

Dear Senators BAIR, Guthrie, Durst, and  
Representatives ANDRUS, Boyle, Pence:

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

IDAPA 02.02.14 - Rules For Weights & Measures (Docket No. 02-0214-1302);

IDAPA 02.04.19 - Rules Governing Domestic Cervidae (Docket No. 02-0419-1301).

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 08/05/2013. 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 09/03/2013.

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 334-4845, or send a written request to the address on the  
memorandum attached below.



Jeff Youtz  
Director

# Legislative Services Office Idaho State Legislature

*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Agricultural Affairs Committee and the House Agricultural Affairs Committee  
**FROM:** Principal Legislative Research Analyst - Katharine Gerrity  
**DATE:** July 17, 2013  
**SUBJECT:** Department of Agriculture

IDAPA 02.02.14 - Rules For Weights & Measures (Docket No. 02-0214-1302)

IDAPA 02.04.19 - Rules Governing Domestic Cervidae (Docket No. 02-0419-1301)

### **1. IDAPA 02.02.14 - Rules For Weights & Measures**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.02.14 - Rules For Weights and Measures. The purpose of the rulemaking is to incorporate by reference the 2014 edition of the National Institute of Standards and Technology Handbook No. 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices." The Department notes that negotiated rule-making was not conducted due to the simple nature of the proposed changes. The rule appears to be authorized pursuant to Section 71-111, Idaho Code.

### **2. IDAPA 02.04.19 - Rules Governing Domestic Cervidae**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.19 - Rules Governing Domestic Cervidae. The purpose of the rulemaking is to specify which forms of unique identification will be acceptable for producers exporting out of the state to utilize within their herds and to maintain compliance with the Animal and Plant Health Inspection Service National Chronic Wasting Disease Herd Certification Program.

The changes provide that all domestic cervidae enrolled in the National CWD Herd Certification Program are required to be identified with two forms of identification. One form must be a nationally unique official animal identification that uses an APHIS-approved numbering system that is linked to the CWD National Database or equivalent ISDA database. The second form of identification must be unique to the individual animal within the herd and also linked to the CWD National Database or equivalent ISDA database to include APHIS-approved identification devices, electronic identification, official USDA tamper-resistant ear tags, legible ear or flank tattoos and other forms of identification as approved by the APHIS Administrator.

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

The Department states that negotiated rulemaking was not conducted because the federal government has already implemented the changes and is mandating state participation in the new Herd Certification Program. The changes will maintain consistency with the federal rule. The rule appears to be authorized pursuant to Section 25-3704, Idaho Code.

cc: Department of Agriculture

Brian J. Oakey, Kevin Merritt & Dr. Scott Leibsle

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1302

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 71-111, 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 July 17, 2013.

The hearing site(s) 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:

To incorporate by reference the 2014 edition of the National Institute of Standard and Technology Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices. NIST documents are available online at <http://www.nist.gov/pml/wmd/index.cfm>.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**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: ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendment.

**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:

This document is recognized nationally as the primary reference document, incorporating the most current version promotes uniformity throughout the United States.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kevin Merritt, Section Manager at (208) 332-8692.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be delivered on or before July 24, 2013.

DATED this 29th day of May, 2013.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd.  
PO Box 790  
Boise, ID 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

**THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR DOCKET NO. 02-0214-1302**

**004. INCORPORATION BY REFERENCE.**

**01. Required Reference Materials.** The 201~~3~~<sup>4</sup> edition of Handbook No. 44 of the National Institute of Standards and Technology, United States Department of Commerce, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," hereby incorporated by reference, shall be the specifications, tolerances and other technical requirements for commercial weighing and measuring devices, unless otherwise stated in these rules. ~~(4-4-13)~~( )

**02. Required Reference Materials for Checking Prepackaged Commodities.** The 4th Edition of Handbook No. 133 of the National Institute of Standards and Technology, United States Department of Commerce, "Checking the Net Contents of Packaged Goods," hereby incorporated by reference, shall be the authority in checking packaged commodities, unless otherwise stated in these rules. (2-13-04)

**03. Specifications for Diesel Fuel and Biodiesel Fuel.** American Society of Testing and Materials (ASTM) D975-07a, "Standard Specification for Diesel Fuel Oils," and ASTM D6751-07a, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels," intended for blending with diesel fuel are hereby incorporated by reference and are the specifications for diesel fuel and biodiesel fuel blend stock (B100 biodiesel). (4-2-08)

**04. Specifications for Gasoline.** American Society of Testing and Materials (ASTM) D 4814-07a, "Standard Specification for Automotive Spark-Ignition Engine Fuel", dated October 17, 2007, is hereby incorporated by reference and is the specification for gasoline. (5-8-09)

**05. Local Availability.** Copies of the incorporated documents are on file with the Idaho State Department of Agriculture, 2216 Kellogg Lane, Boise, Idaho 83712. Copies of NIST documents may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies are available for downloading at <http://www.nist.gov/pml/wmd/index.cfm>. Copies of ASTM specifications are on file with the Idaho State Department of Agriculture or may be purchased from <http://www.astm.org>, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428. (4-7-11)

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**

**02.04.19 - RULES GOVERNING DOMESTIC CERVIDAE**

**DOCKET NO. 02-0419-1301**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-3704, 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 July 17th, 2013.

The hearing site(s) 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:

Amends Subsection 02.04.19.022 to specify which forms of unique identification will be acceptable for producers exporting out of the state to utilize within their herds and to maintain compliance with Animal and Plant Health Inspection Service (APHIS) National Chronic Wasting Disease (CWD) Herd Certification Program (HCP).

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**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:

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the federal government has already implemented the changes and is mandating state participation in the new HCP. The changes to IDAPA 02.04.19 are being made to maintain consistency with the federal rule.

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Deputy Administrator - Division of Animal Industries at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be delivered on or before July 24th, 2013.

DATED this 29th day of May, 2013.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8503  
Fax: (208) 334-2170

**THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR DOCKET NO. 02-0419-1301**

**010. DEFINITIONS.**

**01. Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/VS, in accordance with Title 9, Part 161, CFR, January 1, 2004, to perform functions required by cooperative state-federal animal disease control and eradication programs. (4-6-05)

**02. Administrator.** Administrator of the Division of Animal Industries or his designee. (4-2-03)

**03. Approved Laboratory.** NVSL, an AAVLD accredited laboratory that is qualified to perform CWD diagnostic procedures, or a laboratory designated by the Administrator to perform CWD diagnostic procedures. (4-2-03)

**04. Approved Slaughter Establishment.** A USDA inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by USDA inspectors. (4-2-03)

**05. Area Veterinarian in Charge.** The USDA/APHIS/VS veterinary official who is assigned to supervise and perform official animal health activities in Idaho. (4-2-03)

**06. Breed Associations and Registries.** Organizations maintaining permanent records of ancestry or pedigrees of animals, individual animal identification records and records of ownership. (4-2-03)

**07. Certificate.** An official document issued by a state or federal animal health official or an accredited veterinarian at the point of origin of a shipment of cervidae, which contains information documenting the age, sex, species, individual identification of the animals, the number of animals, the purpose of the movement, the points of origin and destination, the consignor, the consignee, the status of the animals relative to official diseases, test results and any other information required by the state animal health official for importation or translocation. (4-2-03)

**08. Cervid Herd.** One (1) or more domestic cervidae or groups of domestic cervidae maintained on common ground or under common ownership or supervision that may be geographically separated but can have interchange or movement. (4-2-03)

**09. Cervidae.** Deer, elk, moose, caribou, reindeer, and related species and hybrids including all members of the cervidae family and hybrids. (4-2-03)

**10. Chronic Wasting Disease.** A transmissible spongiform encephalopathy of cervids, which is a nonfebrile, transmissible, insidious, and degenerative disease affecting the central nervous system of cervidae. (4-2-03)

**11. Commingling.** Within the last five (5) years, the animals have had direct contact with each other, had less than thirty (30) feet of physical separation, or shared management equipment, pasture, or surface water sources, except for periods of less than forty-eight (48) hours at sales or auctions when a state or federal animal health official has determined such contact presents minimal risk of CWD transmission. (4-2-03)

**12. Custom Exempt Slaughter Establishment.** A slaughter establishment that is subject to facility inspection by USDA, but which does not have ante-mortem and post-mortem inspection of animals by USDA inspectors. (4-2-03)

**13. CWD-Adjacent Herd.** A herd of domestic cervidae occupying premises that border a premises occupied by a CWD positive herd, including herds separated by roads or streams. (4-6-05)

**14. CWD-Exposed Animal.** A cervid animal that is not exhibiting any signs of CWD, but has had contact within the last five (5) years with cervids from a CWD-positive herd or the animal is a member of a CWD-exposed herd. (4-2-03)

15. **CWD-Exposed Herd.** A herd of cervidae in which no animals are exhibiting signs of CWD, but: (4-2-03)
- a. An epidemiological investigation indicates that contact with CWD positive animals or contact with animals from a CWD positive herd has occurred in the previous five (5) years; or (4-2-03)
  - b. A herd of cervidae occupying premises that were previously occupied by a CWD positive herd within the past five (5) years as determined by the designated epidemiologist; or (4-2-03)
  - c. Two (2) herds that are maintained on a single premises even if they are managed separately, have no commingling, and have separate herd records. (4-6-05)
16. **CWD-Positive Cervid.** A domestic cervid on which a diagnosis of CWD has been confirmed through positive test results on any official cervid CWD test by an approved laboratory. (4-2-03)
17. **CWD-Positive Herd.** A domestic cervidae herd in which any animal(s) has been diagnosed with CWD, based on positive laboratory results, from an approved laboratory. (4-2-03)
18. **CWD-Suspect Cervid.** A domestic cervid for which laboratory evidence or clinical signs suggests a diagnosis of CWD. (4-2-03)
19. **CWD-Suspect Herd.** A domestic cervidae herd in which any animal(s) has been determined to be a CWD-suspect. (4-2-03)
20. **Department.** The Idaho State Department of Agriculture. (4-2-03)
21. **Death Certificate.** A form, approved by the administrator, provided by the Division for the reporting of cervidae deaths and for reporting sample submission for CWD testing. (4-6-05)
22. **Designated Epidemiologist.** A state or federal veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the Administrator to fulfill the epidemiology duties relative to the state domestic cervidae disease control program. (4-2-03)
23. **Director.** The Director of the Idaho State Department of Agriculture, or his designee. (4-2-03)
24. **Disposal.** Final disposition of dead cervidae. (4-2-03)
25. **Division.** Idaho State Department of Agriculture, Division of Animal Industries. (4-2-03)
26. **Domestic Cervidae.** Fallow deer (*Dama dama*), elk (*Cervus elaphus*) or reindeer (*Rangifer tarandus*) owned by a person. (4-2-03)
27. **Domestic Cervidae Ranch.** A premises where domestic cervidae are held or kept, including multiple premises under common ownership. (4-6-05)
28. **Electronic Identification.** A form of unique, permanent individual animal identification such as radio frequency identification tag, radio frequency identification implant, or other forms approved by the Administrator. (4-6-05)
29. **Escape.** Any domestic cervidae located outside the perimeter fence of a domestic cervidae ranch and not under the immediate control of the owner or operator of the domestic cervidae ranch. (4-2-03)
30. **Federal Animal Health Official.** An employee of USDA/APHIS/VS who is authorized to perform animal health activities. (4-6-05)
31. **Herd of Origin.** A cervid herd, on any domestic cervidae ranch or other premise, where the



- animals were born, or where they were kept for at least one (1) year prior to date of shipment. (4-2-03)
- 32. Herd Status.** Classification of a cervidae herd with regard to CWD. (4-2-03)
- 33. Intrastate Movement Certificate.** A form approved by the Administrator, and available from the Division, to document the movement of domestic cervidae between premises within Idaho. (4-2-03)
- 34. Individual CWD Herd Plan.** A written herd management agreement and testing plan developed by the herd owner and approved by the Administrator to identify and eradicate CWD from a positive, source, suspect, exposed, or adjacent herd. (4-7-11)
- 35. Limited Contact.** Incidental contact between animals of different herds in separate pens off of the herd's premises at fairs, shows, exhibitions and sales. (4-2-03)
- 36. National CWD Herd Certification Program.** A federal-state-industry cooperative program administered by APHIS and implemented by participating states that establishes CWD surveillance and testing standards that owners must achieve before interstate transport of cervids will be permitted. ( )
- 367. Official CWD Test.** A test approved by the Administrator and conducted at an approved laboratory to diagnose CWD. (4-2-03)
- 378. Official Identification.** Identification, approved by the Administrator, that individually, uniquely, and permanently identifies each cervid. (4-2-03)
- 389. Operator.** A person who has authority to manage or direct a domestic cervidae ranch. (4-2-03)
- 3940. Owner.** The person that has legal title to, or has financial control of, any domestic cervidae or domestic cervidae ranch (4-2-03)
- 401. Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (4-2-03)
- 412. Premises.** The ground, area, buildings, and equipment utilized to raise, propagate, control, or harvest domestic cervidae. (4-2-03)
- 423. Quarantine.** An order issued on authority of the Administrator, by a state or federal animal health official or accredited veterinarian, prohibiting movement of cervids from any location without a written restricted movement permit. (4-2-03)
- 434. Quarantine Facility.** A confined area where selected domestic cervidae can be secured and isolated from all other cervidae and livestock. (4-2-03)
- 445. Ranch Management Plan.** A written plan for a domestic cervidae ranch that sets forth best management practices that mitigates the introduction or dissemination of disease among domestic cervidae. (4-7-11)
- 456. Reidentification.** The identification of a domestic cervid which had been officially identified, as provided by this chapter, but which has lost the official identification device, or the tattoo or official identification device has become illegible. (4-2-03)
- 467. Restrain.** The immobilization of domestic cervidae in a chute, other device, or by other means for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (4-2-03)
- 478. Restricted Movement Permit.** An official document that is issued by the Administrator, AVIC, or an accredited veterinarian for movement of animals from positive, suspect, or exposed herds. (4-2-03)

- 489.** **Source Herd.** A herd from which at least one (1) cervid has originated within the previous five (5) years and that cervid has been diagnosed CWD positive. (4-2-03)
- 4950.** **State Animal Health Official.** The Administrator, or his designee. (4-2-03)
- 501.** **Status Date.** The date on which the Administrator approves in writing a herd status change with regard to CWD. (4-2-03)
- 512.** **Trace Back Herd.** An exposed herd in which at least one (1) CWD positive animal resided within any of the previous sixty (60) months prior to diagnosis with CWD. (4-2-03)
- 523.** **Trace Forward Herd.** A herd that has received exposed animals from a positive herd within sixty (60) months prior to the diagnosis of CWD in the positive herd or from the identified point of entry of CWD into the positive herd. (4-2-03)
- 534.** **Traceback.** The process of identifying the movements and the herd of origin of CWD positive, or exposed animals, including herds that were sold for slaughter. (4-2-03)
- 545.** **Wild Cervidae.** Any cervid animal not owned by a person. (4-2-03)
- 556.** **Wild Ungulate.** Any four (4) legged, hooved herbivore, including cervids and other ruminants, not owned by a person. (4-6-05)
- 567.** **Wild Ungulate Cooperative Herd Plan.** A plan, developed cooperatively by the owner of the domestic cervidae ranch, the ISDA, and the Idaho Department of Fish and Game to determine the disposition of any wild ungulates that are found to be located on a domestic cervidae ranch. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**014. IMPORTATION OF DOMESTIC CERVIDAE.**

All domestic cervidae imported into the state of Idaho shall comply with the requirements of [the APHIS National CWD Herd Certification Program and IDAPA 02.04.21 "Rules Governing the Importation of Animals,"](#) which apply to domestic cervidae. ~~(4-2-03)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**023. -- 029. (RESERVED)**

**023. NATIONAL CWD HERD CERTIFICATION PROGRAM OFFICIAL IDENTIFICATION.**

All domestic cervidae enrolled in the National CWD Herd Certification Program are required to be identified with two (2) forms of identification for each animal. One (1) form of identification must be a nationally unique official animal identification that uses an APHIS-approved numbering system that is linked to the CWD National Database or equivalent ISDA database. The second form of identification must be unique to the individual animal within the herd and also be linked to the CWD National Database or equivalent ISDA database. ( )

- 01. APHIS-Approved Identification Devices.** ( )
- a. Electronic Identification;** ( )
- b. Official USDA Tamper-Resistant Ear Tag;** ( )
- c. Legible Ear or Flank Tattoo; and** ( )
- d. Other forms of Identification as approved by APHIS Administrator.** ( )