

CHAPTER 10

ENCLOSED AND TOTALLY CONFINED POULTRY CAFO OPERATIONS

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9-10-1: **APPLICABILITY:**

- A. The regulations established in this chapter shall apply to all new poultry confined animal feeding operations (CAFO), the operation's facilities and to conversions and expansions of existing poultry CAFOs and facilities that constitute a totally confined system. The Zoning Administrator shall interpret this ordinance and any applications made pursuant thereto to ensure that said applications or permits issued thereafter under this Chapter are in accordance with the terms and provisions hereunder set forth.
- B. These regulations shall not apply to any Unconfined or Semi-confined poultry CAFO or facility. Any poultry CAFO or facility not covered by this ordinance shall meet the requirements of Cassia County Code, Title 9, Chapter 11.

9-10-2: **PROCEDURE:**

- A. All newly proposed poultry CAFOs, and all conversions and expansions of existing poultry CAFOs shall be required to obtain a CAFO permit as is hereinafter set forth in this Chapter 10, Title 9, Cassia County Code.
- B. All newly proposed CAFOs, and all conversions and expansions of existing poultry CAFOS which exceeds capacity to house 50,000 poultry shall also be required to obtain a conditional use permit under Chapter 13 of Title 9, Cassia County Code before commencing any building or operations as a Poultry CAFO.

9-10-3: **DEFINITIONS:**

- Dry Litter Operation: any poultry facility that doesn't use water or waste water to harvest or transport manure from poultry housing.
- Environmentally Controlled: poultry housing that has solid sides and end walls with all openings sealed except for fan exits and ventilation intakes, allowing no access to outside open pens. The housing is climate controlled for temperature and moisture.
- Hatchery: A commercial establishment dedicated to the hatching of poultry eggs to provide day old chicks to the poultry industry.
- Large Poultry CAFO: A poultry facility where 1,000 birds can be housed. The birds are housed at a single physical site and may include multiple buildings.
- Liquid Waste Operation: any poultry facility that uses water or waste water to harvest or transport manure from poultry housing to a storage structure.
- Poultry: domesticated male or female chickens that are housed for the production of meat or eggs, and includes Commercial Layers, Layer Breeder, Broiler, Broiler Breeder and Pullets.
- Poultry CAFO Boundary: A legally described parcel or parcels of land containing a poultry CAFO to be used for establishing setbacks between new and existing facilities.

9-10-3

9-10-5

Poultry Facility: Includes all coops, barns, pens, manure storage areas, and dead poultry disposal areas used in conjunction with poultry production and which are on the same site as the poultry operation. Adjacent sites under common ownership are considered the same facility for purposes of this definition.

Production Area: the area expressed in square feet of poultry housing used in the raising of poultry not including mechanical, worker or office space.

Totally Confined: a “Totally Confined” poultry facility refers to any poultry facility where all birds are housed within enclosed structures and where no open pens are utilized, and where any activity associated with poultry raising or waste management from poultry raising activity is handled within a totally enclosed and confined structure.

Unconfined: an “Unconfined” poultry facility includes any poultry CAFO or facility where any birds are raised in open pens with or without shades and are subject to the elements, and also where any function associated with poultry raising or waste management from poultry raising activity is not handled in an enclosed facility.

9-10-4: **ZONES ALLOWED:**

- A. Large Poultry CAFOs may be sited in the prime agricultural and multiple use zones, as long as appropriate permits therefore are granted by the County.
- B. Large Poultry CAFOs will not be permitted nor sited in any zone other than as listed in 9-10-4A provisions of this Chapter.
- C. Hatcheries may be sited in the Multiple Use Zone and Prime Agricultural zone, and if a conditional use permit is granted may also locate in the Industrial Commercial Zone.

9-10-5: **DEVELOPMENT DENSITY:** Based upon information presented to the County by industry experts, and in an effort to avoid existing density requirements related to nutrient management planning, the county will permit based on the following criteria:

- A. A Large Poultry CAFO must own 4 sq feet of contiguous land for every 1 sq foot of production area, which land shall be designated to the particular CAFO and may not be used to satisfy any other density requirements of Cassia County in siting any animal feeding operation. Any reduction in land size for the Poultry CAFO shall automatically require the CAFO to reduce numbers of birds to stay in balance.
- B. A Large Poultry CAFO may not exceed maximum size of four million two hundred thousand (4, 200,000) birds at any one time.

9-10-6:

SETBACKS:

- A. The following minimum setbacks are applicable to all poultry operations under this Chapter. These minimum setbacks may be increased by action of the Planning and Zoning Commission, if in the determination of the Commission, additional setback is needed to provide for the protection of health, safety or general welfare of the County.
 - 1. 400 feet from poultry housing or any CAFO structure to any dwelling, church, school or other building designed for human occupancy not located on the designated CAFO site.
 - 2. 100 foot setback from property line(s) and public right of way(s) to all poultry facility buildings and storage areas.
 - 3. Poultry facility improvements and storage areas under this Chapter shall only be built within Flood Zone "C" or those areas designated by "D" as established by the most current version of the Flood Insurance Rate Map produced by the Federal Emergency Management Agency (FEMA).
 - 4. 400 foot setback from poultry facility buildings and storage areas to any water wells documented by Idaho Department of Water Resources, or any other wells known to the applicant or its agents, which are located on the designated CAFO site.
 - 5. All lighting shall be placed and shielded to direct the light source down onto and inside the property lines of the designated CAFO site.
 - 6. All facilities and storage areas for confining poultry and / or poultry waste shall be located within the boundaries of the designated CAFO site.

7. The external boundaries of any large poultry CAFO must be at least one thousand three hundred twenty feet (1,320') from the external boundary of any property in Cassia County that is zoned as Residential Agricultural, Agricultural Residential or City Impact/Buffer zone. (amd. Ord. 2011-08-01, 8-25-2011.)
 8. The external boundary of any large poultry CAFO structure under this Chapter must be located at least five thousand two hundred eighty feet (5,280') from any existing legally platted subdivision or planned unit development with visible improvements such as a highway district or county approved and accepted road or any existing designated city impact area or any existing designated buffer zone. (amd. Ord. 2011-08-01, 8-25-2011.)
 9. A Large Poultry CAFO must maintain a minimum bio-security distance between Large Poultry CAFOs to protect existing operations from the impacts of new operations. This will be accomplished by each CAFO of 50,000 birds or less having a two (2) mile buffer extending from its external boundaries; any CAFO in excess of 50,000 birds shall have and provide a four (4) mile buffer extending from its external boundaries. No proposed Large Poultry CAFO can be sited within an existing bio-security buffer area. No proposed bio-security buffer may intersect an existing bio-security buffer area.
 10. All poultry facilities shall have environmentally controlled barns for all poultry housing.
 11. All transport of litter to, from and between any poultry facility which is permitted hereunder shall be fully covered during transportation and holding.
 12. Any land applied litter of a large Poultry CAFO that is permitted hereunder shall not be applied in the bio-security area of another poultry facility.
- B. Additional setbacks and requirements for new poultry CAFOs or expanding poultry CAFOs which exceed a capacity to house 50,000 poultry. These additional setbacks are:
1. Poultry CAFOs under this subsection shall not propose a litter disposal system that relies on land application of raw untreated litter or application of composted poultry CAFO waste to land.

2. Poultry CAFOs under this subsection shall have a litter disposal system that is fully enclosed and treats or manufactures the litter into a useable commercial
3. The external boundaries of any large poultry CAFO, for which the housing capacity exceeds 50,000 poultry, must be located at least five thousand two hundred eighty feet (5,280') from the external boundary of any property in Cassia County that is zoned as Residential Agricultural, Agricultural Residential or City Impact/Buffer zone.
4. Product which may include, but not necessarily be limited to energy or fertilizer pellets.
5. The treatment, processing, or manufacturing may be done on site or off site;
6. Treatment, processing or manufacturing may be done by the CAFO permit holder or by contract through and with a third party;
7. Third party contracts hereunder must contain the conditions imposed by the Planning and Zoning Commission and be approved by the County Prosecuting Attorney;
8. Any entity providing storage, treatment, processing and/or manufacturing related hereto, that is located in Cassia County must have applied for and have been granted a conditional use permit under Title 9, Chapter 13, Cassia County Code before commencing any such operation. (amd. Ord. 2011-08-01, 8-25-2011 [#3. New provision, provisions thereafter relettered only.]

9-10-7:

APPLICATION REQUIREMENTS FOR NEW POULTRY

CAFO PERMIT: Owners of real property upon which a new poultry CAFO will be established must file an application for such CAFO with the office of the zoning administration for Cassia County, Idaho. The application for a new poultry CAFO must be in writing and shall contain the following information:

- A. Personal Information: Complete names, addresses and telephone numbers of every owner of real property within the proposed confined animal feeding operation. If applicant is not the owner of real property within the proposed site of operation, applicant shall also disclose complete names, addresses and telephone numbers of all applicants, and shall furthermore state and clarify their interest(s) in the proposal.
- B. Legal Description: The complete legal description of the real property contained within the confined animal feeding operation, including the number of acres for each description and the geographic information system (GIS) data and global positioning satellite (GPS) data in digital file format that meets County mapping department's requirements for each parcel.

- C. Use and Zoning – The present zoning district designation and a description of the current and historical uses of the proposed CAFO site shall be stated.
- D. Site Map – a map showing the boundaries of the CAFO site and all improvements and storage areas on the CAFO. The map must be drawn to a standard scale of at least 1"=100 ft or as approved by the zoning administrator. The map must show the following:
1. Water Bodies: existing ditches, canals, live streams or other bodies of water.
 2. Wells: All wells located within the site as documented by Idaho Department of Water Resources (IDWR), or any other wells known to the applicant or its agents.
 3. Structures: the dimensions and locations of barns and waste storage areas.
 4. Lighting: the location of any light towers located on the site.
 5. Residences and Roads: the location of all buildings intended for human occupancy and roads on the CAFO site.
 6. Distances: the map must show the following distances expressed to the Nearest 10 feet:
 7. Shortest distance from property line and public right of way to facility barns and waste storage areas.
 8. A note specifying the square footage of actual production space for the site.
 9. Flood zones or designated areas as established by the most current version of the Flood Insurance Rate Map produced by the Federal Emergency Management Agency (FEMA).
- E. Vicinity Map – a map showing the boundaries of the CAFO site and the surrounding property within four (4) miles of the CAFO site. The map must be drawn to scale of not less than 8 inches to the mile (8"=1 Mile, or 1"=660 ft) and must show the following:
1. Water Bodies: existing ditches, canals, live streams or other bodies
 2. Wells: All wells located within the two (2) miles radius as documented by Idaho Department of Water Resources (IDWR), or any other wells known to the applicant or its agents.

3. Residences and Roads: the approximate location of all buildings intended for human occupancy and roads within four (4) miles of the CAFO site.
 4. Distances: the map must show the following distances expressed to the nearest 10 feet:
 - i. Shortest distance from the external poultry CAFO boundary to a dwelling, church, school or other building designed for human occupancy not located on the designated CAFO site.
 - ii. Shortest distance from any manure storage area to a dwelling, church, school or other building designed for human occupancy not located on the designated CAFO site.
 - iii. Shortest distance from the external boundaries of the poultry CAFO to Flood Zones A or B, as designated by FEMA on the Flood Rate Insurance Map. If this distance exceeds 5,280', affixing a note to that effect on the map will be sufficient showing.
- F. Topographical Map – A separate topographical map shall be submitted showing elevation contours for the CAFO site.
- G. Waste management – A narrative description of the waste management system which includes the proposed means the facility will employ to dispose of all waste including, litter and dead animals. The narrative shall include a description of the means and methods by which the applicant will ensure that waste will not escape the boundaries of the CAFO or enter the waters of the US. This description shall include a copy of the facility's approved nutrient management plan (NMP). The acres required for the waste management system, as determined by the NMP shall be identified and described as set forth in Cassia County Code 9-10-7B. Such identified acres shall not be used for density or NMP purposes for any other CAFO.
- H. Third party contracts for waste disposal shall be allowed subject to the approval of the Cassia County Prosecuting Attorney for facilities that are not included within, or governed by section 9-10-6B. All such third party contracts must remain in effect during the term of the poultry CAFO permit; however third party contracts may be substituted during the term of the permit so long as they meet any applicable governmental regulations for waste disposal. The applicant shall also include the geographic information system (GIS) data and global positioning satellite (GPS) data in digital file format that meets County mapping department's requirements to identify the land in each third party contract.

Once land is contracted hereunder, it cannot be contracted at the same time for any other operational density requirement or approved nutrient management plan requirement for any other facility or use in Cassia County. If contracted land is withdrawn and the same amount of substitute land is not contracted in its place, then the permit holder shall permanently reduce the number of birds that can be housed at the CAFO to meet density requirements herein set out.

- I. Neighboring property owners – a list of names and addresses of all property owners owning real property located within one mile of the external boundaries of the CAFO.
- J. A writing from the department of water resources of the state of Idaho, including a profile of all water rights necessary for the operation of the confined animal feeding operation or, if those rights have not yet been granted, proof that an application for transfer or other suitable application has been filed with the department of water resources which, if granted, would allow sufficient water rights to permit a lawful operation of the new confined animal feeding operation.
- K. County Weed Plan: A plan developed in conjunction with the Cassia County Weed Department setting forth suitable methods, managements and practices for controlling weeds on and involved with the development herein. Weeds shall be defined by state of Idaho noxious weed statutes, laws and regulations.
- L. Fee: A nonrefundable fee, in an amount set by the county must be included with any application for a new poultry CAFO.
- M. Until all items listed herein are submitted to the satisfaction of the zoning administrator, any application made with the zoning department is deemed only to be lodged, but not to be filed. Applications shall be considered and determined based upon the regulations existing as of the date of filing of the application, unless otherwise provided for by action of the Board of County Commissioners. (amd. Ord. 2011-08-01, 8-25-2011 [new item “k”, L and M re-lettered only.]

9-10-8: **PERMIT HEARING PROCESS:** The zoning administrator shall review every CAFO and CUP application submitted under this chapter. If the administrator determines that the applications are complete the administrator shall refer the applications to the planning and zoning commission for a hearing on the CAFO and CUP applications. Conditional use permits shall be reviewed, referred, noticed and heard in accordance with provisions of Chapter 13, Title 9, and shall be heard in conjunction with CAFO permits hereunder.

A. Hearing:

1. Prior to the hearing of a new CAFO permit:

- i. A written notice shall be published in a newspaper of (or having) general circulation in Cassia County [see Idaho Code §60-106] by the applicant at least 30 days prior to the date of hearing; and
- ii. Notice shall be posted on the premises by the applicant not less than one (1) week prior to hearing; and
- iii. Written notice shall also be sent at least 30 days prior to the date of hearing by the applicant by U.S. Mail, First Class Postage Prepaid, to every person listed by the applicable county tax assessor as owning real property located within one mile of any external boundary of the CAFO described in the application notifying such persons and the public that:
 - a. Submittal: A new application for confined animal feeding operation permit has been received;
 - b. Date: The date upon which the application was received by the county;
 - c. Name And Address: The names and addresses of all of the applicants;
 - d. Legal Description: The exact legal description of the real property comprising the proposed poultry CAFO;
 - e. Nature of Operation: The nature of the proposed confined animal feeding operation;
 - f. Number of Birds: The maximum number of birds that will be confined thereon; and
 - g. Development Extent: The number of square feet of production space that will be used to confine poultry on the site and the number of square feet attributed to the poultry CAFO.

2. The notice shall further state that a public hearing will be held prior to the issuance of the permit and give the date, time and place of such hearing. The applicant shall prepare and file, with the planning and zoning secretary, at least two (2) days prior to the hearing, an affidavit of publication, posting and mailing indicating that the notice given is in compliance with subsections A and B of this section.

- B. Support Or Objection: All persons to whom notice is mailed shall be advised in that notice that they and others who can establish that their substantial rights would be affected by the approval or denial of the permit may file written objections or supporting statements with the planning and zoning commission secretary no later than ten (10) days prior to the hearing setting forth in that writing that person's support or objection to the issuance of the new CAFO permit.
1. Written objections shall set forth each requirement of law (local, state or federal) which the objecting party believes the CAFO permit would violate.
 2. Written statements shall also set forth either that the party making the statement owns property within one (1) mile of the external boundaries of the CAFO site described in the application and/or otherwise setting forth the substantial rights that would be affected by the approval or denial of the permit.
 3. Additionally, any party desiring to file any document(s) exceeding one (1) one-sided, 8 ½" x 11" sized page, shall file such document(s) at least ten (10) days prior to the hearing, with the planning and zoning commission secretary. The planning and zoning commission reserves the right to reject any proffered documentation that violates the intent of this regulation.
- C. Testimony At Hearing: Any person who files a statement in support or objection to the issuance of a new CAFO permit shall indicate in such statement whether or not such person desires to testify at the hearing.
1. Prior to the hearing the planning and zoning commission shall determine which of those persons who desire to testify will be permitted to testify at the hearing.
 2. All statements of support or objections shall be made a part of the record at the hearing, but no person except the applicant shall be permitted to testify at the hearing unless they have previously filed a written statement of support for or objection to the issuance of the permit.
 3. A transcribable record of the hearing and the deliberation of the Commission toward a decision shall be kept for a period of time not less than six (6) months, nor shall they be required to be kept for a period of time not to exceed twelve (12) months, after the Planning and Zoning Commission's final decision on the matter.
 4. Upon written request and within the time period provided for retention of the record, any person may have the record transcribed at his expense.
 - 5.

- D. Rules of Procedure: The Planning and Zoning Commission may adopt rules of procedure not inconsistent with the provisions of this title or state law for the conduct of its business and procedures for hearings.
- E. Decision: After the hearing the planning and zoning commission shall approve, disapprove, or approve with conditions the application by written decision. If the application is approved or approved with conditions a permit shall be issued for the CAFO with such conditions as the commission determines.

9-10-9: **RIGHT TO OCCUPY AND COMMENCE OPERATION:** Any person to whom a new CAFO permit is issued shall not commence operations on the new CAFO or allow poultry to occupy the new CAFO without first having submitted written proof to the zoning administrator for Cassia County, Idaho that the CAFO has:

- A. been constructed in conformance with the application and
- B. that the agencies deemed relevant to the new CAFO application by the administrator have inspected the completed facility and approved it ready for the commencement of use and
- C. the facility has in place a valid water right(s) to permit the lawful operation of the facility.

9-10-10: **TRANSFERABILITY AND DISCONTINUANCE:** The ownership of a CAFO permit may be transferred to a new owner of the CAFO by application to the zoning administrator stating that the new owner will assume all duties and responsibilities of the previous owner under the existing CAFO permit and any agreements then in force with respect to that permit. The holder of an existing or new CAFO permit who discontinues its operations for a period not in excess of ten (10) years may reestablish such use without obtaining a new permit as provided by Idaho Code 67-6538.

9-10-11: **PERMIT DEVELOPMENT:** Any permit obtained under this chapter shall be valid for a period of 3 years from final written decision of the board. Any permit that was presented as being phased over a longer period of time shall be considered commenced when construction has started for the first phase of the project. Any permit obtained under this chapter must be occupied by the operator within 4 years of issuance by the board.

9-10-12: **REPORTING REQUIREMENTS / RANDOM INSPECTIONS:**

- A. Once approved and under operation, the Owner or Operator shall submit an annual report to the Cassia County Administrative Office describing the quantities and types of poultry confined on the facility, the number of acres required under its currently approved nutrient management plan, including designation of owned acreage and export acreage, including legal descriptions and the global positioning satellite (GPS) data in format suitable to the County mapping department for each parcel not previously reported. This annual report shall also verify that any third party contracts for export concerning waste management under this Chapter remain in force; or alternatively, shall detail any amendments, novations or cancellations of such contracts. This report shall be filed by June 1st of each year.
- B. Additionally, the Owner or Operator shall allow any authorized County officer or employee to enter on to its facility for purposes of ensuring compliance with county regulations which are applicable to the operation. Any County officer or employee acting hereunder shall follow the Bio Security Plan as established by the Facility and as approved and accepted by the County Zoning Administrator. If there is no mutually agreed upon Bio Security Plan, the County representative may enter the property immediately to ensure compliance with public health and welfare issues.

9-10-13: **COUNTY OFFICER OR EMPLOYEE AUTHORIZED ENTRY:** It shall be unlawful and a misdemeanor to interfere with, hinder or refuse to allow any authorized County officer or employee to enter upon private or public property to enforce the provisions of this Chapter, or to enforce any other provision arising hereunder.

9-10-14: **APPEALS:** An applicant, any person who receives a mailed notice of an application for issuance of a CAFO permit under this chapter, or any person whose substantial rights are affected by the issuance or denial of a CAFO permit may appeal the decision of the planning and zoning commission by filing a notice of appeal stating the basis for such appeal together with a specification of the provisions of the law the decision is deemed to violate within twenty eight (28) days of the date of the signing of the planning and zoning commission decision, and paying a fee set by the county. Appeals shall be filed and heard in conformance with subsection 9-5-5J of this title.