

NEBRASKA ADMINISTRATIVE CODE

TITLE 29, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 2

NEBRASKA DEPARTMENT OF AGRICULTURE

LIVESTOCK FRIENDLY COUNTY REGULATIONS

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NEBRASKA ADMINISTRATIVE CODE

TITLE 29 - DEPARTMENT OF AGRICULTURE, AG PROMOTION AND DEVELOPMENT

CHAPTER 2 - LIVESTOCK FRIENDLY COUNTY REGULATIONS

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TITLE 29 - DEPARTMENT OF AGRICULTURE, AG PROMOTION AND DEVELOPMENT

CHAPTER 2 - LIVESTOCK FRIENDLY COUNTY REGULATIONS

1 Statement of Purpose. The purpose of these regulations is to aid in administering Section 2 of Legislative Bill 754, Ninety-Eighth Legislature, First Session 2003, Neb. Rev. Stat. §54-2802. These regulations are intended to govern the procedure for the Department to designate a livestock friendly county and are not intended to limit the authority or ability of any county to enforce any valid county regulation.

2 Administration. These regulations shall be administered by the Department of Agriculture, Ag Promotion and Development Division, located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94947, Lincoln, Nebraska 68509-4947. The telephone number is (402) 471-4876. The Department's web site is <http://www.agr.state.ne.us>.

3 Definitions.

3.1 ACT means Section 2 of Legislative Bill 754, Ninety-Eighth Legislature, First Session 2003 codified at Neb. Rev. Stat. §54-2802.

3.2 ANIMAL FEEDING OPERATION means a location where beef cattle, dairy cattle, horses, swine, sheep, poultry, or other livestock have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the location. Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of livestock waste.

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3.3 ANIMAL UNIT means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by 1.0, plus the number of cow/calf pairs multiplied by 1.2, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing 55 pounds or more multiplied by 0.4, plus the number of weaned pigs weighing less than 55 pounds multiplied by 0.04, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0, plus the number of chickens multiplied by 0.01, plus the number of turkeys multiplied by 0.02, plus the number of ducks multiplied by 0.2. For immature dairy cattle or species not listed, the number of animal units shall be calculated as the average weight of the animals, divided by 1,000 pounds, multiplied by the number of animals.

3.4 APPLICANT means any Nebraska county that has submitted an application and followed the other procedures established by the Department to be designated as a Livestock Friendly County pursuant to the Act and these regulations.

3.5 APPLICATION means the fully completed package of forms provided by the Department for use under the Act, or forms substantially similar to the Department's forms, and all other information requested and requirements established by the Department for counties to be designated as a Livestock Friendly County pursuant to the Act and these regulations. The application package may be obtained by contacting the Department of Agriculture, as listed in Section 002 and may be available on the Department's web site.

3.6 BEST MANAGEMENT PRACTICES means schedules of activities, prohibitions, maintenance procedures, and other management practices found to be the most effective and practicable methods for specific sites to prevent or reduce the discharge of pollutants to waters of the state or control odor where appropriate. Best management practices also includes operating procedures and practices to control site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

3.7 DEPARTMENT means the Nebraska Department of Agriculture.

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3.8 DIRECTOR means the Director of the Nebraska Department of Agriculture or the Director's designee.

3.9 LB 754 means Legislative Bill 754, Ninety-Eighth Legislature, First Session 2003.

3.10 LIVESTOCK FRIENDLY COUNTY means any county designated by the Director as a "Livestock Friendly County" under the Act after fulfilling all of the requirements and meeting the criteria and standards established by the Department under the Act and these regulations.

3.11 LIVESTOCK WASTE CONTROL FACILITY means any structure or combination of structures utilized to control livestock waste until it can be used, recycled, or disposed of in an environmentally acceptable manner. Such structures include, but are not limited to, diversion terraces, holding ponds, debris basins, liquid manure storage pits, lagoons, and other such devices utilized to control livestock waste.

3.12 LIVESTOCK WASTE MANAGEMENT ACT means Neb. Rev. Stat. §54-2401, et seq., as the same may be amended from time to time.

3.13 WELLHEAD PROTECTION AREA ACT means Neb. Rev. Stat. §§46-1501, et seq., as the same may be amended from time to time.

4 Findings Identified in LB 754. The Legislature made the following findings in LB 754:

4.1 Livestock production has traditionally served a significant role in the economic vitality of rural areas of Nebraska, and in Nebraska's overall economy.

4.2 The growth and vitality of Nebraska's livestock sector are critical to the continued prosperity of Nebraska and its citizens.

4.3 Trends in livestock production suggest a need to identify and address factors that affect the viability and expansion of livestock production, including:

004.03A The impact of livestock production on Nebraska's economy and its communities;

004.03B Requirements imposed by all applicable regulatory agencies; and

004.03C The latest technology available to enhance the livestock industry.

5 Intent Identified in LB 754. LB 754 states that the intent of the Legislature is to seek reasonable means to nurture and support the livestock sector of Nebraska.

6 Purposes Identified in the Act. The Director of Agriculture shall establish a process, including criteria and standards, to recognize and assist efforts of counties to maintain or expand their livestock sector.

7 Eligible Applicants. Any Nebraska county may submit an application to be designated as a Livestock Friendly County.

8 Application Process.

8.1 All counties applying for designation as Livestock Friendly Counties shall be required to submit a fully completed application and any other information or requirements established by the Department.

8.2 To be considered, a county shall complete an application which includes, but is not limited to, the following information and materials:

008.02A The name of a contact person and the appropriate address with the initial application.

008.02B A formal declaration of the county board, by a duly enacted resolution following a public hearing, including, but not limited to, the following:

008.02B(1) An expression of interest in developing the livestock production and processing sectors of the county's economy.

008.02B(2) An acknowledgment that livestock is important to the economic well-being of the county.

008.02B(3) An assurance that the county intends to work with all other governmental jurisdictions within its boundaries in implementing livestock development within the county;

008.02B(4) A commitment to compliance with the Livestock Waste Management Act.

008.02B(5) A commitment to enter into a letter of understanding with the Department agreeing to:

008.02B(5)(a) Develop a plan to support the livestock industry in the county.

008.02B(5)(b) Submit reports as directed by the Department.

008.02C A narrative describing how the county meets the overall intent of LB 754 including:

008.02C(1) Steps taken to support the livestock industry within the county.

008.02C(2) Actions taken or information provided to avoid conflicting land uses.

008.02D If the county has adopted zoning, pursuant to Neb. Rev. Stat. §23-114, copies of the following:

008.02D(1) County comprehensive development plan and zoning resolution.

008.02D(2) Zoning regulations applicable to animal feeding operations.

008.02D(3) Zoning map indicating districts in which animal feeding operations are a permitted use.

008.02D(4) Any other procedures, guidelines, or other requirements applicable to livestock producers in the county.

008.02D(5) The conditional use permits, including any conditions or requirements, for animal feeding operations granted by the county board during the prior 24 months.

008.02D(6) The written statement of fact, if available, for any applications by animal feeding operations for conditional use permits granted or applications for conditional use permits denied during the prior 24 months.

008.02D(7) Any zoning regulations related to rural housing development.

008.02E If any city, village, or other governmental jurisdiction within the county imposes restrictions on animal feeding operations, copies of the following:

008.02E(1) The ordinances or regulations applicable to animal feeding operations.

008.02E(2) Map designating areas subject to such ordinances or regulations.

008.02E(3) Resolution or written statement of the city council, village board, or board of any other governmental jurisdiction acknowledging that livestock is important to the economic well-being of the area and expressing an interest in supporting the livestock production and processing sectors; and

008.02F If any controlling entity has designated a wellhead protection area, as both terms are defined in the Wellhead Protection Area Act, copies of the following:

008.02F(1) Map identifying the wellhead protection area designated by the controlling entity and approved by the Director of the Department of Environmental Quality in accordance with the Wellhead Protection Act that are applicable to animal feeding operations.

008.02F(2) The wellhead protection plan or other document containing the applicable controls approved by the Director of the Department of Environmental Quality in accordance with the Wellhead Protection Act that are applicable to animal feeding operations.

8.2 G If needed, the Department may request additional information from the applicants.

8.3 Evaluation Committee. The Director may, at the Director's discretion, appoint a departmental committee to review any application and advise the Director as to that applicant's qualification as an Livestock Friendly County. Each evaluation committee shall be appointed by the Director and may consist of representatives from the Department, the Department of Economic Development, the Department of Environmental Quality, other state government agencies, county government, academic institutions and others as determined by the Director.

8.4 Principles. General principles that the Director or the evaluation committee, if appointed, shall follow when evaluating applications and applying the criteria and standards listed in Subsection 008.05 include:

008.04A Consideration should be given to the diversity of activities currently underway or being initiated by a county.

008.04B Applications should be reviewed giving flexible and individual treatment to allow each county to design its own livestock development program according to its own timetable.

008.04C Land use regulations should foster the state's agriculture, recreation, and other industries and encourage the most appropriate use of land in the county.

008.04D Land use regulations should reflect the contribution of livestock to the economic well-being of the community taking into account the local community standards.

008.04E Land use controls and regulations should be objective, science-based standards that may be applied uniformly and are not subject to manipulation because of the type of operation or individual applying.

008.04F Land use controls should be drafted so that producers can predict whether a properly designed animal feeding operation will be allowed in a

particular area and once permits are granted, should remain in effect so long as the animal feeding operation continues as proposed when the permit was issued.

8.4 G Counties and livestock producers should be committed to protection of the environment, through compliance with the Livestock Waste Management Act and other standards established by state and federal environmental regulators.

8.4 H Counties that have not adopted zoning shall be eligible for designation as a Livestock Friendly County.

8.5 Evaluation Criteria and Standards. Applications made to the Department shall be evaluated based on the criteria listed below. The Director will compare the examples listed under each criterion with the activities undertaken in the county or regulations imposed by the county to determine if the county may be considered a livestock friendly county, provided that county activities or regulations not listed may be determined to satisfy the criterion. The criteria are not weighted and the Director may determine that a county satisfies a specific criterion if it has no regulations regarding that area.

008.05A The county is committed to developing the livestock production and processing sectors of the county's economy. Examples of county commitment include:

008.05A(1) Expressions of commitment in county board resolution.

008.05A(2) Programs by county government and others within the county promoting and facilitating modernization, expansion, and new development of crop and animal feeding operations in agriculture areas.

008.05A(3) In areas with significant existing non-agriculture uses and areas near cities and villages, programs that permit reasonable modernization and expansion of existing animal feeding operations in a manner that is compatible with nonfarm land uses.

008.05B Evidence or information that the county is working with all other governmental jurisdictions within its boundaries to support livestock development within the county. Examples of activities taken by cities, villages and other governmental jurisdictions that support livestock include:

008.05B(1) Expressions of commitment in a resolution of the city council or village board.

008.05B(2) Development restrictions or design requirements applicable to animal feeding operations do not extend beyond the extraterritorial zoning jurisdiction provided for by Nebraska statute from the city or village corporate limits (subject to Subpart 008.05B(3)), unless such restrictions are based on the facts and environmental conditions specific to the city or village and supported by scientifically justified environmental risk analysis consistent with state standards or relevant results of monitoring or modeling of environmental risks conducted by Nebraska regulatory agencies or other reliable, relevant, and broadly accepted information or principles.

008.05B(3) Development restrictions or design requirements intended to protect public water supplies and applicable to animal feeding operations are not more restrictive than controls adopted and do not extend beyond the wellhead protection area designated by a controlling entity (as both terms are defined in the Wellhead Protection Area Act) and approved by the Director of the Nebraska Department of Environmental Quality in accordance with the Wellhead Protection Area Act.

008.05C County has taken steps to reduce nonfarm development and nonfarm residential density and to discourage land uses that conflict with animal agriculture in areas identified for agriculture or predominately used for agricultural production. Examples of such steps include:

008.05C(1) Density limitations, minimum lot sizes or other restrictions on nonfarm residential development in intensive agriculture areas.

008.05C(2) Density restrictions allowing for not more than one dwelling for every quarter-quarter section of land unless additional dwellings are occupied by employees or operators of the farm or ranch or are in areas designated for nonfarm rural housing (based on proximity to surrounding natural resources, cities or villages and ability to efficiently provide county services).

008.05C(3) Education programs communicating impacts of agriculture activities to developers considering non-agriculture activities in rural areas.

008.05C(4) County has completed rural housing study analyzing housing patterns and density and identifying areas suitable for livestock development.

008.05C(5) Activities by the county or groups within the county to determine the economic impact of animal feeding operations on the county.

008.05C(6) Multiple agriculture zones with at least one zone designated livestock or intensive agriculture zone with the following regulations applicable:

008.05C(6)(a) Conditional use permits not required in identified livestock zones for animal feeding operations meeting established specifications (e.g., size, type of operation, and type of livestock waste control facility).

008.05C(6)(b) Restrictions on residential housing are greater in identified livestock zone.

008.05D Procedures for obtaining permits and application of other regulatory requirements applicable to livestock producers are clearly

documented and based on objective, science-based standards that provide fair, objective and predictable results. Examples include:

008.05D(1) Procedure and information requirements for obtaining a conditional use permit or a special use permit are published and timelines for consideration of applications have been established.

008.05D(2) Conditional use permits cannot be withdrawn due to subsequent changes in zoning regulations.

008.05D(3) Animal feeding operations are allowed to expand within specified limits without reapplying for a conditional use permit.

8.5 E Design and site requirements and conditions placed on animal feeding operations are reasonable and justifiably related to purposes identified in the zoning regulation. Examples of reasonable and justifiable requirements include:

008.05E(1) Standards for applying design requirements (e.g., groundwater monitoring wells, lagoon lining requirements, seepage requirements) and operating conditions (e.g., financial surety, cleanup bonds) are clearly documented and based on objective, science-based standards that provide fair, objective and predictable results.

008.05E(2) Standards are not more restrictive than the Livestock Waste Management Act or other state standards established by Nebraska regulatory agencies unless based on the facts and environmental conditions specific to the county and supported by scientifically justified environmental risk analysis consistent with state standards or relevant results of monitoring or modeling of environmental risks conducted by Nebraska regulatory agencies or other reliable, relevant and broadly accepted information or principles.

008.05F Setbacks or separation distances required between animal feeding operations and other uses are reasonable and justifiable. Setbacks or separation distances required between animal feeding operations (including livestock waste control facilities) and neighboring residences shall be considered to be reasonable and justifiable if the distance required by the county regulation for animal feeding operations at each of the number of animal unit sizes listed below is not greater than (subject to Subpart 008.05F(1)) the distances indicated:

1,000 animal units - 0.25 mile
5,000 animal units - 0.375 mile
10,000 animal units - 0.50 mile
20,000 animal units - 0.75 mile

Other examples of reasonable and justifiable setbacks or separation distances include:

008.05F(1) Setbacks or separation distances greater than those set forth above may be considered reasonable and justifiable if based on the facts and environmental conditions specific to the county and supported by scientifically justified environmental risk analysis consistent with state standards or relevant results of monitoring or modeling of air emissions, odor emissions, or both air and odor emissions conducted by Nebraska regulatory agencies, the Nebraska Institute of Agriculture and Natural Resources, or other reliable, relevant and broadly accepted information or principles.

008.05F(2) The county has completed a review of the location of existing animal feeding operations in the county relative to other adjoining land uses and determined that:

008.05F(2)(a) A substantial majority of the existing animal feeding operations in the county meet or exceed the setbacks or separation distances required for new animal feeding operations by current county zoning regulations (without relying on any grandfather provisions); and

008.05F(2)(b) A significant portion of the existing animal feeding operations in the county are currently located at a sufficient setback or separation distance from other uses to allow expansion of the animal feeding operation under current county zoning regulations.

008.05F(3) No maximum animal unit cap or moratorium on building or expanding animal feeding operations unless such caps are based on the facts and environmental conditions specific to the county and supported by scientifically justified environmental risk analysis consistent with state standards or relevant results of monitoring or modeling of air emissions, odor emissions, or both air and odor emissions conducted by Nebraska regulatory agencies, the Nebraska Institute of Agriculture and Natural Resources, or other reliable, relevant and broadly accepted information or principles.

008.05F(4) Setbacks or separation distances based upon the type of operations (open lot vs. confined animal feeding operation), the type of livestock waste control facility (aerobic lagoon, anaerobic lagoon, facultative lagoon, deep pit, etc.), and prevailing winds rather than strict distance limits in all directions, provided that the distances more restrictive than the distances set forth above shall be based on the facts and environmental conditions specific to the county and supported as described in Subpart 008.05F(1).

008.05F(5) Setbacks or separation distances reflect or take into account best management practices adopted by the producer to mitigate environmental risks.

008.05F(6) Reciprocal setbacks or separation distances restrict development on property adjoining animal feeding operations to prevent non-agriculture uses from encroaching on animal feeding operation set-backs or separation distances and to provide for reasonable expansion of the animal feeding operation.

008.05F(7) Restrictions and requirements for approval of the conditional use permit request and setback requirements are based on a point system considering the characteristics of and practices used on the individual operation, provided the points allocated for particular characteristics and practices are based on the facts and environmental conditions existing and practices used in the county and are consistent with state standards or relevant results of monitoring or modeling of air emissions, odor emissions, or both air and odor emissions conducted by Nebraska regulatory agencies, the Nebraska Institute of Agriculture and Natural Resources, or other reliable, relevant and broadly accepted information or principles.

9 Use of Designation.

9.1 A Livestock Friendly County may include the following statement (or words to similar effect) in any advertising, brochures, producer information or other promotional materials distributed by the county or others on the county's behalf:

"[County] has been designated a Livestock Friendly County by the Nebraska Department of Agriculture and has met the required criteria and standards for such designation"

9.2 A Livestock Friendly County may include the words "Livestock Friendly County" and the Nebraska Department of Agriculture logo on county signs, billboards and other media. Any use of the Nebraska Department of Agriculture logo with additional words or words other than "Livestock Friendly County" shall be approved in writing by the Department before use.

9.3 Samples of all promotional and printed materials (but not including references in correspondence from the county) that includes the statement in Subsection 009.01 and examples of any use of Nebraska Department of Agriculture's logo shall be provided in advance to the Nebraska Department of Agriculture. The Nebraska Department of Agriculture reserves the right to review, request changes, or disallow use of such materials at its discretion.

10 Reporting Requirements.

10.1 The county board, or its designee, of any county designated as a Livestock Friendly County shall submit an annual report to the Department on or before January 31 of each year in a format as determined by the Department. The annual report shall include, but is not limited to, the following information with respect to the prior calendar year:

010.01A A description of activities by the county or by organizations within the county to support and nurture the livestock industry in the county, if any.

010.01B If a county is subject to zoning, copies of the following:

010.01B(1) Any changes to the county comprehensive development plan and zoning resolutions adopted during the preceding year.

010.01B(2) Any changes to zoning regulations applicable to animal feeding operations adopted during the preceding year.

010.01B(3) Zoning map indicating any changes adopted during the preceding year to the districts in which animal feeding operations are a permitted use.

010.01B(4) Any changes adopted during the preceding year to the procedures, guidelines, or other requirements applicable to animal feeding operations in the county.

010.01B(5) The conditional use permits, including any conditions or requirements, for animal feeding operations granted by the county board during the preceding year.

010.01B(6) The written statement of fact, if available, for any applications by animal feeding operations for conditional use permits granted or applications for conditional use permits denied during the preceding year.

010.01B(7) Any changes to zoning regulations applicable to rural housing development approved during the preceding year.

10.1 B(8) Any changes or additions to ordinances or regulations imposed on animal feeding operations by any city or village within the county during the preceding year.

10.2 The Department may require Livestock Friendly Counties to provide reports to enable the Department to fulfill the requirements of LB 754.

11 Annual Review and Withdrawal of Designation.

11.1 The county board of any county may withdraw the county from consideration to be designated as a livestock friendly county or, if the county has been designated as a livestock friendly county, may withdraw from the program at any time by providing the Department a copy of a duly enacted resolution of the county board following a public hearing requesting such withdrawal.

11.2 The Director shall annually review the reports and materials submitted by each Livestock Friendly County to determine if the county continues to meet the criteria and standards set forth in Subsection 008.05. The Director may consider any other relevant information applicable to the county that is available.

11.3 If the Director determines that a county no longer meets the criteria and standards set forth in Subsection 008.05, the Department shall give written notice to the county of the Director's determination and the basis for such determination. The Director shall consider any additional information provided by the county to support the county's designation as a livestock friendly county up to 90 days from the date of the notice, provided that the Director may extend such period in Director's sole discretion. The Department shall give the county notice of the Director's final determination within a reasonable time at the end of such period.

11.4 If the Director makes a final determination that a county no longer meets the criteria and standards set forth in Subsection 008.05, the county shall discontinue using promotional materials and remove any signage or cover

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portions of any signs that include, the Nebraska Department of Agriculture logo with the words "Livestock Friendly County". The county shall discontinue use of materials and cover or remove signage within a reasonable time period, allowing for use contracts of existing supplies of materials and considering media and staff availability for changing signs.

11.5 The Department may not assess penalties or take any additional actions other than those described in this Section 011 (except actions related to use of the Nebraska Department of Agriculture logo) against any county no longer meeting the criteria and standards set forth in Subsection 008.05.

12 Annotation. Neb. Rev. Stat. §54-2802 (Supp. 2003).