multiplied by four-tenths (.4) plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (.1).

(b) "Facilities" or "facility" means a place, site or location or part thereof where swine are kept, handled, housed or otherwise maintained and includes, but is not limited to, buildings, lots, pens and animal waste management systems, and which has a one-time animal unit capacity of two thousand (2,000) or more animal units.

(c) "Large swine feeding operations" means swine facilities having a one-time animal unit capacity of two thousand (2,000) or more animal units.

(d) "One-time animal unit capacity" means the maximum number of animal units that a facility is capable of housing at any given time.

200. PERMIT APPLICATION.

01. Permit Application. Every person requiring a permit under these rules shall submit a permit application to the Department. A permit application will be used to determine if the construction, operation, and closure of a swine facility will be in conformance with these and other applicable rules. Effective Date (3-29-12)

02. Preapplication Conference. Prospective applicants are encouraged to meet with the Department to discuss application requirements and procedures. Effective Date (4-1-00)

03. Contents of Application. Each application shall include, in the format set forth by the Director and when determined applicable by the Director, the following information in Subsections 200.04 through 200.08 in sufficient detail to allow the Director to make necessary application review decisions concerning design, environmental protection and public health. Effective Date (4-1-00)

04. Relevant Information. Effective Date (4-1-00)

a. Name, mailing address and phone number of the facility owner. Effective Date (4-1-00)

b. Name, mailing address and phone number of the facility operator. Effective Date (4-1-00)

- c. Name and mailing address of the facility. Effective Date (4-1-00)
- d. Legal description of the facility location. Effective Date (4-1-00)
- e. The legal structure of the entity owning the facility, including the names and addresses of all directors, officers, registered agents and partners. Effective Date (4-1-00)
- f. The names and locations of all swine facilities owned and/or operated by the applicant within the last ten (10) years. Effective Date (3-29-12)
- g. The one-time animal unit capacity of the facility. Effective Date (4-1-00)
- h. The type of animals to be confined at the facility. Effective Date (4-1-00)
- i. Evidence that a valid water right exists to supply adequate water for the proposed facility or a copy of either an application for permit to appropriate water or an application to change the point of diversion, place, period and nature of use of an existing water right that has been filed with the Idaho Department of Water Resources which, if approved, will supply adequate water for the proposed operation. Effective Date (4-1-00)
- j. Proof of financial capability to perform remedial actions and to meet the conditions of an approved closure plan for a facility. The mechanism used to demonstrate financial capability must be legally valid, binding and enforceable under applicable law and must insure that the funds necessary to meet the costs of remediation and closure will be available whenever they are needed in accordance with Section 205. The mechanisms include, but are not limited to, trust funds, surety bonds, letters of credit, insurance and corporate guarantees. Effective Date (3-15-02)
- k. The facility's biosecurity and sanitary standards. Effective Date (4-1-00)
- l. A statement of estimated annual income and operating expenses that demonstrate, to the satisfaction of the Department, financial capability to operate the facility. Effective Date (3-15-02)

05. Construction Plan. Plans and specifications for the facility's animal waste management system that include the following information: Effective Date (4-1-00)

- a. Vicinity map(s) prepared on one (1) or more seven and one-half minute (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following: Effective Date (4-1-00)

- i. Layout of the facility, including buildings and animal waste management system; Effective Date (4-1-00)
- ii. The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant; Effective Date (4-1-00)
- iii. The location of occupied dwellings, public and private gathering places, such as schools, churches and parks, and incorporated municipalities which are within a two (2) mile radius of the facility; and Effective Date (4-1-00)
- iv. Private and community domestic water wells, irrigation wells, irrigation conveyance and drainage structures, monitoring wells, wetlands, streams, springs, and reservoirs which are within a one (1) mile radius of the facility. Effective Date (4-1-00)

b. Facility construction specifications including: Effective Date (4-1-00)

- i. A site plan showing: Effective Date (4-1-00)
 - (1) Building locations; Effective Date (4-1-00)
 - (2) Waste facilities; Effective Date (4-1-00)
 - (3) All waste conveyance systems; and Effective Date (4-1-00)
 - (4) All irrigation systems used for land application, including details of approved water supply protection devices. Effective Date (4-1-00)
- ii. Building plans showing: Effective Date (4-1-00)
 - (1) All wastewater collection systems in housed units; Effective Date (4-1-00)
 - (2) All freshwater supply systems, including details of approved water supply protection devices; Effective Date (4-1-00)
 - (3) Detailed drawings of wastewater collection and conveyance systems and containment construction; and Effective Date (4-1-00)
 - (4) Detailed construction and installation procedures. Effective Date (4-1-00)

06. Site Characterization. A characterization of the facility and any land application site(s) owned or operated by the applicant, prepared by a registered professional geologist, a registered professional engineer or a qualified ground water hydrologist, that includes the following information: Effective Date (4-1-00)

a. A description of monitoring methods, frequency, and reporting components related to either leak detection systems and/or ground water monitoring wells; Effective Date (4-1-00)

b. The climatic, hydrogeologic, and soil characteristics; Effective Date (4-1-00)

c. The depth to water and a potentiometric map for the uppermost and regional aquifer; Effective Date (4-1-00)

d. The vertical and horizontal conductivity, gradient, and ground water flow direction and velocity; Effective Date (4-1-00)

e. Estimates of recharge to the uppermost aquifer; Effective Date (4-1-00)

f. Information which characterizes the relationship between the ground water and adjacent surface waters; and Effective Date (4-1-00)

g. A summary of local ground water quality data. Effective Date (4-1-00)

07. Nutrient Management Plan. A plan prepared by a Certified Planner demonstrating compliance with the Nutrient Management Standard for land application. Effective Date (4-1-00)

08. Closure Plan. A plan describing the procedures for final closure of a facility that ensures no adverse impacts to the environment and waters of the state and that includes: Effective Date (4-1-00)

a. The estimated length of operation of the facility; and Effective Date (4-1-00)

b. A description of the procedures, methods, and schedule to be implemented at the facility for final disposal, handling, management and/or treatment of all animal waste. Effective Date (4-1-00)

09. Other Information. An applicant shall provide any other information relative to Subsections 200.04 through 200.08 deemed necessary by the Director to assess protection of human health and the environment Effective Date (4-1-00)

10. Application Fee. A fee shall be submitted with each permit application as follows: Effective Date (4-1-00)

- a. Three thousand dollars (\$ 3,000) for facilities that have a one-time animal unit capacity of less than five-thousand (5,000) animal units; Effective Date (4-1-00)
- b. Five thousand dollars (\$ 5,000) for facilities that have a one-time animal unit capacity of five thousand to ten thousand (5,000-10,000) animal units; and Effective Date (4-1-00)
- c. Ten thousand dollars (\$ 10,000) for facilities that have a one-time animal unit capacity over ten thousand (10,000) animal units. Effective Date (4-1-00)

210. EXISTING FACILITIES.

01. Registration Requirement. Existing facility owners shall register with the Department within three (3) months after the original effective date of these rules. Registration shall include the information in Subsection 200.04 except for Subsection 200.04.j. Nothing in Section 210 shall be construed to deny an existing facility the opportunity to apply for, and receive, a permit under these rules. (4-1-00)

02. Plan Requirement. Existing facilities shall submit a nutrient management plan and closure plan to the Director for approval within two (2) years of the original effective date of these rules in accordance with Subsections 200.07 and 200.08. An application fee shall not be required unless the facility is expanding. (4-1-00)

03. Expanding Facility. The owner of an existing facility shall not increase the one-time animal unit capacity of the facility by ten percent (10%) or more without first obtaining a permit for the expansion as required by these rules. The ten percent (10%) increase is measured cumulatively from the original effective date of these rules. (4-1-00)

250. REQUIREMENTS FOR WATER QUALITY PROTECTION. The following minimum design and performance standards are intended as a baseline for protection of public health and the waters of the state. These standards shall apply to all facilities and be reflected in the permit unless the Director approves, based on an applicant's site specific information, that compliance with a specific standard is not required to protect water quality and the public health. Other conditions, as determined by the Director to be necessary to protect water quality, may be included in a permit. (4-1-00)

01. Animal Waste Management System Design Criteria. A facility's animal waste management system shall be designed and constructed in accordance with the NRCS and the American Society of Agricultural Engineers standards, whichever is most stringent and shall: (4-1-00)

- a. Contain the maximum expected operating water balance and the twenty-five (25) year twenty-four (24) hour rainfall event and the one (1) in five (5) year winter runoff. (4-1-00)

- b. Provide capacity to store the peak volume of process wastewater that will be generated during a six (6) month period. (4-1-00)
- c. Provide a one (1) foot freeboard in addition to the storage requirements, specified in Subsections 250.01.a. and 250.01.b. (4-1-00)
- d. Impoundments, other than for emergency runoff, containing or designed to contain process wastewater shall be designed for efficient leak detection and shall not be located in the one-hundred (100) year floodplain. (4-1-00)
- e. Seepage rates for impoundments shall be no greater than 1×10^{-7} cm/sec. (4-1-00)

02. Water Quality Monitoring. Ground water and/or leak detection monitoring shall be conducted for every facility with a liquid storage impoundment and shall be designed to give the earliest possible detection of an unauthorized discharge to ground water. (4-1-00)

03. Discharges. Facilities shall be constructed, operated and maintained to not cause unauthorized discharges. (4-1-00)

04. Spill Contingency Plan. Facilities shall prepare a discharge response strategy that describes procedures and methods to be implemented for the abatement and cleanup of any pollutant. (4-1-00)

05. Stockpile Areas. Animal waste stockpile areas, including compost areas, shall be constructed to ensure that all water and precipitation, which comes into contact with the stockpiles, does not enter waters of the state. (4-1-00)

400. PERMIT CONDITIONS. The following conditions shall apply to all permittees. (4-1-00)

01. Compliance Required. The permittee shall comply with all conditions of the permit. The permit shall not relieve the permittee of the responsibility to comply with all other applicable local, state, and federal laws. (4-1-00)

02. Financial Capability. Permittees shall have the financial capability to perform remedial actions and to meet the conditions of an approved closure plan for a facility. (3-15-02)

03. Construction and Operation of Facility. The permittee shall ensure that construction, operation and maintenance of the facility proceed according to the construction plans and specifications and the approved monitoring, nutrient management and closure plans, and comply with the following: (4-1-00)

- a. Within thirty (30) days of completion of construction, submit as built plans. (4-1-00)
- b. Apply appropriate management practices as approved by the Director. (4-1-00)
- c. The facility or operations associated with the facility shall not create a public health hazard or nuisance conditions including odors. (4-1-00)
- d. The facility shall not dispose of any material not approved for disposal under the permit into the animal waste management system including, but not limited to, human waste. (4-1-00)
- e. The removal of animal waste from an impoundment or storage structure shall be performed in a manner to not damage the integrity of the liner. (4-1-00)
- f. Dead animals shall be removed from the facility for rendering, cremation, burial, composting or other disposal in accordance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." (3-15-02)
- g. Nutrient management plans shall be amended if modifications to the facility operation, as outlined in the Nutrient Management Standard or other conditions, warrant the amendment. (4-1-00)
- h. Soil tests shall be conducted on all land application sites owned or leased by the permittee every year to determine compliance with the nutrient management plan and Nutrient Management Standard. The Director may require more frequent soil tests if deemed necessary. (4-1-00)

04. Provide Information. The permittee shall furnish to the Director within a reasonable time, any information including copies of records required by the permit or other applicable rules, which the Director may reasonably require to determine whether cause exists for modifying or revoking the permit or to determine compliance with the permit or other applicable rules. (4-1-00)

05. Entry and Access. The permittee shall allow the Director, consistent with Title 39, Chapter 1, Idaho Code, and in compliance with the biosecurity and sanitary standards of a facility, so long as the standards and requirements do not inhibit reasonable access, to: (4-1-00)

- a. Enter at reasonable times upon the premises of a permitted facility or where records are kept; (4-1-00)
- b. Have access to and copy at reasonable times any records that must be kept under conditions of the permit; (4-1-00)

- c. Inspect any facility or land application site; and (4-1-00)
- d. Sample or monitor at reasonable times, substances or parameters directly related to compliance with the permit or these rules. (4-1-00)

6) Idaho Code §§ 39-175A, 175B, 175C; IDAPA 58.01.25(105)(09)

§ 39-175A. Legislative findings and purposes.

(1) The legislature finds:

- (a) That navigable waters within the state are one of the state's most valuable natural resources;
- (b) That it is in the public interest to promote effective and efficient regulation of the discharge of pollutants into navigable waters, and that the state should control such permitting decisions as authorized under the federal clean water act;
- (c) That the clean water act allows a state to develop and implement, with approval from the United States environmental protection agency, a national pollutant discharge elimination system (NPDES) program to be administered by the state;
- (d) That the clean water act, as amended, and regulations adopted pursuant thereto, establishes complex and detailed provisions for regulation of those who discharge pollutants into navigable waters;
- (e) That a state program to implement permitting decisions as authorized in the clean water act, and regulations adopted pursuant thereto, may enable the state to issue flexible permits consistent with the clean water act and avoid the existence of duplicative, overlapping or conflicting state and federal regulatory and enforcement processes;
- (f) That a state program must be run with a minimum of federal interference in permitting, inspection and enforcement activities and that all state permitting actions under the approved state program are to be state actions and are not subject to consultation under the endangered species act or analysis under the provisions of the national environmental policy act. There should be no conditions of approval of the state program that have the effect of undermining or circumventing these principles;
- (g) That the decision to accept delegation of authority from the environmental protection agency to operate an NPDES program has significant public policy implications that should be made by the legislature.

(2) Therefore, it is the intent of the legislature to establish requirements that must be satisfied prior to legislative approval of a permitting program that complies with the clean water act and incorporates flexible permitting procedures and rules to be promulgated by the board.

§ 39-175B. Relationship between state and federal law.

The legislature cannot conveniently or advantageously set forth in this chapter all the requirements of all of the regulations which have been or will be established under the clean water act. However, any state permitting program must avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems. Further, the board may promulgate rules to implement a state permitting program but such rules shall not impose conditions or requirements more stringent or broader in scope than the clean water act and regulations adopted pursuant thereto. Further, the department will not require Idaho pollutant discharge elimination system (IPDES) permits for activities and sources not required to have permits by the United States environmental protection agency.

§ 39-175C. Approval of Idaho pollutant discharge elimination system program.

(1) The department is authorized to implement an Idaho pollutant discharge elimination system (IPDES) program consistent with the requirements of this section. The program shall not include the authority to issue permits for any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation, such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility or when secured to the bed of a lake or river, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development.

(2) The board is authorized to proceed with negotiated rulemaking and all other actions necessary to maintain approval of the IPDES program by the United States environmental protection agency including rules authorizing the collection of reasonable fees for processing and implementing an IPDES permit program. Such fees shall not be assessed or collected unless the state maintains an approved IPDES program consistent with the requirements of this section.

(3) Any memorandum of agreement negotiated by the director to maintain approval to operate an IPDES program shall be binding on the state of Idaho upon enactment of this statute.

(4) Implementation of the IPDES program shall not occur prior to statutory enactment of implementing legislation and authorization of a memorandum of agreement as specified in subsection (3) of this section.

(5) The director, as appropriate, shall establish agreements with other state agencies with expertise to administer the IPDES program.

(6) No provision of this chapter shall be interpreted as to supersede, abrogate, injure or create rights to divert or store water and apply water to beneficial uses established under section 3, article XV, of the constitution of the state of Idaho, and title 42, Idaho Code.

(7) Nothing in this section is intended to supersede any existing agreements between federal, state or local agencies regarding authority over inspections, enforcement or other obligations under the clean water act.

105. APPLICATION FOR AN INDIVIDUAL IPDES PERMIT.

[. . .]

09. Individual Permit Application Requirements for New and Existing Concentrated Animal Feeding Operations (CAFO).

An applicant for an IPDES permit for a new or existing CAFO, as defined in 40 CFR 122.23(b) shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04:

- a. The name of the owner or operator;
- b. The facility location and mailing addresses;
- c. Latitude and longitude of the production area to the nearest second, measured at the entrance to the production area;
- d. A topographic map of the geographic area in which the concentrated animal feeding operation is located, showing the specific location of the production area;
- e. Specific information about the number and type of animals, including, if applicable: beef cattle, broilers, layers, swine weighing fifty-five (55) pounds or more, swine weighing less than fifty-five (55) pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, or other animals, whether in open confinement or housed under roof;
- f. The type of containment and total capacity in tons or gallons of any anaerobic lagoon, roofed storage shed, storage pond, under-floor pit, above-ground storage tank, below-ground storage tank, concrete pad,

impervious soil pad, or other structure or area used for containment and storage of manure, litter, and process wastewater;

g. The total number of acres available and under the applicant's control for land application of manure, litter, or process wastewater;

h. Estimated amounts of manure, litter, and process wastewater generated per year in tons or gallons;

i. Estimated amounts of manure, litter, and process wastewater transferred to other persons per year in tons or gallons; and

j. A nutrient management plan that has been completed and will be implemented upon the date of permit coverage. A nutrient management plan must meet, at a minimum, the requirements specified in 40 CFR 122.42(e), including for all CAFOs subject to 40 CFR 412.30 through 412.37, 412.40 through 412.47, or the requirements of 40 CFR 412.4(c), as applicable.

[...]