



**SRAP**  
Socially Responsible  
Agriculture Project

# Guide to Confronting Concentrated Animal Feeding Operations in

# IDAHO



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## **A PROJECT BY SOCIALLY RESPONSIBLE AGRICULTURE PROJECT**

For more than 20 years, Socially Responsible Agriculture Project (SRAP) has served as a mobilizing force to help communities protect themselves from the damages caused by industrial livestock operations and to advocate for a food system built on regenerative practices, justice, democracy, and resilience. Our team includes technical experts, independent family farmers, and rural residents who have faced the threats of factory farms in their communities. When asked for help, SRAP offers free support, providing communities with the knowledge and skills to protect their right to clean water, air, and soil and to a healthy, just, and vibrant future. For more information, visit [www.sraproject.org](http://www.sraproject.org).

### **SRAP HELP HOTLINE**

Facing a factory farm? Contact SRAP for support.

[www.sraproject.org/help](http://www.sraproject.org/help)

(503) 362-8303

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# CAFO Guide Overview

This guide outlines CAFO laws, regulatory processes, and useful resources for advocates. Below is an overview of actions communities can take if a CAFO is being built, expanding, or violating regulations.

## EDUCATE YOURSELF

Learn how CAFOs harm communities at [sraproject.org](https://sraproject.org). Use this guide to find state agencies that regulate CAFOs; state permitting requirements for zoning, construction, etc.; and public open meetings and records laws. Use SRAP's Federal Guide to learn relevant federal laws like the Clean Water Act, Clean Air Act, and Endangered Species Act.

## LOOK FOR PUBLIC NOTICES

Look for public notices of CAFOs in newspapers, state agency websites, and at government buildings. The window for public participation is often brief. Find rules and deadlines for public comment, hearing requests, and appeals. Respond before deadlines.

## REQUEST AND REVIEW PUBLIC RECORDS

Search for public records related to the CAFO; if necessary, make a public records request.

## NEW OR EXPANDING CAFOS

### REVIEW ZONING ORDINANCES

Review municipal or county codes and zoning ordinances to determine if any requirements must be met at the local level.

### REVIEW PERMIT APPLICATIONS

Determine if any local, state, or federal permit applications are required; review application materials to make sure all requirements are met.

### COLLECT DATA

Test water before the CAFO siting or expansion to establish a baseline. This may show that new pollution came from the CAFO.

## EXISTING CAFOS

### REVIEW CAFO DOCUMENTS

Review permits, applications, manure management plans, nutrient management plans, monitoring reports, etc. Familiarize yourself with permit and plan provisions so you can spot violations.

### COLLECT DATA

Conduct well, soil, water, and/or air testing to establish a connection between the facility and harmful pollution. Keep a log of odor and other impacts.

### MONITOR CAFOS AND BUILD A RECORD

Submit complaints to regulators if you observe violations. Take photos and keep a log. Don't trespass!

### FOLLOW UP ON AGENCY RESPONSE TO COMPLAINTS

Did the agency take action? If a state agency isn't complying with state or federal environmental laws, contact your U.S. EPA Regional Office.

### ORGANIZE A COMMUNITY GROUP

Organize your group and develop a public presence.

Consider forming a nonprofit if you plan long-term advocacy.

### SEEK LEGAL ADVICE

Consider contacting law firms or pro-bono clinics for help with legal matters related to CAFOs.

### IDENTIFY IMPAIRED WATER BODIES

Determine if impaired waters may be impacted by discharge from the existing or proposed CAFO.

### CONTACT STATE OR LOCAL HEALTH DEPARTMENT

The Health Department may monitor or oppose the CAFO due to public health impacts.

### CHECK FOR PUBLIC FINANCING

If the CAFO received government-backed loans, see if an Environmental Assessment was conducted.

### TRACK PUBLIC NOTICES

CAFO permits come up for renewal, so look for public notices and comment opportunities.

### REVIEW STATE RIGHT-TO-FARM LAW

Find exceptions to the law's nuisance liability shield (e.g., compliance with laws and permits is often a prerequisite to nuisance claim protection).

### AGENCIES & STATE DEFINITIONS

Familiarize yourself with your state's livestock operation definitions, and with the agencies that regulate the industry. (Definitions and relevant agencies vary by state.)

### SEEK PROPERTY TAX ADJUSTMENT

Neighbors may be able to reduce their property taxes due to CAFOs' negative impact on property values.

### ENGAGE IN RULEMAKING PROCESSES

Attend regulatory meetings and share your concerns. If your state allows it, develop local ordinances to protect communities.

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## INTRODUCTION: CAFOs IN IDAHO

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Animal agriculture in Idaho is dominated by dairy and beef cattle operations. The state ranks 4<sup>th</sup> for dairy and 10<sup>th</sup> for cattle out of all 50 states.<sup>1</sup> Idaho also has some hog, poultry, and sheep operations, but cattle make up the bulk of the state's animal agriculture industry. In total, Idaho had 24,800 farm operations on about 11.6 million acres of the state.<sup>2</sup> According to the U.S. Environmental Protection Agency (EPA) 2017 permitting status report, Idaho has approximately 365 concentrated animal feeding operations (CAFOs) and none of them have National Pollutant Discharge Elimination System (NPDES) permits.<sup>3</sup> In Idaho, the EPA currently administers the NPDES permit program but the general NPDES permit for CAFOs expired in 2017,<sup>4</sup> and at the time of this writing (June 2019), no new NPDES CAFO permit has been approved or implemented. To confuse matters further, Idaho is in the process of transitioning NPDES authority from EPA to the state's IPDES program and they're implementing it in phases—starting in 2018 and ending in 2021. CAFO regulation in Idaho is a confusing mix of federal, state, and local level authorities that varies considerably based on the size of the operation and the type of livestock.

Idaho's regulation of animal agriculture more complicated than most states because multiple agencies are responsible for different aspects of regulation and different species of animals. In Idaho, the Idaho Department of Environmental Quality (IDEQ), Idaho State Department of Agriculture (ISDA), and U.S. EPA are all involved with CAFO regulation. ISDA regulates beef, dairy, and poultry operations, and IDEQ regulates swine operations. ISDA also regulates odors from livestock operations, but IDEQ handles air quality issues like dust and ammonia. The U.S. EPA is responsible for issuing NPDES permits from discharging operations, even though it has not updated or renewed the expired NPDES CAFO general permit. NPDES authority is currently being transferred to the state but the transfer is still in progress, creating a permitting limbo for NPDES CAFO permits. This can make it challenging to know who to contact regarding issues and questions about new, expanding, or existing livestock operations.

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<sup>1</sup> [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=IDAHO](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=IDAHO)

<sup>2</sup> [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=IDAHO](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=IDAHO)

<sup>3</sup> [https://www.epa.gov/sites/production/files/2018-05/documents/tracksum\\_endyear\\_2017.pdf](https://www.epa.gov/sites/production/files/2018-05/documents/tracksum_endyear_2017.pdf)

<sup>4</sup> <https://www.epa.gov/sites/production/files/2017-12/documents/r10-npdes-idaho-cafo-gp-id010000-final-permit-2012.pdf>

While state and federal agencies play a role in CAFO regulation, significant authority on CAFO siting and permitting rests with counties and local government. Counties have the authority to enact ordinances regarding CAFO siting, permits, waste removal, and other environmental protection clauses that provide greater protections than state law. Idaho law requires an opportunity for public input before CAFO siting decisions and county boards have authority to approve or reject a proposed CAFO site. This degree of local control and public involvement are important features of CAFO regulation in Idaho.

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## AGENCIES & STATE DEFINITIONS

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*Familiarize yourself with your state's livestock operation definitions, and with the agencies that regulate the industry. (Definitions and relevant agencies vary by state.)*

### Agencies

#### Idaho Department of Environmental Quality (IDEQ)

IDEQ "is a state department created by the Idaho Environmental Protection and Health Act to ensure clean air, water, and land in the state and protect Idaho residents from the adverse health impacts of pollution."<sup>5</sup> IDEQ enforces both state and federal environmental protection laws and regulations that apply to some livestock operations in the state. IDEQ is authorized to regulate swine facilities and poultry operations with more than 2,000 units, but ISDA regulates dairy, beef, and poultry operations. IDEQ also regulates air pollution for pollutants like ammonia and fugitive dust from livestock operations. For more information, see [IDEQ's website](http://www.deq.idaho.gov/).<sup>6</sup>

#### Idaho State Department of Agriculture (ISDA)

ISDA plays a significant role in regulating animal agriculture in Idaho. The agency is authorized to develop, implement, and enforce a variety of laws and regulations pertaining to dairy, cattle, and poultry. The agency issues operating permits and regulates the storage and application of animal waste. ISDA is also responsible for

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<sup>5</sup> <http://www.deq.idaho.gov/>

<sup>6</sup> <http://www.deq.idaho.gov/>

responding to odor complaints arising from animal agriculture operations and enforcing manure stockpiling setbacks. For more information, see [ISDA's website](#).<sup>7</sup>

## **U.S. EPA Region 10**

Idaho is part of U.S. EPA Region 10, the Pacific Northwest, which also includes Alaska, Oregon, Washington, and 271 tribal nations. While most livestock regulation happens at the state level, the EPA has some oversight authority regarding the state's implementation of federal laws. Until recently, Idaho was one of the four states in the U.S. where the EPA maintained jurisdiction over the state's NPDES program. EPA Region 10 was the lead agency for CAFO permits regulating the discharge of pollutants to Idaho surface waters. As of June 2019, NPDES permitting authority is in the process of being transferred to the state. U.S. EPA is no longer issuing CAFO NPDES permits but Idaho has not fully assumed NPDES permitting authority. The current schedule for transfer of permitting authority for CAFO General permits is set to take place in July 2020. Be sure to check back to see if the state has fully assumed responsibility for the NPDES program previously administered by the EPA. For more information about EPA Region 10 and its involvement in Idaho, see their [website](#).<sup>8</sup>

## **CAFO Site Advisory Team**

Counties in Idaho exercise considerable discretion over the siting of CAFOs in their jurisdiction. Counties may request a site suitability determination from the CAFO Site Advisory Team. The CAFO Site Advisory Team is composed of representatives from ISDA, IDEQ, and Idaho Department of Water Resources. The team identifies environmental risk categories related to the proposed CAFO site, describes the factors that contribute to the risks, and suggests possible mitigation of risk.<sup>9</sup> The county considers the CAFO Site Advisory Team suitability determination when deciding whether to grant or deny conditional use or livestock confinement operation permits. For more information about the CAFO Site Advisory Team, see IDAPA 02.04.18.

## **Idaho Department of Health and Welfare (IDHW) & Public Health Districts**

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<sup>7</sup> <https://agri.idaho.gov/main/>

<sup>8</sup> <https://www.epa.gov/aboutepa/epa-region-10-pacific-northwest>

<sup>9</sup> IDAPA 02.04.18 et seq.



Idaho Department of Health and Welfare (IDHW) has an Environmental Health Program within the agency “committed to promoting healthy and safe water through education and awareness including Fish Consumption Advisories, well water testing, and Harmful Algal Blooms (HABs).” IDHW coordinates with local public health districts and IDEQ to address environmental issues impacting local health. Idaho’s public health districts are not part of any state agency but they work closely with IDHW. The health districts are independent agencies that respond to local needs in their district.

For questions about drinking water quality and testing, see [IDHW’s Drinking Water Certification website](#)<sup>10</sup> or contact your [local public health district](#).<sup>11</sup>

For information about the interplay between public health districts and IDEQ regarding environmental issues impacting public health, see their [Memorandum of Understanding](#).<sup>12</sup>

## **Definitions**

### **Animal Feeding Operation (AFO)**

*Idaho Code § 25-4002*

An AFO is a facility where animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in a 12-month period and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

### **Concentrated Feeding Operation (CAFO)**

*Idaho Code § 67-6529C(1); IDAPA 02.04.18.010*

Idaho law defines a CAFO as a lot or facility where the following conditions are met:

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<sup>10</sup>

<http://healthandwelfare.idaho.gov/Health/Labs/DrinkingWaterCertification/tabid/1833/Default.aspx>

<sup>11</sup> <https://healthandwelfare.idaho.gov/Health/HealthDistricts/tabid/97/Default.aspx>

<sup>12</sup> <https://www.deq.idaho.gov/media/60177724/mou-deq-phds.pdf>



- a) Animals have been, are, or will be stabled or confined and fed or maintained for a total of 90 consecutive days or more in any 12-month period;
- b) Crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility; and
- c) The lot or facility is designed to confine or actually does confine as many as or more than the numbers of animals specified in any of the following categories: 700 mature dairy cows, whether milked or dry; 1,000 veal calves; 1,000 cattle other than mature dairy cows or veal calves; 2,500 swine each weighing 55 pounds or more; 10,000 swine each weighing less than 55 pounds; 500 horses; 10,000 sheep or lambs; or 82,000 chickens.

Two or more CAFOs under common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for waste disposal.<sup>13</sup>

#### CAFO Size Chart

Animal	# of Animals
<b>Cattle</b> (bull, steer, heifer, or calf)	≥ 1,000
<b>Dairy cow</b>	≥ 700
<b>Horses</b>	≥ 500
<b>Veal</b>	≥ 1,000
<b>Swine</b> (≥ 55 pounds)	≥ 2,000
<b>Swine</b> (< 55 pounds)	≥ 10,000
<b>Sheep/lambs</b>	≥ 10,000
<b>Ducks</b> (with liquid manure handling)	≥ 5,000
<b>Ducks</b> (with dry manure handling)	≥ 30,000
<b>Chickens</b> (with liquid manure handling)	≥ 30,000
<b>Laying hens</b> (with dry manure handling)	≥ 82,000
<b>Chickens</b> (other than laying hens) with dry manure handling	≥ 125,000
<b>Turkeys</b>	≥ 55,000

<sup>13</sup> Idaho Code § 67-6529C(1)

Counties may develop local ordinances that define CAFOs in ways that differ from the state definition. Check your local code to determine which definition may apply.

### **Large swine feeding operation**

*Idaho Code § 39-104A(6)(c)*

“Large swine feeding operations” means swine facilities having a one-time animal unit capacity of 2,000 or more animal units.

The state acknowledges that it is experiencing a development of large swine feeding operations “which are inadequately controlled through existing state regulatory mechanisms.”<sup>14</sup> State law grants IDEQ authority to develop and implement rules to regulate these facilities in particular, and requires financial assurances demonstrating that the operation has the financial capability to handle facility closures and remediation.<sup>15</sup>

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## **WATER**

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*Most states are responsible for implementing the Clean Water Act and several other programs and permits that address water quality and availability across the state.*

### **National Pollutant Discharge Elimination System (NPDES) and Idaho Pollutant Discharge Elimination System (IPDES)**

Until recently, Idaho was one of four states in the U.S. that did not implement the National Pollutant Discharge Elimination System (NPDES) required by the Clean Water Act. Idaho left it up to the U.S. Environmental Protection Agency (EPA) to implement the program. NPDES permits are required for the discharge of pollutants from a point source to waters of the state. CAFOs are considered point sources and are subject to a CAFO-specific NPDES permit. Discharging CAFOs were required to obtain a NPDES CAFO permit from the EPA, but the most recent [NPDES CAFO permit](https://www.epa.gov/sites/production/files/2017-12/documents/r10-npdes-idaho-cafo-gp-id010000-final-permit-2012.pdf) expired in May 2017.<sup>16</sup>

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<sup>14</sup> Idaho Code § 39-104A(1).

<sup>15</sup> Idaho Code § 39-104A(3).

<sup>16</sup> <https://www.epa.gov/sites/production/files/2017-12/documents/r10-npdes-idaho-cafo-gp-id010000-final-permit-2012.pdf>

In 2016, Idaho petitioned the EPA to take over implementation of the NPDES program and develop its own state Idaho Pollutant Discharge Elimination System (IPDES). The EPA authorized the transfer in 2018. As of June 2019, the state is in the process of developing its own IPDES program and accepting public input in the process. The state is scheduled to implement different aspects of the IPDES program in phases over the next few years, with CAFO IPDES permits scheduled for 2020.<sup>17</sup> The expired NPDES permit and non-existent but forthcoming IPDES permit means that permitting for discharging CAFOs is in a permitting limbo.

Given these pending changes, we suggest checking the status of CAFO permitting to see where they are in the process and engaging in public participation opportunities to advocate for a permit that protects individuals, sustainable agricultural practices, communities, the environment, and public health.

For information about the IPDES Program implementation, see the following resources:

- IDAPA 58.01.25: Rules Regulating the Idaho Pollutant Discharge Elimination System Program
- IDEQ's website on [IPDES Program: Guidance Development](#)<sup>18</sup>

### **Nutrient Management Plan**

*IDAPA 02.04.30 et seq.*

Idaho requires certain AFOs and all CAFOs to develop and implement a Nutrient Management Plan (NMP) written by a certified nutrient management planner.<sup>19</sup> Dairies and beef cattle AFOs follow the 1999 USDA NRCS Nutrient Management Code 590. Poultry CAFOs follow the 2007 USDA NRCS Nutrient Management Code 590.

For more information on NMPs in Idaho, see [ISDA's NMP Process](#) website,<sup>20</sup> [NRCS Nutrient Management Code 590](#),<sup>21</sup> and applicable state regulations.<sup>22</sup>

### **Setback Requirements**

*IDAPA 02.04.31 et seq.*

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<sup>17</sup> <http://www.deq.idaho.gov/water-quality/ipdes/>

<sup>18</sup> <http://www.deq.idaho.gov/water-quality/ipdes/guidance-development/>

<sup>19</sup> IDAPA 02.04.30.100

<sup>20</sup> <http://www.idahoag.us/agri/Categories/Environment/nmp/process.php>

<sup>21</sup> [https://agri.idaho.gov/main/wp-content/uploads/2017/10/june\\_2007\\_NRCS\\_590.pdf](https://agri.idaho.gov/main/wp-content/uploads/2017/10/june_2007_NRCS_590.pdf)

<sup>22</sup> IDAPA 02.04.30 et seq.

Idaho follows federal NPDES minimums regarding water-quality-based setback requirements. Operators must not land-apply waste within 100 feet to any down-gradient surface water, tile intake, sinkhole, or conduit to surface waters. The operation may substitute this 100-foot requirement for a 35-foot vegetated buffer or if they demonstrate that an alternative practice or field condition provides protection equivalent to the 100-foot setback.

In addition to waste application setbacks, Idaho has waste stockpiling setbacks.<sup>23</sup> The stockpiling of agricultural waste must meet the following setback requirements:

- 300 feet from a dwelling
- 500 feet from a hospital, church, or school
- 100 feet from a domestic or irrigation well
- 100 feet from surface waters
- 50 feet from a public highway

Note: counties may impose additional setbacks regarding waste application as well as how close a CAFO or its waste storage structures may be constructed to neighboring homes and properties. Check local regulations for any additional setbacks that may apply.

## Wetlands

Wetlands are a critically important resource that require strong governmental protections. While wetlands comprise only one to two percent of land mass in Idaho,<sup>24</sup> they are essential to Idaho's plant and wildlife species and contribute to groundwater recharge, flood minimization, sediment and shoreline stabilization, and water quality improvement, carbon sequestration, and outdoor recreation.<sup>25</sup> Idaho's Department of Fish and Game (IDFG) is the lead state agency concerning wetland management in many of the state's wetlands. IDFG also collects data and develops mapping tools.<sup>26</sup> However, when it comes to alterations to wetlands on or near private property, IDFG does not have much authority and IDEQ gets involved.

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<sup>23</sup> IDAPA 02.04.31 et seq.

<sup>24</sup>

[https://www.aswm.org/pdf\\_lib/state\\_summaries/idaho\\_state\\_wetland\\_program\\_summary\\_111615.pdf](https://www.aswm.org/pdf_lib/state_summaries/idaho_state_wetland_program_summary_111615.pdf)

<sup>25</sup> <https://idfg.idaho.gov/conservation/wetlands>

<sup>26</sup> <https://idfg.idaho.gov/conservation/wetlands>



Generally, any modification to wetlands, including depositing fill, excavating, or draining, will require a federal 404 permit from the U.S. Army Corps of Engineers (US ACoE). However, Section 401 of the CWA prevents a federal agency from issuing a permit for any activity that may result in a discharge to water (including wetlands) until the state where the discharge would occur has granted or waived Section 401 certification. Denying 401 certification prevents the federal permit or license from being issued. This process ensures that the issuance of federal permits will not violate state water quality standards. If a new or existing facility is engaging in or will engage in activities that will impact wetlands, raise the issue. See if the operation has sought the appropriate permits. If they haven't, submit a complaint to the appropriate agency.

For more information about the U.S. ACoE role in 404 wetland permitting, see [USACE's Regulatory website](#).<sup>27</sup>

For more information about state water quality certification, see [IDEQ's Dredge & Fill Permits website](#).<sup>28</sup>

To locate wetlands in your area, see U.S. Fish & Wildlife Service's [Wetlands Mapper](#).<sup>29</sup>

## **Water Quality**

### **Water Quality Standards<sup>30</sup>**

*IDAPA 58.01.02*

### **Impaired Water Bodies**

Section 303(d) of the Clean Water Act requires states to perform annual water quality assessments<sup>31</sup> and identify waters not meeting the state's water quality standards.<sup>32</sup> Since states are supposed to protect waters from further degradation, it may be important to note if a CAFO or large AFO is seeking to discharge into or near

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<sup>27</sup> <https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Nationwide-Permits/>

<sup>28</sup> <http://www.deq.idaho.gov/permitting/water-quality-permitting/dredge-fill.aspx>

<sup>29</sup> Wetland Mapper, US FISH AND WILDLIFE SERVICE,  
<https://www.fws.gov/wetlands/data/Mapper.html>

<sup>30</sup> 47 CSR 2.

<sup>31</sup> CWA § 305(b).

<sup>32</sup> CWA § 303(d).

an already impaired water of the state. You can find this information in [IDEQ's Integrated Report](#)<sup>33</sup> or [IDEQ's interactive map](#).<sup>34</sup>

## Groundwater

*Idaho Code 39-102; Idaho Code 39-120, Idaho Code 39-126; Idaho Code 39-501 to 39-508; IDAPA 58.01.11*

The Clean Water Act calls for the regulation of discharges to surface waters, but states have varying degrees of protection for groundwater. Idaho's laws and regulations address the issue in multiple sections. The state code asserts, "It is the policy of the state to prevent contamination of ground water from any source to the maximum extent practical."<sup>35</sup> Idaho's Ground Water Quality Protection Act of 1989<sup>36</sup> created a Ground Water Quality Council and directed them to develop a Ground Water Quality Plan and implement ground water quality monitoring in the state.

See the final state [Ground Water Quality Plan](#)—specifically the Agricultural Ground Water Quality Protection Program portion of the document that begins on page 59.<sup>37</sup>

Idaho recognizes ground water as a key resource and IDEQ is responsible for protecting ground water quality from pollution and degradation as ground water is also the drinking water for 95% of the state's residents.<sup>38</sup> However, IDEQ works with other state and local agencies to help achieve the state's ground water policy. For example, ISDA is responsible for addressing ground water issues that involve animal waste and other agricultural contaminants.

See [Idaho Ground Water Protection Interagency Cooperative Agreement](#).<sup>39</sup>

See also IDAPA 58.01.11 Ground Water Quality Rule.

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<sup>33</sup> <https://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report.aspx>

<sup>34</sup> <https://mapcase.deq.idaho.gov/wq2016/>

<sup>35</sup> Idaho Code §39.102(3)(a).

<sup>36</sup> Senate Bill 1269

<sup>37</sup> [https://www.deq.idaho.gov/media/462972-idaho\\_gw\\_quality\\_plan\\_final\\_entire.pdf](https://www.deq.idaho.gov/media/462972-idaho_gw_quality_plan_final_entire.pdf)

<sup>38</sup> <https://www.deq.idaho.gov/water-quality/ground-water/>

<sup>39</sup> [https://www.deq.idaho.gov/media/565903-interagency\\_gw\\_cooperative\\_agreement\\_2008.pdf](https://www.deq.idaho.gov/media/565903-interagency_gw_cooperative_agreement_2008.pdf)

In addition to ground water quality standards, ground water quality plans, monitoring requirements, and local government involvement in ground water protection, the state also authorizes counties overlying sensitive aquifers to create aquifer protection districts.<sup>40</sup> For more information about aquifers and to view a map of Idaho's major aquifers, see [IDEQ's Aquifer website](#).<sup>41</sup>

Check to see if your region has its own [Ground Water Quality Management Plan](#)<sup>42</sup> or aquifer protection district.

See also [Ground Water Reports by Geographic Area](#).<sup>43</sup>

### **Construction & Stormwater**

While an AFO may not need an NPDES/IPDES permit to operate, its construction may require a stormwater permit. The federal Clean Water Act calls for the control of pollution generated by runoff from construction activity.<sup>44</sup> For now, EPA administers stormwater construction permits for the state and anyone planning a construction project that will disturb more than one acre of earth must obtain a NPDES Construction Stormwater General Permit, prepare a Storm Water Pollution Prevention Plan (SWPPP), and implement practices to minimize runoff. Be sure to check back to see if IDEQ has taken over permitting responsibilities from EPA for construction stormwater permits.

For more information, see [IDEQ's Stormwater NPDES Permits website](#)<sup>45</sup> and [EPA's Stormwater Discharges from Construction Activities website](#).<sup>46</sup>

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## **AIR**

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<sup>40</sup> *Idaho Code 39-501 to 39-508*

<sup>41</sup> <https://www.deq.idaho.gov/water-quality/ground-water/aquifers/>

<sup>42</sup> <https://www.deq.idaho.gov/water-quality/ground-water/management-plans/>

<sup>43</sup> <https://www.deq.idaho.gov/water-quality/ground-water/reports-by-geographic-area/>

<sup>44</sup> CWA § 402; 40 C.F.R. §§ 122.26, 450.

<sup>45</sup> <https://www.deq.idaho.gov/permitting/water-quality-permitting/npdes/stormwater-permits/>

<sup>46</sup> <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>

## Air Quality

Industrial livestock operations are a significant source of odors and air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds, and other contaminants. In theory, animal agriculture may be regulated, but the industry has largely evaded meaningful regulation. While federal air-related laws and regulations do not require much from CAFOs, states may develop their own regulations for CAFO emissions. Idaho primarily relies on terms of Nutrient Management Plans (NMPs) and Best Management Practices (BMPs) to address CAFO odors and air quality issues. Below are the primary laws and regulations that address air quality from animal agriculture in Idaho.

- *IDAPA 58.01.01.760: Rules for the Control of Ammonia from Dairy Farms*
  - The rules seek to control ammonia from dairy farms using BMPs.
  - Owners and operators of dairy farms emitting air pollutant(s) may register with IDEQ instead of obtaining a site-specific air quality operating permit. If the operation complies with the rules of this chapter, they can obtain a permit by rule from IDEQ and ISDA. IDEQ is responsible for enforcement of air quality regulations but ISDA is responsible for ensuring that the operation complies with NMP and BMPs to reduce the emissions regulated by IDEQ.
  - Within 30 days of receiving permit by rule registration information, IDEQ/ISDA will conduct a qualifying inspection to ensure the required point total of BMPs are being employed. The dairy must have at least 27 points worth of BMPs. See IDAPA 58.01.01.764 for a list of BMPs and their assigned point value.
- *IDAPA 58.01.01.220 et seq.: General Exemption Criteria for Permit to Construct Exemptions*
  - Agricultural activities are considered exempt from needing a permit to construct.
- *IDAPA 58.01.01.653: Agricultural Activities*
  - "For agricultural activity purposes, operating in conformance with generally recognized agricultural practices constitutes reasonable control of fugitive dust."<sup>47</sup>

## Odors

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<sup>47</sup> IDAPA 58.01.01.653



Idaho has several laws and regulations pertaining to odor from animal agriculture. The legal authority and lead agency often differ based on the type and size of the livestock operation. For example, odor complaints related to large swine operations should be handled by IDEQ but odor complaints related to non-swine AFOs like dairies should be handled by ISDA. Below are the primary laws and regulations that address odor from animal agriculture in Idaho.

- *Idaho Code 25-38: Agriculture Odor Management Act*
  - ISDA is authorized to regulate odors from agricultural operations.
  - New or modified liquid waste systems must be designed by a licensed professional engineer approved by ISDA and constructed to manage odors.
  - ISDA will make reasonable efforts to ensure that requirements imposed upon agricultural operations regarding odor management are cost-effective and economically, environmentally, and technologically feasible.
  - Violators will be required to submit an odor management plan to ISDA.
  - Odor management plans are designed to work in conjunction with nutrient management plans.<sup>48</sup>
- *IDAPA 02.04.16.000 et seq. Rules Governing Agriculture Odor Management*
  - These rules apply to agricultural operations—except beef AFOs and large swine and large poultry operations.
- *IDAPA 02.04.15: Rule Governing Beef Cattle Animal Feeding Operations*
  - Stating that nutrient management plans should address odors generated in excess of odors normally associated with raising beef cattle.<sup>49</sup>
- *IDAPA 02.04.32: Rules Governing Poultry Operations*
  - Stating that nutrient management plans should address odors generated in excess of odors normally associated with raising poultry in Idaho<sup>50</sup> and that facilities should not create nuisance conditions including odor.<sup>51</sup>
- *Idaho Code 1-39: Authority to Make Rules Regulating Large Swine Operations*
  - DEQ is authorized to regulate odors from swine operations with greater than 2,000 animal units.

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<sup>48</sup> Idaho Code § 25-3805

<sup>49</sup> IDAPA 02.04.15.030.

<sup>50</sup> IDAPA 02.04.32.130.250.

<sup>51</sup> IDAPA 02.04.32.130.02.

- *IDAPA 58.01.09: Rules Regulating Swine Facilities*
  - “The facility or operations associated with the facility shall not create a public health or nuisance conditions including odors.”<sup>52</sup>
  - Permits for DEQ regulation of large swine operations must include an odor management plan.<sup>53</sup>
- *Idaho Code 49-22: Beef Cattle Environmental Control Act*
  - ISDA is authorized to regulate beef cattle AFOs to ensure that manure associated with beef AFOs are handled in a manner which protects the natural resources of the state.
- *IDAPA 58.01.01.775: Rules for Control of Odors*
  - “No person shall allow, suffer, cause or permit the emission of odorous gases, liquids or solids into the atmosphere in such quantities to causes air pollution.”

Complaints about agricultural odors can be submitted directly to ISDA via their online [Animal Industries Complaint Form](#).<sup>54</sup>

If the complaint is about a large swine operation, submit complaints to the IDEQ. For a detailed discussion of IDEQ’s odor compliant process, see [IDEQ’s Odor Management website](#)<sup>55</sup> or their [Procedures for Responding to Odor Complaints guidance document](#).<sup>56</sup>

Note: complaints submitted are a public record and open inspection and copying pursuant to the state’s Public Records Act.

Local governments may have additional odor ordinances that apply to animal agriculture operations. Check your local ordinances to see if additional odor regulations apply.

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## ZONING & LAND USE

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<sup>52</sup> IDAPA 50.01.09.400.03(c).

<sup>53</sup> IDAPA 58.01.09.450.02(d).

<sup>54</sup> <https://agri.idaho.gov/main/animals/animal-industries-complaint-form/>

<sup>55</sup> <https://www.deq.idaho.gov/air-quality/air-pollutants/odors/>

<sup>56</sup> <https://www.deq.idaho.gov/media/60178730/procedures-for-responding-to-odor-complaints.pdf>

*Local governments are often the first to know of a proposal for a CAFO or other livestock operation to locate or expand in a community. Compared to many other states, Idaho's counties exercise a greater degree of local control over CAFO siting.*

### **Zoning & Local Control**

*Idaho Code §67-65 et seq.*

Idaho's Local Land Use Planning Act is to "promote the health, safety and general welfare of the people of the state of Idaho."<sup>57</sup> Unlike many other states, counties and local government in Idaho maintain considerable control and discretion in regulating animal agriculture within their region. The planning and zoning commission must prepare, implement, and review a comprehensive plan that contains the following components: property rights, population, school facilities, economic development, land use, natural resources, hazardous areas, public services, transportation, recreation, special areas, housing, community design, agriculture, and public facilities.<sup>58</sup> Counties may establish zoning ordinances in accordance with its comprehensive plan that impact CAFO siting and operation within the county. Idaho code specifies that counties may regulate siting of certain animal operations and facilities. Idaho Code § 67-6529 states:

Notwithstanding any provision of law to the contrary, a board of county commissioners shall enact ordinances and resolutions to regulate the siting of large confined animal feeding operations and facilities, as they shall be defined by the board, provided however, that the definition of a confined animal feeding operation shall not be less restrictive than the definition contained in section 67-6529C, Idaho Code, including the approval or rejection of sites for the operations and facilities. At a minimum, a county's ordinance or resolution shall provide that the board of county commissioners shall hold at least one (1) public hearing affording the public an opportunity to comment on each proposed site before the siting of such facility. Several sites may be considered at any one (1) public hearing. Only members of the public with their primary residence within a one (1) mile radius of a proposed site may provide comment at the hearing. However, this distance may be increased by the board. A record of each hearing and comments received shall be

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<sup>57</sup> Idaho Code § 67-6502

<sup>58</sup> Idaho Code § 67-6508

made by the board. The comments shall be duly considered by the board when deciding whether to approve or reject a proposed site. A board of county commissioners may reject a site regardless of the approval or rejection of the site by a state agency.<sup>59</sup>

Counties may also develop and enforce their own odor management plans<sup>60</sup> or request a report from the CAFO Site Advisory Team.<sup>61</sup> The county's authority to enact such ordinances and make their own determinations regardless of state agency recommendations is significant. Residents should engage with their county commissions to develop ordinances and comment on CAFO siting actions that would impact their communities.

Note that county officials making land use decisions are prohibited from participating in proceedings or actions if they have an actual or potential conflict of interest in the proceeding.<sup>62</sup> So be sure to consult your local code, participate, and get to know your local officials because they may be the ones who make the final decision about CAFOs in your community.

### **CAFO Site Advisory Team**

The CAFO Site Advisory Team consists of representatives from ISDA, IDEQ, and Idaho Department of Water Resources who provide siting determinations if a county requests it.<sup>63</sup> The county may consider the site suitability report when deciding to approve or deny a CAFO site. For more details, see the Rules Governing CAFO Site Advisory Team at IDAPA 02.04.18.000 et seq.

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## **PUBLIC PARTICIPATION**

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*Take advantage of every opportunity to make your voice heard about industrial animal agriculture in your communities. CAFO operators and regulators will not take additional steps to check the industry unless the public demands it.*

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<sup>59</sup> Idaho Code § 67-6529(2)

<sup>60</sup> Idaho Code § 67-6529D

<sup>61</sup> Idaho Code § 67-6529G

<sup>62</sup> Idaho Code § 67-6506

<sup>63</sup> Idaho Code § 67-6529A; Site Advisory Team Suitability Determination Act



## **Public Notice & Hearings**

Idaho law requires an opportunity for public input before CAFOs are sited in the state. For local CAFO siting decisions, members of the public residing within one mile of the proposed site are given notice and may provide comments at a public hearing. The county board may extend the one-mile radius requirement and they must consider public comments when deciding whether to approve or reject a proposed CAFO site.

Idaho is currently in the process of transitioning NPDES authority from EPA to the state IPDES program.<sup>64</sup> Check to see if EPA or IDEQ is responsible for CAFO or Stormwater Construction discharge permits in Idaho.

For IPDES permits, IDEQ is required to provide public notice and an opportunity for comment on the department's tentative decision prior to making a final decision.<sup>65</sup> The agency is also expected to respond to public comments and provide a basis for the agency's final decision. For more information about IPDES notice and appeals, see Idaho Code § 39-175A through §39-175D.

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## **NUISANCE & RIGHT-TO-FARM LAW**

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*When state and federal regulations fail to protect residents from the harmful impacts of industrial livestock facilities, these residents may consider filing a nuisance lawsuit. Unfortunately, Idaho's Right-to-Farm Law makes this strategy challenging or ineffective in most cases.*

## **Nuisance Claims**

A nuisance is something that interferes with the right to use and enjoy real property. Noise, odors, dust, smoke, pollution, pests, illness, or light could be considered nuisances. Many individuals and communities describe CAFOs as nuisances since CAFOs can decrease local property values, prevent people from using and enjoying their homes or yards, and can impair human health. While this sounds like a perfect example of a nuisance, many states—including Idaho—have enacted laws to shield livestock operations from nuisance liability.

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<sup>64</sup> Idaho Code § 39-175C

<sup>65</sup> Idaho Code § 39-175D

## Idaho's Right-to-Farm Law

*Idaho Code §§ 22-4501 to 22-4504*

Right-to-farm laws exist in most states and seek to protect farmers from nuisance suits brought by neighbors and communities experiencing unpleasant effects of agricultural production. Idaho's right-to-farm law states:

The legislature finds that agricultural activities conducted on farmland in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses, and in some cases prohibit investments in agricultural improvements. It is the intent of the legislature to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. The legislature also finds that the right to farm is a natural right and is recognized as a permitted use throughout the state of Idaho.<sup>66</sup>

No agricultural operation, agricultural facility or expansion thereof shall be or become a nuisance, private or public, by any changed conditions in or about the surrounding nonagricultural activities after it has been in operation for more than one (1) year, when the operation, facility or expansion was not a nuisance at the time it began or was constructed. The provisions of this section shall not apply when a nuisance results from the improper or negligent operation of an agricultural operation, agricultural facility or expansion thereof.<sup>67</sup>

No city, county, taxing district or other political subdivision of this state shall adopt any ordinance or resolution that declares any agricultural operation, agricultural facility or expansion thereof that is operated in accordance with generally recognized agricultural practices to be a nuisance, nor shall any zoning ordinance that requires abatement as a nuisance or forces the closure of any such agricultural operation or agricultural facility be adopted. Any such ordinance or resolution shall be void and shall have no force or

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<sup>66</sup> Idaho Code § 22-4501

<sup>67</sup> Idaho Code § 22-4503

effect. Zoning and nuisance ordinances shall not apply to agricultural operations and agricultural facilities that were established outside the corporate limits of a municipality and then were incorporated into the municipality by annexation. The county planning and zoning authority may adopt a nuisance waiver procedure to be recorded with the county recorder or appropriate county recording authority pursuant to residential divisions of property.<sup>68</sup>

An agricultural operation, agricultural facility or expansion thereof that is operated in accordance with generally recognized agricultural practices or in compliance with a state or federally issued permit shall not be found to be a public or private nuisance. The provisions of this subsection shall not apply when a nuisance results from the improper or negligent operation of an agricultural operation, agricultural facility or expansion thereof.<sup>69</sup>

As you can see, Idaho's Right-to-Farm Law severely restricts a neighbor's ability to maintain a successful nuisance claim against a nearby livestock operation

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## ENFORCEMENT

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*It's not surprising that industrial agriculture isn't eager to self-report violations of local, state, or federal law. It is often up to residents to report violations and push for enforcement. A record of compliance issues demonstrates that penalties or enforcement actions are necessary.*

### Enforcement Authority

*Idaho Code §§ 39-101 through 39-130; Idaho Code §22-4901 et seq.*

IDEQ is authorized to conduct investigations, inspections, and enforcement relating to violations of rules, permits, requirements, or orders issued or adopted pursuant to the Idaho Environmental Protection and Health Act.

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<sup>68</sup> Idaho Code § 22-4504

<sup>69</sup> Idaho Code § 22-4505

For more specific information about investigations, inspections, violations, enforcement, penalties, and injunctions, see Idaho Code § 39-108.

The Beef Cattle Environmental Control Act authorizes the ISDA to coordinate with IDEQ to enforce provisions of the Act<sup>70</sup> but also outlines enforcement actions ISDA may undertake in response to non-compliance.<sup>71</sup> See the language of the statute for more details.

### **Submitting Complaints & Reporting Violations**

Due to the mix of local, state, and federal regulation of CAFOs in Idaho, it can be difficult to determine who to contact regarding issues with a livestock operation. The contact will vary based on type of operation, number of animals at the operation, and nature of the complaint.

Below is a list of the most likely points of contact to submit complaints or report violations.

- Air Quality Concerns → [IDEQ Regional Office](#)<sup>72</sup>
- Dead Animal Disposal Complaint → [ISDA Complaint Form](#)<sup>73</sup> or call (866)435-0490
- Wetland Modification/Dredge & Fill Permit Concerns → [US Army Corps of Engineers](#)<sup>74</sup>
- Discharges → [US EPA Region 10](#)<sup>75</sup> or [IDEQ Regional Office](#)<sup>76</sup>
- Odors → [ISDA Complaint Form](#)<sup>77</sup>
- Odors from large swine operations → [IDEQ Regional Office](#)<sup>78</sup> or [IDEQ Air Quality Division](#)<sup>79</sup>
- Water Safety Testing → [Public Health Districts](#)<sup>80</sup>

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<sup>70</sup> Idaho Code § 22-4093.

<sup>71</sup> Idaho Code § 22-4909.

<sup>72</sup> <https://www.deq.idaho.gov/regional-offices-issues/>

<sup>73</sup> <https://agri.idaho.gov/main/animals/animal-industries-complaint-form/>

<sup>74</sup> <https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Contact-Us/>

<sup>75</sup> <https://www.epa.gov/npdes>

<sup>76</sup> <https://www.deq.idaho.gov/regional-offices-issues/>

<sup>77</sup> <https://agri.idaho.gov/main/animals/animal-industries-complaint-form/>

<sup>78</sup> <https://www.deq.idaho.gov/regional-offices-issues/>

<sup>79</sup> <http://deq.idaho.gov/air-quality/air-pollutants/odors/>

<sup>80</sup> <http://healthandwelfare.idaho.gov/?TabId=97>

Be sure to properly describe and document the compliance issue you are reporting. Take detailed notes and take pictures whenever possible but **do not trespass** in order to do so.

**Note:** Any complaints are public record.

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## PUBLIC INFORMATION LAWS

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*One of the first steps when dealing with a new, expanding, or problematic industrial livestock operation is gathering information via research online, submitting record requests, and/or attending public meetings. Fortunately, there are state laws that are intended to increase government transparency and provide public access to certain types of information.*

### Freedom of Information Act

5 U.S.C. § 552

The Freedom of Information Act (FOIA) is federal law that allows individuals to access and request information from government agencies, subject to some restrictions. See the Federal Guide for more information.

### Idaho Public Records Act

Idaho Code § 74-101 et seq.

The Idaho Public Records Act is intended to promote transparent and ethical government in the state. The Act provides that “Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.”<sup>81</sup> The Act has a relatively broad reach that includes public records from practically all forms of state and local agencies or government. The Act applies to “every state officer, department, division, bureau, commission and board or any committee of a state agency including those in the legislative or judicial branch, except the state militia and the Idaho state historical society library and archives” and any “county, city, school district, municipal corporation, district, public health district, political subdivision, or any agency

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<sup>81</sup> Idaho Code § 74-102(1).

thereof, or any committee of a local agency.”<sup>82</sup> Public record “includes, but is not limited to, any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.”<sup>83</sup>

Requests should be made in writing and the agency or public body must grant or deny the request within three working days of receiving the request.<sup>84</sup> You do not have to provide the reason you are requesting the public record. Although no specific form is required to make a record request, a sample Idaho record request is available [here](#).<sup>85</sup>

See the following sections for more details about the Idaho Public Records Act.

*Idaho Code § 74-102: Public Records—Right to Examine*

*Idaho Code § 74-103: Response to Request for Examination of Public Records*

*Idaho Code §§ 74-104 through 111: Records Exempt from Disclosure*

*Idaho Code § 74-114: Access to Air Quality, Water Quality and Hazardous Waste Records*

*Idaho Code § 74-115: Proceedings to Enforce Right to Examine or to Receive a Copy of Records*

For a deep dive into Idaho Public Records Act, see the [Idaho Public Records Law Manual](#) published by the Idaho Office of the Attorney General.<sup>86</sup>

Public record regulations and procedures can change frequently; consult the most current laws and regulations before filing Idaho record requests.

### **Idaho Open Meetings Law**

*Idaho Code § 74-201 et seq.*

The Idaho Open Meetings Law legislates how public meetings are conducted to foster ethical and transparent government. It declares:

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<sup>82</sup> Idaho Code § 74-101.

<sup>83</sup> Idaho Code § 74-101(13).

<sup>84</sup> Idaho Code § 74-103.

<sup>85</sup> <https://www.nfoic.org/idaho-sample-foia-request>

<sup>86</sup> <https://www.ag.idaho.gov/content/uploads/2018/04/PublicRecordsLaw.pdf>



“The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.”<sup>87</sup>

It states that all meetings of any governing body shall be open to the public—with a few exceptions—and outlines adequate notice of the meetings. For more information about exemptions, notice, meeting minute requirements, and enforcement of the law, see Idaho Code §§ 74-201 through 74-208. Note that actions or decision taken in violation of Idaho Open Meetings Law may be null and void only if a suit is filed within 30 days of the violation.<sup>88</sup>

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### PROPERTY TAX APPEAL

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*Industrial livestock operations have been shown to reduce nearby property values by as much as 80 percent. Unfortunately, local governments often fail to adjust property value assessments accordingly, causing owners of nearby properties to pay more than their fair share of property taxes, in addition to enduring the other harmful impacts of industrial livestock production. In these cases, property owners may be able to seek a property tax reduction. This may also help convince local government officials that CAFOs aren't as economically beneficial to communities as their proponents claim.*

#### [Property Tax Appeal](#)

*Idaho Code § 63-501A; Idaho Code § 63-511*

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### OTHER RESOURCES

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*Protecting your community from factory farms is difficult. Avoid working alone by building relationships in your community, consulting with experts, and collaborating with groups working on similar issues.*

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<sup>87</sup> Idaho Code § 74-201.

<sup>88</sup> Idaho Code § 74-208(6).

### **Socially Responsible Agriculture Project (SRAP)**

SRAP provides free advice and technical assistance to communities throughout the U.S. facing factory farms. Find additional resources at [www.sraproject.org](http://www.sraproject.org), and contact SRAP for support at 503-632-8303 or through our [website](#).<sup>89</sup>

### **State and Nonprofit Organizations**

#### **Idaho Concerned Area Residents for the Environment**

[http://www.imrivers.org/idahocares/?page\\_id=20](http://www.imrivers.org/idahocares/?page_id=20)

#### **Sierra Club – Idaho Chapter**

<https://www.sierraclub.org/idaho>

#### **Kootenai Environmental Alliance**

<http://kealliance.org/>

#### **Idaho Conservation League**

<https://www.idahoconservation.org/>

#### **Inland NW Land Conservancy**

<https://www.inlandnwland.org/>

#### **Idaho Rivers United**

<https://www.idahorivers.org/mission>

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<sup>89</sup> Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>