

IDAHO STATE DEPARTMENT OF AGRICULTURE  
DOMESTIC CERVIDAE  
Penalty Assessment Guideline and Matrix

Any person who violates applicable provisions of the Domestic Cervidae Law (Title 25, Chapter 37, Idaho Code) and/or IDAPA 02.04.19 - Rules Governing Domestic Cervidae or those sections applicable to domestic cervidae in chapters 2, 3, 4 and 6 of Title 25, Idaho Code shall be subject to enforcement action by the Idaho State Department of Agriculture (ISDA). The ISDA is authorized to assess a civil penalty up to five thousand dollars (\$5,000) per violation. *See* Idaho Code § 25-3706(1)(a). The purpose of this Penalty Assessment Guideline and Matrix (“Guideline”) is to help the ISDA determine a fair, reasonable and defensible civil penalty when one is warranted. The ISDA must take into consideration the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires. *See id.* at 3706(6).

This Guideline is designed to include most violations that may be committed by domestic cervidae producers. However, situations may arise that are not adequately addressed by this Guideline or justice and fairness requires a civil penalty that is contemplated herein. In such cases, the Director or designated representatives of the Director may levy any penalty appropriate under existing law.

To expedite resolution of alleged violations, ISDA encourages all persons who may be subject to enforcement action to confer informally with the Director’s representative regarding alleged violations and proposed penalties.

This Guideline shall not prevent ISDA from:

- (1) Choosing not to pursue a case administratively; or
- (2) Referring any violation to the appropriate prosecuting authority for legal action regardless of ISDA’s level of enforcement for that action.

1. Introduction

The goal of the regulatory component of the Domestic Cervidae program and this Guideline is to serve as a deterrent to violations of the applicable laws and rules. The ISDA recognizes that not all violations of the applicable domestic cervidae laws and rules are the same. Accordingly, the ISDA has created the following categories and described a commensurate response:

- A. Category I (Major). The Director may issue a civil penalty for first time Category I violations in addition to any alternative enforcement action deemed necessary to protect the public interests.
- B. Category II (Moderate). For a first time Category II violation, the Director may take alternative enforcement action that will allow for a specified amount of time to take

corrective action. Failure to complete the required corrective action within the specified time period, or repeat violations, may result in the issuance of a civil penalty. Subsequent violations of a category II violation may result in a Category I response, depending upon the circumstances.

- C. Category III (Minor). For a first time Category III violation, the Director may take alternative enforcement action that will identify the violation in writing and serve as a warning to the producer. Subsequent violations of a category III violation may result in either a Category II or Category I response depending upon the circumstances.
- D. “First time violation” means that the alleged violator has no prior incident that resulted in a Category II or Category III violation within three (3) years prior to the alleged violation under review or a Category I violation within five (5) years prior to the alleged violation under review.
- E. “Second time violation” means that the alleged violator has one (1) prior incident that resulted in a Category II or Category III violation within three (3) years prior to the alleged violation under review or a Category I violation within five (5) years prior to the alleged violation under review.
- F. “Third time violation” means that the alleged violator has at least two (2) prior incidents that resulted in a Category II or Category III violation within three (3) years prior to the alleged violation under review or at least two (2) Category I violations within five (5) years prior to the alleged violation under review.

## 2. Prohibited Acts.

- A. Category I violations include, but are not limited to the following:

- (1) Failure to properly maintain the integrity of cervidae holding facilities such as failure to maintain perimeter fencing, gathering or restraint facilities, quarantine facilities or water supply as outlined in IDAPA 02.04.19.100-105.

- (2) Submit false or fraudulent inventories, records, or reports;

- (3) Failure to take all reasonable actions to prevent the escape of domestic cervidae or failure to report an escape of a domestic cervidae as outlined in IDAPA 02.04.19.204

- B. Category II violations include, but are not limited to the following:

- (1) Failure to properly identify all domestic cervidae as provided by IDAPA 02.04.19.020-031;

- (2) Failure to adhere to requirements for facility inspection and/or inventory verification as outlined in IDAPA 02.04.200-202;

(3) Failure to submit death certificates of all cervidae over one year of age as outlined in IDAPA 02.04.19.205-208;

(4) Failing to adhere to Chronic Wasting Disease (CWD) surveillance and testing requirements as provided under IDAPA 02.04.19.500-505;

(5) Fail, refuse, or neglect to keep or maintain records as required under the Idaho Rules Governing Domestic Cervidae, or refuse to make available such records upon request by ISDA as outlined in IDAPA 02.04.19.200.01-04.

C. Category III violations include, but are not limited to the following;

(1) Failure to remit payment for the annual herd assessment by the January 1<sup>st</sup> deadline as outlined in IDAPA 02.04.19.090;

(2) Failure to submit the annual inventory report by the December 31<sup>st</sup> deadline as outlined in IDAPA 02.04.19.201;

(3) Failure to submit death certificates within the requisite 5 days of gaining knowledge of the animal's death as provided by IDAPA 02.04.19.205.03

3. Baseline Civil Penalties.

Category	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	3 <sup>rd</sup> (and subsequent) Violation
Category I (Major)	Cost to investigate plus \$1000	Cost to investigate plus \$2000	Cost to investigate plus \$4000
Category II (Moderate)	Cost to investigate plus \$250	Cost to investigate plus \$500	Cost to investigate plus \$1,000
Category III (Minor)	Regulatory letter	Cost to investigate plus \$250	Cost to investigate plus \$500

4. Calculation of Penalty.

The ISDA may not collect more than \$5,000 per violation. Accordingly the basis used in the matrix above is limited by that factor. For example, if one violation of the Rules Governing Domestic Cervidae is alleged and the cost to investigate that violation exceeds \$5,000 the maximum civil penalty under that scenario is \$5,000. Alternatively, if the cost to investigate a violation is \$500 and the violation alleged is a third time Category I violation, the basis for determining the civil penalty will be \$4,500. Additionally, aggravating and mitigating factors may also be considered to enhance or diminish a base line penalty, respectively. The application of aggravating and mitigating factors is discussed in more detail below.

- A. Aggravating Factors. ISDA may consider circumstances enhancing the seriousness of the violation that will result in a greater civil penalty. These factors include, but are not limited to the following:
- (1) Number of violations under investigation;
  - (2) Similarity of prior violations;
  - (3) High magnitude of harm, or potential harm caused by the violation;
  - (4) Disregard for the safety or health of humans, animals or the environment;
  - (5) Little or no attempt(s) to come into compliance; or
  - (6) Impede, obstruct, hinder or otherwise prevent or attempt to prevent ISDA from the performance of its duties under the Domestic Cervidae Law or the Rules Governing Domestic Cervidae
- B. Mitigating Factors. ISDA may consider circumstances reducing the seriousness of the violation to result in a lesser penalty or foregoing a penalty in favor of issuing a warning/non-compliance letter. These factors include, but are not limited to, the following:
- (1) Voluntary disclosure of violation;
  - (2) Low magnitude of harm, or potential harm, caused by the violation;
  - (3) Cooperation with the investigation;
  - (4) Corrective action(s) taken for prior violation(s);
  - (5) Corrective action(s) taken for pending violation(s); or
  - (6) Compliance history.
  - (7) Economic impact of the penalty on the violator
- C. Substantial Harm. Any violation that results in substantial harm to human health, animal health or the environment may be subject to a civil penalty of not more than five thousand dollars (\$5,000) for the initial violation or any subsequent violation.
- D. Payment of Penalties. As authorized under Section 25-2713, Idaho Code, a civil penalty imposed may be increased or reduced upon such terms and conditions as the Director considers proper and consistent with the health and safety of the public, animals and the environment.

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