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**IDAPA 02
TITLE 04
CHAPTER 16**

02.04.16 - RULES GOVERNING AGRICULTURE ODOR MANAGEMENT

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 25, Chapter 38, Idaho Code. (3-15-02)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.16, "Rules Governing Agriculture Odor Management." (3-15-02)

02. Scope. These rules shall govern the management of odor generated on agricultural operations, except beef cattle animal feeding operations and large swine and poultry operations. The official citation of this chapter is IDAPA 02.04.16.000 et seq. For example this section's citation is IDAPA 02.04.16.001. (3-15-02)

002. WRITTEN INTERPRETATIONS.

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

003. ADMINISTRATIVE APPEAL.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (3-15-02)

004. INCORPORATION BY REFERENCE.

Copies of these documents may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.04.16 incorporates by reference: (3-15-02)

01. Idaho NRCS Nutrient Management Standard 590, June 1999. (3-15-02)

02. Best Management Practices listed in the "Idaho Agricultural Pollution Abatement Plan," August 2001. (3-15-02)

03. ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997. (3-15-02)

04. NRCS Conservation Practice Standard 317, March 2001. (3-15-02)

005. IDAHO PUBLIC RECORDS ACT.

These rules are public records and are available for inspection and copying at the department. (3-15-02)

006. ADDRESS, OFFICE HOURS, TELEPHONE AND FAX NUMBERS.

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-0790. (3-15-02)

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (3-15-02)

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P. O. Box 790, Boise, Idaho 83701. (3-15-02)

04. Telephone Number. The telephone number of the central office is (208) 332-8500. (3-15-02)

05. Fax Number. The fax number of the central office is (208) 334-4062. (3-15-02)

007. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter. (3-15-02)

01. Accepted Agricultural Practices. Those management practices normally associated with agriculture in Idaho, including but not limited to those practices identified in Section 100 of these rules, and which include management practices intended to control odor generated by an agricultural operation. (5-3-03)

02. Agricultural Animals. Those animals, including but not limited to mink, domestic cervidae, horses, and ratites raised for agricultural purposes. (3-15-02)

03. Agricultural Operation. Those operations where livestock or other agricultural animals are raised, or crops are grown, for commercial purposes, not to include those operations set forth within Section 25-3801(2), Idaho Code. (5-3-03)

04. Animal. Livestock and agricultural animals. (5-3-03)

05. BAT. The best application of science that is accessible and obtainable to achieve a desired objective. (5-3-03)

06. Best Management Practices. Practices, techniques, or measures that are determined by the Department to be a cost-effective and practicable means of managing odor generated on an agriculture operation to a level associated with accepted agriculture practices. (3-15-02)

07. Compost. A biologically stable material derived from the biological decomposition of organic matter. (3-15-02)

08. Composting. The aerobic degradation of manure and other organic material to a biologically stable form. (3-15-02)

09. Beef Cattle. All cattle except those located on a dairy farm that has been permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste." (3-15-02)

10. Beef Cattle Animal Feeding Operation. Those operations regulated pursuant to IDAPA 02.04.15, "Rules of the Department of Agriculture Regulating Beef Cattle Animal Feeding Operations." (3-15-02)

11. Department. The Idaho State Department of Agriculture. (3-15-02)

12. Director. The Director of the Idaho State Department of Agriculture. (3-15-02)

13. 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. (3-15-02)

14. Large Swine And Poultry Operations. Those swine and poultry operations regulated pursuant to IDAPA 58.01.09, "Rules Regulating Swine and Poultry Facilities." (3-15-02)

15. Livestock. Cattle, sheep, swine and poultry. (3-15-02)

16. Liquid-Solid Separation. The removal of solid manure from water through mechanical or settling means. (3-15-02)

17. Liquid Waste System. Wastewater storage and containment facilities and associated waste collection and conveyance systems where water is used as the primary carrier of manure and manure is added to the wastewater storage and containment facilities on a regular basis including the final distribution system. (5-3-03)

18. Manure. Animal excrement that may also contain bedding, spilled feed, or soil. (5-3-03)

19. Modified. Structural changes and alterations to agricultural operations which would require increased wastewater storage or containment capacity or such changes which would increase the amount of manure entering wastewater storage and containment facilities. (3-15-03)

20. Nutrient Management Plan. A plan prepared in conformance with the nutrient management standard. (3-15-02)

21. Nutrient Management Standard. 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. (3-15-02)

22. Odor. The property or quality of a substance that stimulates or is perceived by the sense of smell, the standards for which shall be judged on criteria that shall include intensity, duration, frequency, offensiveness, and health risks. (5-3-03)

23. Odor Management Plan. A site-specific plan approved by the Director to manage odor generated on an agricultural operation to a level associated with accepted agricultural practices by utilizing best management practices. (3-15-02)

24. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (3-15-02)

25. 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. (3-15-02)

26. Wastewater. Water containing manure, which is generated on a livestock operation. (3-15-02)

27. Wastewater Storage and Containment Facilities. Wastewater storage ponds, wastewater treatment lagoons, and evaporative ponds. (3-15-02)

28. Wastewater Treatment. A process by which wastewater is treated through aerobic or anaerobic degradation or other means. (3-15-02)

011. ABBREVIATIONS.

01. ASAE. American Society of Agricultural Engineers. (3-15-02)

02. BAT. Best Available Technology. (3-15-02)

03. BMP. Best Management Practice. (3-15-02)

04. DEQ. Idaho Department of Environmental Quality. (3-15-02)

05. NMP. Nutrient Management Plan. (3-15-02)

06. NOV. Notice Of Violation. (3-15-02)

07. NRCS. The United States Department of Agriculture, Natural Resources Conservation Service. (3-15-02)

08. OMP. Odor Management Plan. (3-15-02)

012. -- 099. (RESERVED)

100. ACCEPTED AGRICULTURAL PRACTICES.

Management practices conducted in accordance with applicable laws, rules and best management practices, as referenced in Subsections 100.01 and 100.02, or in the absence of referenced best management practices, management practices conducted in a manner that demonstrates reasonable efforts to minimize odors, shall be considered accepted agricultural practices for purposes of this rule. (3-15-02)

01. Applicable Rules. The following are applicable rules for the purpose of Section 100: (3-15-02)

a. IDAPA 02.04.14, "Rules Governing Dairy Waste." (3-15-02)

b. IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." (3-15-02)

c. IDAPA 02.06.17, "Rules Concerning Disposal of Cull Onion and Potatoes." (3-15-02)

d. IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." (3-15-02)

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 shall be considered accepted agricultural practices for purposes of this rule. (3-15-02)

a. Idaho NRCS Nutrient Management Standard 590, June 1999. (3-15-02)

b. Best Management Practices listed in the "Idaho Agricultural Pollution Abatement Plan," August 2001. (3-15-02)

c. "Control of Manure Odors," ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997. (3-15-02)

d. "Composting Facility," NRCS Conservation Practice Standard 317, March 2001. (3-15-02)

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 500. (3-15-02)

101. -- 199. (RESERVED)

200. APPLICABILITY.

These rules apply to all agricultural operations, except: (3-15-02)

01. Beef Cattle. Beef cattle animal feeding operations regulated pursuant to IDAPA 02.04.15, "Rules of the Department of Agriculture Governing Beef Cattle Animal Feeding Operations." (3-15-02)

02. Swine and Poultry. Large swine and poultry operations regulated pursuant to IDAPA 58.01.09, "Rules Regulating Swine and Poultry Facilities." (3-15-02)

201. -- 299. (RESERVED)

300. 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. (3-15-02)

01. Department Review. Department engineering staff shall provide to the Director a review and assessment of all new or modified liquid waste systems for his consideration prior to final approval of such systems by the Director. 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. (5-3-03)

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. (5-3-03)

a. If construction is commenced prior to the Director's written approval, the Director may order construction activities to be ceased. (5-3-03)

b. No material deviation shall be made from the approved plans and specifications without the prior written approval of the director. (5-3-03)

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. (5-3-03)

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. (5-3-03)

301. 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: (3-15-02)

01. Wastewater Storage and Containment Facilities: (3-15-02)

a. Liquid-solid separation. (3-15-02)

b. Wastewater treatment. (3-15-02)

c. Use of chemical or biological additives. (3-15-02)

d. Dilution of wastewater. (3-15-02)

e. Impermeable or permeable storage covers. (3-15-02)

f. Biofilters. (3-15-02)

g. Enhancing dispersion. (3-15-02)

h. Location of wastewater discharge into storage and containment facilities. (3-15-02)

02. Wastewater Collection and Conveyance Systems. (3-15-02)

a. Wastewater Treatment. (3-15-02)

b. Use of chemical or biological additives. (3-15-02)

c. Dilution of wastewater. (3-15-02)

d. Impermeable or permeable covers of collection areas. (3-15-02)

e. Timing of collection and conveyance system operation. (3-15-02)

f. Frequency and duration of collection and conveyance system operation. (3-15-02)

g. Enhancing dispersion. (3-15-02)

302. -- 399. (RESERVED)

400. INSPECTIONS.

The Director or his 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 these rules. (3-15-02)

01. Notification of County Commissioners. Prior to conducting an inspection, the Department shall notify the board of county commissioners for the county in which the agricultural operation is located and the board of county commissioners may have a designee accompany the department during the inspection. (3-15-02)

02. Records Obtained by the Department. All records copied or obtained by the Department as the result of an inspection under this section shall be exempt from public disclosure under Title 9, Chapter 3, Idaho Code, except the following: (3-15-02)

a. Records otherwise deemed to be public records not exempt from disclosure under Title 9, Chapter 3, Idaho Code. (3-15-02)

b. Inspection reports, determinations of compliance or noncompliance and all other records created by the department pursuant to this section. (3-15-02)

401. -- 499. (RESERVED)

500. ODOR MANAGEMENT PLANS.

OMP's shall be designed to work in conjunction with any required NMP and shall be submitted to the Director in writing. Upon approval by the Director, the Director and either the owner or operator of the agricultural operation shall sign the OMP. (3-15-02)

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 to the Director an OMP for approval. (3-15-02)

02. Interim Measures. The Department shall work with the owner or operator of an agriculture operation that has received a NOV for a first time violation 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. (3-15-02)

03. Department Approval. The Director shall approve, reject, or request 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. The approval, rejection, or request for additional information shall be provided to the owner or operator of the agricultural operation in writing. (3-15-02)

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. (3-15-02)

b. Within fifteen (15) days of receiving the additional information or a rewritten OMP, the Director shall approve or reject the OMP. If the OMP is rejected, the Director may issue a subsequent violation under Section 701 and assess the penalty provisions specified in Section 900 of these rules. (3-15-02)

c. The Director may, on a case by case basis, grant extensions to the deadlines contained in Section 500. (3-15-02)

04. Implementation. OMP's shall be implemented as approved by the Director. (3-15-02)

05. Review of OMP. The Department shall review OMP's 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 shall 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. (3-15-02)

501. CONTENTS OF AN ODOR MANAGEMENT PLAN.

Contents of an OMP for an agricultural operation may include, but are not limited to the following: (3-15-02)

- 01. Owner's Name.** Name and telephone number of the owner of the operation. (3-15-02)
- 02. Address.** Physical address of the operation. (3-15-02)
- 03. Location.** County in which the operation is located. (3-15-02)
- 04. Operation Description.** A description of the operation that includes, as applicable: (3-15-02)
 - a.** Type of operation. (3-15-02)
 - b.** General description of operation. (3-15-02)
 - c.** Number and type of any animals including age groups. (3-15-02)
 - d.** Any plans for expansion. (3-15-02)
 - e.** Type of housing used related to age groups of animals. (3-15-02)
 - f.** General description of nearby residential areas, public use areas, and pertinent agricultural operations. (3-15-02)
 - g.** Type of crop and number of acres grown. (3-15-02)
- 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. (3-15-02)
- 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: (3-15-02)
 - a.** Manure cleaning systems. (3-15-02)
 - b.** Manure transfer systems. (3-15-02)
 - c.** Manure separation systems. (3-15-02)
- 07. Scaled Site Plan.** A site plan showing all buildings, housing facilities, waste/manure storage areas, piping, feed storage areas, and roadways. (3-15-02)
- 08. Land Application System.** A detailed description of the present management practices and methods used to make land application including: (3-15-02)
 - a.** Timing, frequency, and duration of practices. (3-15-02)
 - b.** Proximity of land application sites to residential and public use areas. (3-15-02)
- 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: (3-15-02)
 - a.** Wind Speed and direction(s). (3-15-02)
 - b.** Temperature range. (3-15-02)

c. Relative humidity range. (3-15-02)

d. Precipitation data. (3-15-02)

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. Each odor source must have an explanation of why it is listed as a source and the reasoning for the overall ranking. (3-15-02)

11. Tiered Implementation. A three-tier process shall be used to reduce odor production from the facility. Each tier shall contain 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: (3-15-02)

a. Process of how the BMP or BAT will be designed or managed. (3-15-02)

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. (3-15-02)

c. Monitoring program that will be implemented to evaluate the effectiveness of the BMP or BAT, with quantitative or qualitative reduction goals. (3-15-02)

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. (3-15-02)

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. (3-15-02)

502. -- 599. (RESERVED)

600. COMPLAINTS.
The Department shall respond to all odor complaints lodged against agriculture operations. (3-15-02)

601. CONTENTS OF COMPLAINTS.
Complaints shall contain the name, address, and telephone number of the complainant. (3-15-02)

602. RESPONSE TO COMPLAINTS.
The response of the Department may be limited to informing the complainant that an odor management plan is being developed or implemented. (5-3-03)

603. -- 699. (RESERVED)

700. 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 IDAPA 02.04.16, "Rules Governing Agriculture Odor Management." (3-15-02)

01. Notice of Violation. The Department shall provide the owner or operator of the agriculture operation with written notice of the violation, and an opportunity for a hearing pursuant to Title 67, Chapter 52, Idaho Code. (3-15-02)

02. Cooperation with the Department. 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. (3-15-02)

701. SUBSEQUENT VIOLATIONS.

Agricultural operations shall be deemed to 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. (3-15-02)

702. ODOR EMISSIONS CAUSED BY AN ACT OF GOD.

Odor emissions caused by an act of God or a mechanical failure shall not constitute a violation, provided that the agricultural operation takes reasonable steps to promptly repair the cause of the emission. This provision is applicable whether or not an agricultural operation is required to have an OMP. (5-3-03)

703. -- 899. (RESERVED)

900. PENALTIES.

Agricultural operations determined by the Department to have committed a subsequent violation of these rules shall be assessed a civil penalty by the Department or its duly authorized agent not to exceed ten thousand dollars (\$10,000) for each offense and be liable for reasonable costs and attorney's fees. (3-15-02)

01. Assessment of Civil Penalty. Assessment of a civil penalty may be made in conjunction with any other Department administrative action. No civil penalty may be imposed unless the person charged was given notice and opportunity for a hearing pursuant to Title 67, Chapter 52, Idaho Code. (3-15-02)

02. Inability to Collect Civil Penalty. If the Department is unable to collect the civil penalty or if any person fails to pay all or a set portion of a civil penalty as determined by the Department, the Department may recover such amount by action in the appropriate district court. (3-15-02)

03. Appeal of Civil Penalty. Any person against whom the Department has assessed a civil penalty may, within thirty (30) days of the final action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the Department to have occurred. (3-15-02)

04. Computation of Monetary Penalties. The imposition or computation of monetary penalties shall take into account the seriousness of the violation and such other matters as justice requires. (5-3-03)

05. Reports for Basis of Penalty. The Director shall prepare a written report setting forth the basis upon which any monetary penalty is imposed or computed and shall retain the report on file with the Department. (5-3-03)

06. Moneys Collected from Violations. Moneys collected for violations of these rules shall be deposited in the state treasury and credited to the General Fund. (3-15-02)

901. -- 999. (RESERVED)

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