

## APPENDIX D

### CONCENTRATED ANIMAL FEEDING OPERATION (CAFO) REGULATIONS

#### Definitions

**Animal Manure:** Poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding, or other materials.

**Applicant:** An individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more concentrated animal feeding operations.

**Concentrated Animal Feeding Operation (CAFO):** A lot or facility that stables or confines and feeds or maintains animals for a total of 45 days or more in any 12-month period and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility, and meets the criteria for class sizes as found in Table 1.1.1.

**Letter of Assurances.** A list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit

**Permit:** A permit required by these regulations unless stated otherwise.

**Residence:** A home must be occupied six (6) months out of the year and have utility hook ups.

**Setback:** The distance required for an operation to be measured from a particular entity. Setbacks are measured from the outermost point of the feedlot and the lagoon to the structure/use as identified on Table 1.1.3.

**Shall:** *Shall* means that the condition is an enforceable requirement of this permit.

**Should:** *Should* means that the condition is a recommendation. If violations of the permit occur, the County will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.

#### **General Requirements.**

An adequate supply of healthy livestock, poultry and other animals is essential to the well-being of county citizens and the State of South Dakota. This section applies to any concentrated animal feeding operation (CAFO) constructed or used after the effective date of October 31<sup>st</sup> 2017. Any facility shall be sufficiently separated from other land uses so as not to unreasonably interfere with or burden the enjoyment of other neighboring lands, consistent with the policy established under this Ordinance. All concentrated animal feeding operations shall comply with the regulations as outlined herein.

If a Class A or B concentrated animal feeding operation, which has a previously issued county permit, changes ownership; the state will transfer the permit. The county will update the permit after the applicant provides proof of state approval. If a Class C concentrated animal feeding operation, which was a previously issued county permit, changes ownership; the new owner will notify the county so that the permit may be

updated. The new owner will be required to abide by the permit requirements and letter of assurances that were issued under the permit application. If the county is not notified of the transfer within sixty (60) days, there will be a \$200 penalty fee.

**Classes of Concentrated Animal Feeding Operations:**

Concentrated animal feeding operations are hereby classified as Class A, B, C or D concentrated animal feeding operations and are defined by the number of animal as listed in Table 1.1.1.

**Number of Animals to Define Classes of Concentrated Animal Feeding Operations**

**Table 1.1.1**

<b>TYPE OF ANIMAL FEEDING OPERATION</b>	<b>Class A: ANIMAL NUMBERS EQUAL TO</b>	<b>Class B: ANIMAL NUMBERS EQUAL TO</b>	<b>Class C: ANIMAL NUMBERS EQUAL TO</b>	<b>Class D: ANIMAL NUMBERS EQUAL TO</b>
<b>Dairy Cows (mature-milked or dry) &amp; Buffalo</b>	<b>3,501 to 7,000</b>	<b>701 to 3,500</b>	<b>200 to 700</b>	<b>199 or less</b>
<b>Cattle other than mature dairy cows or veal calves*</b>	<b>5,001 to 10,000</b>	<b>1,001 to 5,000</b>	<b>300 to 1,000</b>	<b>299 or less</b>
<b>Swine (weighing more than 55 pounds)</b>	<b>12,501 to 25,000</b>	<b>2,501 to 12,500</b>	<b>750 to 2,500</b>	<b>749 or less</b>
<b>Swine (weighing less than 55 pounds)</b>	<b>50,001 to 100,000</b>	<b>10,001 to 50,000</b>	<b>3,000 to 10,000</b>	<b>2,999 or less</b>
<b>Sheep, Lambs, or Goats</b>	<b>50,001 to 100,000</b>	<b>10,001 to 50,000</b>	<b>3,000 to 10,000</b>	<b>2,999 or less</b>
<b>Turkeys</b>	<b>280,001 to 550,000</b>	<b>55,001 to 280,000</b>	<b>17,000 to 55,000</b>	<b>16,999 or less</b>
<b>Laying hens or broilers, and Pheasants**</b>	<b>150,001 to 300,000</b>	<b>30,001 to 150,000</b>	<b>9,000 to 30,000</b>	<b>8,999 or less</b>
<b>Chickens, other than laying hens***</b>	<b>625,001 to 1,250,000</b>	<b>125,001 to 625,000</b>	<b>38,000 to 125,000</b>	<b>37,999 or less</b>
<b>Laying hens ***</b>	<b>410,001 to 820,000</b>	<b>80,001 to 410,000</b>	<b>25,000 to 80,000</b>	<b>24,999 or less</b>
<b>Ducks **</b>	<b>25,001 to 50,000</b>	<b>5,001 to 25,000</b>	<b>1,500 to 5,000</b>	<b>1,499 or less</b>
<b>Ducks ***</b>	<b>150,001 to 300,000</b>	<b>30,001 to 150,000</b>	<b>9,000 to 30,000</b>	<b>8,999 or less</b>
<b>Geese</b>	<b>150,001 to 300,000</b>	<b>30,001 to 150,000</b>	<b>9,000 to 30,000</b>	<b>8,999 or less</b>
<b>Horses</b>	<b>2,501 to 5,000</b>	<b>501 to 2,500</b>	<b>150 to 500</b>	<b>149 or less</b>

If applying for a larger number of head than Class A allows, the applicant must first obtain a Variance from the Board of Adjustments. Subject to approval of the variance, for every 1 Animal Unit (AU) over Class A, 1ft will be added to the setback distance.

**Table 1.1.2 Animal Ratios to Calculate Class for Multiple Species Under Common Ownership**

Cattle other than mature dairy cows or veal calves*	1
Dairy cows (mature – milked or dry & buffalo)	1.4
Swine (weighting more than 55 pounds)	0.4
Swine (weighting less than 55 pounds)	0.1
Sheep, Lambs, or Goats	0.1
Turkeys	0.018
Laying hens or broilers, and Pheasants**	0.033
Chickens, other than laying hens***	0.008
Laying hens***	0.0122
Ducks**	0.2
Ducks***	0.033
Geese	0.033
Horses	2

**NOTES:**

\* **Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.**

\*\* **Animal feeding operation uses a liquid manure handling system.**

\*\*\* **Animal feeding operation uses other than a liquid manure handling system.**

**Concentrated Animal Feeding Operation Permit Requirements**

Two (2) or more concentrated animal feeding operations under common ownership are a single concentrated animal feeding operation if they adjoin each other (within one mile) or if they use a common area or system for disposal of manure. Required setbacks for the two (2) or more concentrated animal feeding operations treated as a single operation shall not be less than the minimum setback required for each operation if said operations were treated as individual operations. (See Table 1.1.2)

Any person who owns, operates, or proposes to own or operate a Class A, B, or C concentrated animal feeding operation as defined in these regulations, shall be required to apply for a conditional use permit pursuant to these regulations whenever any of the following occurs:

1. A new concentrated animal feeding operation is proposed where one does not exist.

2. An expansion of a concentrated animal feeding operation is proposed that exceeds the number of animal units allowed by an existing county-issued permit.
3. An expansion in the number of animal units of a concentrated animal feeding operation, without a county-issued permit, that existed prior to October 31<sup>st</sup> 2017 which would result in the creation of either a Class A, B or C concentrated animal feeding operation
4. A change in ownership of a Class C concentrated animal feeding operation which does not have a previously issued county-permit.
5. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.
6. A signed complaint has been received and/or documented by the County Zoning Administrator or South Dakota Department of Environment and Natural Resources and after inspection reveals that the concentrated animal feeding operation is in violation of County or State regulations.

**Concentrated Animal Feeding Operation Control Requirements:**

**1. Required Minimum Setbacks** and Separation Distance for New Classes A, B, and C Concentrated Animal Feeding Operations and those Existing Concentrated Animal Feeding Operations without a County issued permit expanding into a Class A, B, and C Concentrated Animal Feeding Operations after (October 31, 2017). See Table 1.1.3.

**Minimum Setbacks 1.1.3**

	<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>	<u>CLASS D</u>
<b>1. Established Residences not including owners/ operators</b>	<u>2 miles</u>	3,960 feet	2,640 feet	
<b>2. Churches, Businesses, &amp; Commercially-zoned Areas</b>	<u>2 miles</u>	5,280 feet	5,280 feet	
<b>3. Incorporated Municipality</b>	<u>3 miles</u>	<u>2.5 miles</u>	2 miles	
<b>4. Federal, State, &amp; County road ROW housed</b>	300 feet	300 feet	300 feet	
<b>5. Township road ROW</b>	150 feet	150 feet	150 feet	

**1. Additional Setback and Separation Distance Requirements for Classes A, B and C Concentrated Animal Feeding Operations.**

**a. Considerations to Increase Setbacks and/or Separation Distances**

The facility shall be sited not closer than those distances indicated in Table 1.1.3. These setbacks are minimum standards that may be increased by the Board of Adjustment during the conditional use permit issuance process due to concerns of the size of the operation or circumstances unique to a specific concentrated animal feeding operation permit application. Setbacks shall be measured from the outermost point of the feedlot and the lagoon to the structure/use as identified on Table 1.1.3.

**b. Considerations to Decrease Setbacks and/or Separation Distances**

If an applicant wishes to place a concentrated animal feeding operation closer than the separation distances set forth in these regulations, the applicant shall obtain Waivers of Distance from all residential property owners within the separation distance. If the applicant obtains waivers from all residential owners of property within the separation distance, the Zoning Administrator will file the waivers with the Register of Deeds. If the applicant cannot obtain waivers from all residential owners of property within the separation distance, they may request a hearing from the Board of Adjustment. Some considerations for allowing decreased setbacks and/or separation distances includes, but is not limited to, the use of a vegetative buffer, deep pit manure management, or any additional recommendations for odor control from the county. Any authorized person, business, or governmental entity that is within the separation distance may waive the separation distance through a written instrument to be filed with the County Register of Deeds. This waiver will accompany the sale and/or transfer of the land.

**3. Exemptions to Setback and/or Separation Distance Requirements**

- a. All Concentrated Animal Feeding Operations (CAFO) in operation prior to October 31 2017, which do not comply with the minimum setback requirements, but continue to operate, and are not expanded in a manner which will result in one of the following examples are exempt from setback/separation distance requirements:

Example 1: Class D CAFO expands to a Class A, B, or C CAFO.

Example 2: Class C CAFO expands to a Class A or B CAFO.

Example 3: Class B CAFO expands to a Class A CAFO.

Example 4: Class A CAFO expands by 15% of the number of animal units

- b. A concentrated animal feeding operation which is expanded or constructed, if the title holder of the land benefiting from the distance separation requirement executes a written waiver with the title holder of the land where the CAFO is located, under such terms and conditions which the parties may negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the Register of Deeds in the county. The title holder of the land benefiting from the distance separation requirement land is the individual or individuals, business entity, governmental entity, bona-fide religious institution, or educational institution from which separation is required. The waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
- c. A concentrated animal feeding operation which is constructed or expanded closer than the required setback/separation distance from the corporate limits of a city, if the incorporated community approves a written waiver. The written waiver becomes effective only after it's recorded with the Register of Deeds.
- d. A concentrated animal feeding operation which existed prior to the creation of a residence, educational institution, commercial enterprise, bona-fide religious institution, incorporated community, if the residence, educational institution, commercial enterprise or bona-fide institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the animal feeding operation was established. The date that the concentrated animal feeding operation was established is the date on which concentrated animal feeding operation commenced operating. A change in ownership or expansion shall not change the date of operation.
- e. It is the intention of the Board of Adjustment in the enforcement of this ordinance that when an operator of an existing Concentrated Animal Feeding Operation applies for a permit to expand to another class level, the standards that apply to the expansion will not be applied to existing structures that were built in compliance with accepted industry standards in existence at the time of the construction of such facilities.

#### **4. Standards for Conditional Use Permits**

- a. The Board of Adjustment or the County Zoning Administrator may request information relating to concentrated animal feeding operations not contained in these regulations.

- b. The Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations, additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.
  - c. Conditional Use permits for concentrated Animal Feeding Operations shall be in effect only as long as other provisions of the permit are being adhered to.
  - d. When considering an application, the Board of Adjustment will take into consideration current and past violations relating to concentrated animal feeding operations that the applicant has or had an interest in.
  - e. A CAFO that adjoins between two counties will follow the regulations of the county that is most restrictive.
  - f. Permit applicants will be required to file a letter of assurances as required by the Board of Adjustment. The letter of assurances will be prepared by the county and signed by both the applicant and the Chair of the Board of Adjustment. The permit for the concentrated animal feeding operation is based upon compliance with the regulations herein, and letter of assurances. Any violation of these regulations or non-compliance with the letter of assurances shall be cause for revoking a permit. If a violation of these regulations or non-compliance with the letter of assurance occurs, permit holders will be notified by registered mail and a hearing before the Board of Adjustment will be held concerning status of the permit. The Board of Adjustment shall either revoke the permit or set a time line for compliance. If compliance is not met, the permit shall be revoked and the permit holder ordered to cease operations.
  - g. It is declared unlawful for any person, firm, or corporation to violate any of the terms or provisions of the concentrated animal feeding operation ordinances. Violation of this ordinance shall be a misdemeanor and may be punishable by a fine of up to two hundred (\$200) dollars for each and every day that any violator fails to comply with the provisions of this ordinance.
  - h. The county will follow State regulations for time allowed to complete construction of a new CAFO.
- 5. Information Required for Class A, B, C and D Concentrated Animal Feeding Operation**
- a. Owner's, manager's, management company's or similar entities name, address and telephone number.
  - b. Legal descriptions of site.
  - c. The number and type of animals to be housed by the proposed concentrated animal feeding operation.

- d. Concentrated Animal Feeding Operations shall obtain a State General Permit pertaining to the animal species of the Concentrated Animal Feeding Operation, if required by the State of South Dakota. A County conditional use permit may be approved conditioned upon receiving a State General Permit.
- e. Information on ability to meet designated setback requirements, including maps showing measured distances and site plan.
- f. Notification / Road Agreement of whomever maintains the access road (township and county).