

Dear Senators VICK, Heider, Stennett, and
Representatives GIBBS, Lickley, Rubel:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Fish and Game:

IDAPA 13.01.18 - Rules Governing Feeding of Wild Cervids (ZBR Chapter Rewrite) - Proposed
Rule (Docket No. 13-0118-2201).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 11/14/2022. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/12/2022.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondoff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: October 27, 2022

SUBJECT: Department of Fish and Game

IDAPA 13.01.18 - Rules Governing Feeding of Wild Cervids (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 13-0118-2201)

Summary and Stated Reasons for the Rule

The Department of Fish and Game submits notice of proposed rule at IDAPA 13.01.18 - Rules Governing Feeding of Wild Cervids. This is a chapter rewrite. According to the department, the rulemaking relates to criteria for determining emergencies warranting agency feeding of wild cervids, including wild elk, deer, and pronghorn, and restrictions on private feeding of wild cervids. The department states that it, with the Idaho State Department of Agriculture, have evaluated the potential to consolidate regulation of private feeding of wild cervids under Fish and Game authority in this rule chapter so that IDAPA 02.04.25 "Rules Governing Private Feeding of Big Game Animals," may be repealed, as proposed under Docket No. 02-0425-2201. The department notes that current restrictions for Fish and Game and the Idaho State Department of Agriculture will be consolidated into a single rule chapter under Fish and Game's authority to regulate the feeding of wildlife, to continue protection of the health of livestock, domestic cervids, domestic bison, and wildlife. The department notes that the rule specifically identifies geographic areas identified in Idaho State Department of Agriculture current rule to prevent brucellosis transmission between wildlife and livestock. The rulemaking also distinguishes "wild cervids" managed under Fish and Game authority from "domestic cervids" regulated under Idaho State Department of Agriculture authority.

Negotiated Rulemaking / Fiscal Impact

Notice of Negotiated Rulemaking was published but no persons identified themselves as interested in participating in negotiated rulemaking. The rule imposes no fees and no fiscal impact is anticipated.

Statutory Authority

The rulemaking appears to be authorized pursuant to Sections 36-104, 36-105, and 36-111, Idaho Code.

cc: Department of Fish and Game
Amber Worthington

Paul Headlee, Deputy Director Kristin Ford, Manager Keith Bybee, Manager April Renfro, Manager Glenn Harris, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

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Boise, Idaho 83720-0054

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***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 13 – DEPARTMENT OF FISH AND GAME
13.01.18 – RULES GOVERNING FEEDING OF WILD CERVIDS
DOCKET NO. 13-0118-2201 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Sections 36-104, 36-105, and 36-111, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2022.

In the event a hearing is scheduled, the hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule is being presented for authorization as part of the IDFG plan to review each rule chapter every 5 years. This rulemaking relates to criteria for determining emergencies warranting agency feeding of wild cervids (including wild elk, deer, and pronghorn), and restrictions on private feeding of wild cervids. Consistent with the Governor's [Executive Order 2020-01](#): Zero-Based Regulation, the agency has revised current rule language to improve clarity and reduce duplication.

IDFG and the Idaho State Department of Agriculture (ISDA) have evaluated the potential to consolidate regulation of private feeding of wild cervids under IDFG's authority in this rule chapter, such that IDAPA 02.04.25, "Rules Governing Private Feeding of Big Game Animals," may be repealed, as proposed concurrently in this bulletin under Docket No. 02-0425-2201.

This proposed rulemaking includes changes to integrate current IDFG and ISDA restrictions into a single rule chapter under IDFG's authority to regulate the feeding of wildlife, to continue protection of the health of livestock, domestic cervids, domestic bison, and wildlife. For example, the proposed rule specifically identifies geographic areas identified in ISDA's current rule to prevent brucellosis transmission between wildlife and livestock. IDFG proposes to change rule wording (previously "pronghorn, elk, and deer") to distinguish "wild cervids" managed under IDFG authority from "domestic cervids" regulated under ISDA authority. The agency also proposes to present the statement of rule intent in the cover sheet published in the Administrative Code, instead of in the rule chapter itself as done currently. The rule also incorporates language related to the Commission's management of Chronic Wasting Disease in wild cervids.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no fiscal impact associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 6, 2022, Idaho Administrative Bulletin, [Vol. 22-4, page 25](#) under Docket No. 13-0118-2201. No persons identified themselves as interested in participating in negotiated rulemaking.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not Applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Tricia Hebdon, Assistant Chief of Wildlife, 208-287-2704.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2022.

DATED this 24th day of August, 2022.

Amber Worthington Deputy Director
Idaho Department of Fish and Game
600 S. Walnut Street
P.O. Box 25 Boise, ID 83707
Phone (208) 334-3771
Fax (208) 334-4885
Email: rules@idfg.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0118-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

13.01.18 – RULES GOVERNING FEEDING OF WILD CERVIDS

000. LEGAL AUTHORITY.

Sections 36-104, 36-105 and 36-111, Idaho Code. ()

001. SCOPE.

These rules govern Department and private feeding of wild cervids. ()

002. – 009. (RESERVED)

010. DEFINITIONS.

01. CWD Management Zone. Chronic Wasting Disease Management Zone designated by the Commission under IDAPA 13.01.10.150. ()

02. DSA. Designated Surveillance Area for brucellosis designated by ISDA order or rule. ()

03. ISDA. Idaho State Department of Agriculture. ()

04. Supplemental Feed. Harvested hay, grain, or straw, or feed pellets. ()

05. Wild Cervids. Deer, elk, or other members of the family Cervidae not owned by a person. ()

011. – 099. (RESERVED)

100. EMERGENCY FEEDING CRITERIA.

01. Declaration of Feeding Emergency. The Department may declare a feeding emergency if one (1) or more of the following criteria are met: ()

a. Actual or imminent threat of depredation to private property. ()

- b. Threat to public safety, including traffic hazards. ()
- c. Excessive mortality that would affect herd recovery. ()
- d. Limited or unavailable winter forage caused by fire or weather. ()

02. Additional Guidelines. Regional Supervisors may develop additional emergency feeding guidelines within the listed criteria, based on disease transmission risk, local conditions, and local public input. ()

101. FEED STOCKPILES.

The Department has identified locations for stockpiling emergency feed where it is impractical and cost-prohibitive to purchase and transport feed after snowfall. The Commission and Director declare stockpile maintenance constitutes a feeding emergency and authorize expenditure of funds for stockpile maintenance. ()

102. – 199. (RESERVED)

200. PRIVATE FEEDING OF WILD CERVIDS.

01. Private Feeding. It is unlawful to purposely or knowingly provide supplemental feed to wild cervids within any CWD Management Zone, within any county partially or entirely within any DSA, or within Clark, Madison, or Jefferson county east of Interstate 15, or in violation of any Commission, Department, or ISDA order, except supplemental feeding conducted or authorized by the Department. ()

02. Incidental Grazing. Incidental grazing by wild cervids on private rangeland forage, standing agricultural crops, or crop residue left on the ground following typical harvest practices does not violate this section. ()

03. Incidental Feeding. Incidental feeding of wild cervids during the normal practice of providing feed to livestock does not violate this section, provided the owner or operator of the premises feeding livestock cooperates with the Department to facilitate conducting wild cervid management activities to avoid feeding wild cervids. ()

201. – 999. (RESERVED)