

TITLE 25
ANIMALS

CHAPTER 40
POULTRY ENVIRONMENTAL ACT

25-4001. SHORT TITLE. This chapter shall be known as the "Poultry Environmental Act."

[25-4001, added 2011, ch. 227, sec. 1, p. 615.]

25-4002. DEFINITIONS. As used in this chapter:

(1) "Administrator" means the administrator, or his designee, for the animal industries division of the Idaho department of agriculture.

(2) "Animal feeding operation" or "AFO" means a lot or facility where the following conditions are met:

(a) Poultry have been, are, or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

(b) Crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(3) "Animal waste" or "manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

(4) "Best management practices" means practices, techniques or measures which are determined to be reasonable precautions, are a cost-effective and practicable means of preventing or reducing pollutants from point sources or nonpoint sources to a level compatible with environmental goals, including water quality goals and standards for waters of the state.

(5) "Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a large poultry CAFO or as a medium poultry CAFO by the terms of this chapter, or that is designated as a CAFO in accordance with section [25-4011](#), Idaho Code. Two (2) or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

(6) "Department" means the Idaho department of agriculture.

(7) "Director" means the director of the Idaho department of agriculture or his designee.

(8) "Land application" means the spreading on, or incorporation of, animal waste into the soil mantle primarily for beneficial purposes.

(9) "Land application area" means land under the control of an AFO owner or operator, whether it is owned, rented or leased, to which manure, litter or process wastewater from the production area is or may be applied.

(10) "Large poultry CAFO" means a poultry AFO that confines as many or more than the number of poultry specified in the following categories:

(a) Fifty-five thousand (55,000) turkeys;

(b) Thirty thousand (30,000) laying hens or broilers, if the AFO uses a liquid manure handling system;

(c) One hundred twenty-five thousand (125,000) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;

(d) Eighty-two thousand (82,000) laying hens, if the AFO uses other than a liquid manure handling system;

(e) Thirty thousand (30,000) ducks, if the AFO uses other than a liquid manure handling system; or

(f) Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system.

(11) "Medium poultry CAFO" means any poultry AFO which confines:

(a) Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys;

(b) Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers, if the AFO uses a liquid manure handling system;

(c) Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;

(d) Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens, if the AFO uses other than a liquid manure handling system;

(e) Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks, if the AFO uses other than a liquid manure handling system; or

(f) One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks, if the AFO uses a liquid manure handling system.

(12) "Modification" or "modified" means structural changes and alterations to the wastewater storage containment facility which would require increased storage or containment capacity or such changes which would alter the function of the wastewater storage containment facility.

(13) "Noncompliance" means a practice or condition that causes an unauthorized discharge, or a practice or condition, that if left uncorrected, will cause an unauthorized discharge, or a condition on the poultry CAFO that does not meet the requirements of the nutrient management standard, nutrient management plan, and 2004 American society of agricultural and biological engineers (ASABE) construction standard for waste containment systems.

(14) "Nutrient management plan" means a plan prepared in conformance with the nutrient management standard, provisions required by 40 CFR 122.42(e) (1), or other equally protective standard for managing the amount, placement, form and timing of the land application of nutrients and soil amendments.

(15) "Nutrient management standard" means the 2007 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.

(16) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, that is recognized by law as the subject of rights and duties.

(17) "Poultry" means chickens, turkeys, ducks, geese and any other bird raised in captivity.

(18) "Process wastewater" means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits or other AFO facilities; direct contact swimming, washing or spray cooling of animals; or dust control. Process

wastewater also includes any water which comes into contact with any raw materials, products or byproducts including manure, litter, feed, milk, eggs or bedding.

(19) "Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area and the waste containment area. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, barnyards and animal walkways. The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers and bedding materials. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of "production area" is any egg washing or egg processing facility, and any area used in the storage, handling, treatment or disposal of mortalities.

(20) "Unauthorized discharge" means a discharge of process wastewater or manure to state surface waters that is not authorized by an NPDES permit or the release of process wastewater or manure to waters of the state that does not meet the requirements of this chapter.

(21) "Wastewater storage and containment facilities" means the portion of an AFO where manure or process wastewater is stored or collected. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds.

(22) "Waters of the state" means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state.

[25-4002, added 2011, ch. 227, sec. 1, p. 615.]

25-4003. PERMIT REQUIRED. (1) No person shall construct, operate or expand a poultry CAFO of any size without first obtaining a permit issued by the director.

(2) 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 management system or land application site.

(3) The provisions of this section shall be applicable only to those poultry CAFOs constructed or modified after the effective date of this chapter.

[25-4003, added 2011, ch. 227, sec. 1, p. 617.]

25-4004. PERMIT APPLICATION. (1) Every person who is required to obtain a permit under this chapter shall submit a permit application to the department prior to facility operation or expansion. A permit application will be used to determine if the construction and operation plans of a large or medium poultry CAFO will be in conformance with the provisions of this chapter.

(2) Each application shall include information in sufficient detail to allow the director to make necessary application review decisions concern-

ing design and environmental protection. In accordance with the provisions of section [25-4012](#), Idaho Code, the director is authorized to promulgate rules to designate the contents of a permit application.

[25-4004, added 2011, ch. 227, sec. 1, p. 617.]

25-4005. EXISTING FACILITIES. (1) Existing large and medium poultry CAFO owners shall register with the department no later than January 1, 2012, upon forms created by the department. None of the provisions in this section shall be construed to deny an existing operation the opportunity to apply for and receive a permit under this chapter.

(2) Existing large and medium poultry CAFOs shall submit a nutrient management plan to the director for approval within one (1) year of the effective date of this chapter. An application fee shall not be required unless the CAFO is expanding.

(3) The owner of an existing poultry operation shall not increase the one-time animal capacity of the operation by ten percent (10%) or more without first obtaining a permit for the expansion as required by the provisions of this chapter. The ten percent (10%) increase is measured cumulatively from the original effective date of this chapter or the date the owner first obtained a permit.

[25-4005, added 2011, ch. 227, sec. 1, p. 617.]

25-4006. DESIGN AND CONSTRUCTION. Each new or modified large and medium CAFO shall design and construct all new and modified wastewater storage and containment facilities in accordance with the engineering standards and specifications provided by the natural resource conservation service or the American society of agricultural and biological engineers (ASABE) or other equally protective standard approved by the director. The department's review and approval of plans under this section shall supersede the Idaho department of environmental quality's implementation of plan and specification review and approval provided pursuant to section [39-118](#), Idaho Code. Such design and construction shall be considered a best management practice.

[25-4006, added 2011, ch. 227, sec. 1, p. 618.]

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.

[25-4007, added 2011, ch. 227, sec. 1, p. 618.]

25-4008. INSPECTIONS. The director or his designee in the division of animal industries is authorized to enter and inspect any AFO and have access to or copy any facility records deemed necessary to ensure compliance with the provisions of this chapter. The director shall comply with the biosecu-

rity protocol of the AFO so long as the protocol does not inhibit reasonable access to:

- (1) Enter and inspect, at reasonable times, the premises or land application site or sites of an AFO;
- (2) Review and copy, at reasonable times, any records that must be kept under conditions of this chapter;
- (3) Sample or monitor, at reasonable times, substances or parameters directly related to compliance with this chapter.

[25-4008, added 2011, ch. 227, sec. 1, p. 618.]

25-4009. COMPLIANCE SCHEDULES AND MONITORING. (1) Compliance schedule. The director may establish a compliance schedule for facilities as part of the permit conditions including:

- (a) Specific steps or actions to be taken by the permittee to achieve compliance with applicable requirements or permit conditions; and
 - (b) Dates by which those steps or actions are to be taken.
- (2) Monitoring requirements. Any facility may be subject to monitoring requirements including, but not limited to, the following:
- (a) The type, installation, use and maintenance of monitoring equipment;
 - (b) Monitoring or sampling methodology, frequency and locations;
 - (c) Monitored substances or parameters;
 - (d) Testing and analytical procedures; and
 - (e) Reporting requirements including both frequency and form.

[25-4009, added 2011, ch. 227, sec. 1, p. 618.]

25-4010. FEES AND ASSESSMENTS TO BE COLLECTED. (1) The department may levy a fee or assessment against the permit holder for the purpose of carrying out the provisions of this chapter and rules promulgated hereunder.

(2) Fees or assessments collected shall be used for costs related to the implementation of the provisions of this chapter.

(3) Fees or assessments shall be levied on a uniform basis in an amount reasonably necessary to cover the cost of the inspection program and the administration of the department of agriculture poultry program. The department shall adjust the fees to be collected under this section as necessary to meet the expenses of the inspections.

(4) The annual fees or assessments shall be based on the square footage of the confinement area. Such fees or assessments may not exceed three cents (3¢) per square foot.

(5) All fees and assessments collected or received by the department under this chapter shall be deposited in the "poultry inspection fund," which fund is hereby created in the state treasury. All moneys coming into the poultry inspection fund are hereby appropriated to the department of agriculture to be used in the inspections required under this chapter.

(6) The fees and assessments accrued in any given year are due and payable no later than January 20 of the following year.

(7) Fees and assessments for new or expanded operations shall be prorated for each month of operation.

[25-4010, added 2011, ch. 227, sec. 1, p. 618.]

25-4011. DESIGNATION. (1) The director may, on a case by case basis, designate a poultry AFO as a medium poultry CAFO if it is determined that the AFO is a significant contributor of pollutants to waters of the state. The designated medium poultry CAFO will be required to follow all permit requirements for a medium poultry CAFO.

(2) The designation shall be provided to the operator of the poultry AFO in writing, setting forth the basis for the director's decision.

(3) The director shall consider the following factors when deciding whether to designate a poultry AFO:

(a) Size of the poultry AFO and the amount of manure, process wastewater and runoff reaching waters of the state;

(b) Location of the poultry AFO relative to waters of the state;

(c) Means of conveyance of manure, process wastewater and runoff into waters of the state;

(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; and

(e) Repeated instances of noncompliance.

(4) Upon request by the operator, the director shall redesignate a facility previously designated under subsection (1) of this section 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 and any fees or assessments paid by the operation due to the designation will not be refundable to the operation.

[25-4011, added 2011, ch. 227, sec. 1, p. 619; am. 2018, ch. 22, sec. 1, p. 35.]

25-4012. AUTHORITY TO PROMULGATE RULES. (1) The legislature finds that poultry AFOs require adequate control through state regulatory mechanisms in order to prevent such operations from posing a threat to the state's water resources. The Idaho state department of agriculture is in the best position to administer and implement rules to provide an adequate regulatory framework for poultry feeding operations.

(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.

(3) Nothing in this chapter prohibits the board of county commissioners of any county from adopting regulations that are more stringent than those adopted by the state.

(4) Nothing in this chapter shall affect the authority of the department of environmental quality to administer and enforce an Idaho national pollutant discharge elimination system (NPDES) program for poultry 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.

(5) The director of the department of environmental quality and the director of the Idaho state department of agriculture shall, as appropriate, establish an agreement relating to the administration of an Idaho NPDES program that recognizes the expertise of the Idaho state department of agricul-

ture. 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 poultry operations, and this shall be the authority for the director of the department of environmental quality to so delegate.

(6) The director of the department of environmental quality shall consult with the director of the Idaho state department of agriculture before certifying discharges from poultry operations as provided under 33 U.S.C. 1341.

[25-4012, added 2011, ch. 227, sec. 1, p. 619; am. 2018, ch. 22, sec. 2, p. 35.]

25-4013. VIOLATIONS. (1) The failure by a permittee to comply with the provisions of this chapter, rules promulgated hereunder, or with any permit condition shall be deemed a violation.

(2) Any person who knowingly makes a false statement, representation, or certification in any application report, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of a permit shall be deemed to have violated the provisions of this chapter.

(3) Any unauthorized discharge from a poultry AFO shall be deemed a violation.

(4) Any person violating any provision of this chapter, the rules promulgated hereunder or any permit or order issued hereunder shall be liable for a civil penalty as set forth in section [25-4014](#), Idaho Code.

(5) The director may revoke a permit for:

(a) A material violation of any condition of a permit; or

(b) If the permit was obtained by misrepresentation or failure to disclose all relevant facts.

(6) Prior to revoking a permit, the director shall issue a notice of intent to revoke, which shall become final unless the permittee timely requests, in writing, an administrative hearing. Such hearing shall be conducted in accordance with the provisions of [chapter 52, title 67](#), Idaho Code.

[25-4013, added 2011, ch. 227, sec. 1, p. 620.]

25-4014. PENALTY FOR VIOLATIONS. Whoever shall violate any of the provisions of this chapter or the rules promulgated hereunder:

(1) May be assessed a civil penalty by the department or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each offense.

(2) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(3) No civil penalty may be assessed unless the person, corporation, cooperative or company charged is given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act.

(4) If the department is unable to collect an assessed civil penalty, or if a person fails to pay all or a set portion of an assessed civil penalty as determined by the department, the department may file an action to recover the civil penalty in the district court of the county in which the violation is alleged to have occurred. In addition to the assessed penalty, the department shall be entitled to recover reasonable attorney's fees and costs incurred in such action or on appeal from such action.

(5) Any person against whom the department has assessed a civil penalty under the provisions of this section may, within twenty-eight (28) days of the final action by the agency 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.

(6) Moneys collected for violations pursuant to the provisions of this section shall be deposited in the state treasury and credited to the state school district building account.

(7) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action.

[25-4014, added 2011, ch. 227, sec. 1, p. 620; am. 2015, ch. 244, sec. 7, p. 1011.]

25-4015. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT. (1) The legislature recognizes the importance of protecting state natural resources including surface water and ground water. It is the intent of the legislature to protect the quality of these natural resources while maintaining an ecologically sound, economically viable and socially responsible poultry industry in the state. The poultry industry produces manure and process wastewater that, when properly used, supplies valuable nutrients and organic matter to soils and is protective of the environment, but may, when improperly stored and managed, create adverse impacts on natural resources, including waters of the state. This chapter is intended to ensure that manure and process wastewater associated with poultry operations are handled in a manner that protects the natural resources of the state.

(2) Successful implementation of this chapter is dependent upon the department receiving adequate funding from the legislature. Moreover, the legislature recognizes that it is important for the state to obtain a delegated national pollutant discharge elimination system (NPDES) program from the United States environmental protection agency under the clean water act. The department's authority to enforce this chapter should be consistent and coordinated with the department of environmental quality's authorities pursuant to [title 39](#), Idaho Code, to protect state ground and surface waters and to obtain approval from the United States environmental protection agency to implement and administer an Idaho NPDES program governing the discharge of pollutants to the waters of the United States as defined in the federal clean water act.

[25-4015, added 2018, ch. 22, sec. 3, p. 36.]