

Dear Senators HARTGEN, Nichols, Semmelroth, and
Representatives ANDRUS, Raymond, Mathias:

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

IDAPA 02.04.19 - Rules Governing Domestic Cervidae - Proposed Rule (Docket No. 02-0419-2401).

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 11/25/2024. 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 12/23/2024.

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 Agricultural Affairs Committee and the House Agricultural Affairs Committee
FROM: Legislative Drafter - Alli Olson
DATE: November 06, 2024
SUBJECT: Department of Agriculture

IDAPA 02.04.19 - Rules Governing Domestic Cervidae - Proposed Rule (Docket No. 02-0419-2401)

Summary and Stated Reasons for the Rule

The Idaho Department of Agriculture submits notice of proposed rulemaking for the Rules Governing Domestic Cervidae, IDAPA 02.04.19. The Department states that the rulemaking will make the rule consistent and compliant with the 2024 legislation, which became Section 25-3705C, Idaho Code.

Negotiated Rulemaking / Fiscal Impact

The Department states that negotiated rulemaking was conducted and that notice was published in the July 3, 2024, Idaho Administrative Bulletin, Volume 24-7, pages 45-46. The Department also states that there are no associated fees nor fiscal impact to the General Fund.

Statutory Authority

The Department of Agriculture appears to have the authority to promulgate this rule pursuant to Sections 25-3704, 25-303, 25-305, 25-401, and 5-601 Idaho Code.

cc: Department of Agriculture
Lloyd Knight

***** 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.

Paul Headlee, Deputy Director Legislative Services Office	Matt Drake, Manager Research & Legislation	Keith Bybee, Manager Budget & Policy Analysis	April Renfro, Manager Legislative Audits	Norma Clark, Manager Information Technology
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Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

IDAPA 02 – IDAHO STATE DEPARTMENT OF AGRICULTURE

02.04.19 – RULES GOVERNING DOMESTIC CERVIDAE

DOCKET NO. 02-0419-2401

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 Sections 25-3704, 25-303, 25-305, 25-401, 25-601, 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 16, 2024.

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:

H 591 was passed by the Idaho Legislature and approved by the Governor during the 2024 Legislative Session. The legislation made certain changes to the quarantine process, sampling protocols, and requirements for domestic cervidae operations while under quarantine. This rulemaking will make the rule consistent and compliant with the legislation.

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

There is no change in fee or charge.

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 on the state General Fund greater than ten thousand dollars (\$10,000).

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 3, 2024 Idaho Administrative Bulletin, [Volume 24-7, Pages 45 and 46](#).

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:

There are no changes to documents already incorporated by reference.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The purpose of the rule is to implement the requirements of Title 25, Chapter 37, Idaho Code. The federal government does not regulate cervidae within the state, with the exception of certain requirements for import into the United States.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight at lloyd.knight@isda.idaho.gov.

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 23, 2024.

DATED this 2nd day of October, 2024.

Lloyd Knight
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov.

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0419-2401
(Only Those Sections With Amendments Are Shown.)

02.04.19 – RULES GOVERNING DOMESTIC CERVIDAE

010. DEFINITIONS.

01. Approved Laboratory. NVSL, an AAFLD accredited laboratory that is qualified to perform CWD diagnostic procedures, or a laboratory designated by the Administrator to perform CWD diagnostic procedures. (3-15-22)

02. Approved Slaughter Establishment. A USDA inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by USDA inspectors. (3-15-22)

03. Area Veterinarian in Charge. The USDA/APHIS/VS veterinary official who is assigned to supervise and perform official animal health activities in Idaho. (3-15-22)

04. Breed Associations and Registries. Organizations maintaining permanent records of ancestry or pedigrees of animals, individual animal identification records and records of ownership. (3-15-22)

05. 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. (3-15-22)

06. Cervidae. Deer, elk, moose, caribou, reindeer, and related species and hybrids including all members of the cervidae family and hybrids. (3-15-22)

07. Chronic Wasting Disease (CWD). A transmissible spongiform encephalopathy of cervids that is a nonfebrile, transmissible, insidious, and degenerative disease affecting the central nervous system of cervidae. (3-15-22)()

~~**08. 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. (3-15-22)~~

~~098.~~ **Custom Exempt Slaughter Establishment.** A slaughter establishment that is subject to facility inspection by USDA, but that does not have ante-mortem and post-mortem inspection of animals by USDA inspectors. (3-15-22)

~~109.~~ **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. (3-15-22)

~~11.~~ **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. (3-15-22)

~~12.~~ **CWD-Exposed Herd.** A herd of cervidae in which no animals are exhibiting signs of CWD, but: (3-15-22)

~~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 (3-15-22)

~~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 (3-15-22)

~~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. (3-15-22)

~~13.~~ **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. (3-15-22)

~~14.~~ **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. (3-15-22)

~~15.~~ **CWD-Suspect Cervid.** A domestic cervid for which laboratory evidence or clinical signs suggests a diagnosis of CWD. (3-15-22)

~~160.~~ **CWD-Suspect Herd.** A domestic cervidae herd in which any animal(s) has been determined to be a CWD-suspect. (3-15-22)

~~171.~~ **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. (3-15-22)

~~182.~~ **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. (3-15-22)

~~193.~~ **Disposal.** Final disposition of dead cervidae. (3-15-22)

~~2014.~~ **Domestic Cervidae.** Fallow deer (*Dama dama*), elk (*Cervus elaphus*) or reindeer (*Rangifer tarandus*) owned by a person. (3-15-22)

~~215.~~ **Domestic Cervidae Ranch.** A premises where domestic cervidae are held or kept, including multiple premises under common ownership. (3-15-22)

~~2216.~~ **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. (3-15-22)

~~2317.~~ **Endemic Area.** A geographical area designated by a state animal health official in the state of origin where animals located within that area are subject to an increased risk of acquiring a contagious disease. Most

commonly in reference to Tuberculosis or Chronic Wasting Disease. (3-15-22)

2418. 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. (3-15-22)

2519. Federal Animal Health Official. An employee of USDA/APHIS/VS who is authorized to perform animal health activities. (3-15-22)

260. Harvest. Any healthy domestic cervid that is intentionally and lethally removed from a domestic cervidae facility, by an owner, designated employee or customer of the facility, strictly for the purposes of either shooting or meat production. Harvested includes cervids slaughtered at an approved or custom-exempt slaughter establishment. (3-15-22)

271. 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. (3-15-22)

282. Herd Status. Classification of a cervidae herd with regard to CWD. (3-15-22)

293. 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. (3-15-22)

3024. 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. (3-15-22)

~~**31. Limited Contact.** Incidental contact between animals of different herds in separate pens off of the herd's premises at fairs, shows, exhibitions and sales. (3-15-22)~~

~~**3225. 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. (3-15-22)~~

~~**3326. Official CWD Test.** A test approved by the Administrator and conducted at an approved laboratory to diagnose CWD where both obex and medial retropharyngeal lymph node samples were submitted for testing. (3-15-22)()~~

~~**3427. Official Identification.** Identification, approved by the Administrator, that individually, uniquely, and permanently identifies each cervid. (3-15-22)~~

~~**3528. Operator.** A person who has authority to manage or direct a domestic cervidae ranch. (3-15-22)~~

~~**3629. Premises.** The ground, area, buildings, and equipment utilized to raise, propagate, control, or harvest domestic cervidae. (3-15-22)~~

~~**370. 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. (3-15-22)~~

~~**381. Quarantine Facility.** A confined area where selected domestic cervidae can be secured and isolated from all other cervidae and livestock. (3-15-22)~~

~~**392. 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. (3-15-22)~~

~~**4033. 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. (3-15-22)

4134. 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. (3-15-22)

4235. 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. (3-15-22)

4336. Source Herd. The herd or herds from where a producer acquired their existing livestock. (3-15-22)

4437. State Animal Health Official. The Administrator, or Administrator's designee. (3-15-22)

4538. Status Date. The date on which the Administrator approves in writing a herd status change with regard to CWD. (3-15-22)

39. Tissues. The obex and medial retropharyngeal lymph node (MRPLN) tissue required for screening elk and deer for Chronic Wasting Disease. ()

460. 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. (3-15-22)

471. 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. (3-15-22)

482. 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. (3-15-22)

493. Wild Cervidae. Any cervid animal not owned by a person. (3-15-22)

5044. Wild Ungulate. Any four (4) legged, hoofed herbivore, including cervids and other ruminants, not owned by a person. (3-15-22)

5145. 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. (3-15-22)

(BREAK IN CONTINUITY OF SECTIONS)

500. SURVEILLANCE FOR CWD.

01. Routine Surveillance. ~~Brain tissue~~ Obex and medial retropharyngeal lymph node tissues from domestic elk and reindeer sixteen (16) months of age or older at the time of death must be submitted annually to official laboratories for CWD testing as provided for in these rules, under the following conditions: ~~(3-15-22)~~ ()

a. No less than ten percent (10%) of cervids harvested or slaughtered. (3-15-22)

b. No less than one hundred percent (100%) of cervids that die for any reason other than slaughter or harvest. (3-15-22)

c. Tissues samples submitted to an official laboratory that are untestable or are given an indeterminate test result do not count towards the tissue submission requirement. (3-15-22)

d. Fallow deer are exempt from CWD testing. (3-15-22)

02. Enhanced Surveillance. ~~Brain + Tissues~~ from one hundred percent (100%) of all domestic elk and reindeer sixteen (16) months of age or older that die for any reason on a facility will be required to be tested for CWD for a period of sixty (60) months under the following conditions: (3-15-22)()

a. A facility has imported cervids from a location within twenty-five (25) miles from a confirmed case of CWD in wild cervids. (3-15-22)

b. A facility has received cervids via intrastate movement from a facility under enhanced CWD surveillance requirements at the time of the transfer. (3-15-22)

c. The duration of the enhanced CWD surveillance requirements are based upon the most recent date of movement that meets the criteria listed in this section. (3-15-22)

501. COLLECTION OF SAMPLES FOR CWD TESTING.

Obex and medial retropharyngeal lymph node samples must be collected immediately upon discovery of the death of a domestic cervid. (3-15-22)()

01. Non-Testable or Samples That Do not Contain Appropriate Tissues. The Administrator may conduct an investigation to determine if a domestic cervidae ranch is complying with the provisions of Section 500 if the owner or operator of a domestic cervidae ranch submits samples for CWD testing which cannot be identified to the animal of origin. (3-15-22)

02. Failure to Meet Annual CWD Tissue Submission Requirement. An owner or operator of a domestic cervidae ranch who fails to submit samples for CWD testing or who fails to meet the annual tissue submission requirements of this chapter, or both, is in violation of these rules, except the Administrator may approve, in writing, a variance from sample submission requirements on a case specific basis. (3-15-22)

(BREAK IN CONTINUITY OF SECTIONS)

504. INVESTIGATION OF CWD.

An epidemiological investigation will be conducted on all CWD positive, suspect, and exposed animals and herds, herds of origin, source herds, all adjacent herds, and all trace herds as determined by the Administrator. (3-15-22)

01. Quarantine. ~~All positive, suspect, and exposed herds or animals, herds of origin, adjacent herds, and herds having contact with positive or exposed animals must be quarantined; and~~ A quarantine shall be applied to all CWD-exposed, CWD-suspect, and CWD-positive herds and animals following an epidemiological investigation that confirms such status as defined in this section. (3-15-22)()

02. Identification. CWD suspect and exposed animals must be identified and remain on the premises where they are found until they have met the provisions for release of quarantine established in this chapter, are destroyed and disposed of as directed by the Administrator, or are moved at the Administrator's direction on a restricted movement permit. (3-15-22)

03. Multi-Facility Ranches. Multi-facility ranches under quarantine may move animals from one facility to another facility owned by the same entity for the purpose of harvest with the approval of the Director of the Idaho State Department of Agriculture. ()

505. DURATION OF CWD QUARANTINE.

Quarantines imposed because of CWD in accordance with this chapter remain in effect until one (1) of the following criteria are met: (3-15-22)

01. CWD Positive Herds. The quarantine may be released after the herd is completely depopulated as provided in Subsection 505.07, or after five (5) years of compliance with an individual herd CWD plan and all provisions of these rules, during which there was no evidence of CWD. (3-15-22)

02. CWD Suspect Herds. The quarantine may be released after the herd is completely depopulated as provided in Subsection 505.07, or after a minimum of five (5) years of compliance with an individual CWD herd plan and all provisions of these rules and during which there was no evidence of CWD, or an epidemiologic investigation determines that there is no evidence CWD exists in the herd as determined by the Administrator. (3-15-22)

03. Source Herds and Herds of Origin. The quarantine may be released after a minimum of five (5) years of compliance with an individual CWD herd plan and all provisions of these rules and during which there was no evidence of CWD, or an epidemiologic investigation determines that there is no evidence CWD exists in the herd and that the herd is not the source of infection as determined by the Administrator. (3-15-22)

04. Exposed Herds. The quarantine may be released after the herd is completely depopulated as provided in Subsection 505.07, or after a minimum of five (5) years of compliance with an individual CWD herd plan and all provisions of these rules and during which there was no evidence of CWD, or an epidemiologic investigation determines that there is no evidence CWD exists in the herd as determined by the Administrator. (3-15-22)

05. Adjacent Herds. The quarantine may be released when directed by the Administrator based upon an epidemiological investigation and in consultation with the designated epidemiologist. (3-15-22)

06. Fencing Requirements. Any owner of a domestic cervidae ranch who chooses to remain under quarantine for five (5) years must ~~construct a second~~ maintain perimeter ~~fence that meets the requirements for perimeter fence, as provided in Section 102, such that no domestic cervidae on the domestic cervidae ranch can get within ten (10) feet of the original exterior perimeter fence or as approved by the Administrator~~ fencing pursuant to Idaho Code 25-3705C and Section 102 of this rule. (3-15-22)()

07. Complete Depopulation. The quarantine may be released after: (3-15-22)

a. Complete depopulation of all cervidae on the premises as directed by the Administrator; and (3-15-22)

b. The premises have been free of all livestock as specified in an individual CWD herd plan approved by the Administrator; and (3-15-22)

c. The soil and facilities have been cleaned, treated, decontaminated, or disinfected as directed by the Administrator. (3-15-22)

08. Disposal of Positive or Exposed Cervidae. All CWD positive or exposed domestic cervidae must be disposed of as directed by the Administrator. (3-15-22)