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## **Domestic Cervidae Rulemaking Analysis**

### **Docket No. 02-0419-2201**

#### **Background**

The Idaho State Department of Agriculture (ISDA) received a Petition to Initiate Rulemaking from the Idaho Wildlife Federation (IWF) on March 8, 2022. The petition requested changes to testing requirements for domestic cervidae operations in proximity to detections of Chronic Wasting Disease (CWD) in wild cervids. IWF requested changes to IDAPA 02.04.19 Section 500.02 to require increased CWD testing for facilities “*within (25) miles from a confirmed case of CWD in wild cervids*”.

The Rules Governing Domestic Cervidae were open for Zero Based Rulemaking in 2021 and were approved by the 2022 Legislature. The issue brought forward by IWF was not requested during 2021 rulemaking, but that rulemaking was conducted prior to the detection of CWD in wild cervids in Idaho.

The ISDA submitted the IWF’s petition for rulemaking to the Department of Financial Management and the Governor’s Office. The ISDA then initiated rulemaking in accordance with § Idaho Code 67-5230.

#### **Rulemaking Authority**

Domestic cervidae production is governed by Title 25, Chapter 37, Idaho Code. The authorizing statute requires CWD testing on all brain tissue samples from no less than 10 percent of all domestic cervidae 16 months of age or older that die or are harvested on domestic cervidae farms. § I.C. 25-3704A.

ISDA has authority to promulgate and enforce rules related to “registration of domestic cervidae farm or ranch premises, and for the prevention of the introduction or dissemination of diseases among domestic cervidae of this state, and to otherwise effectuate enforcement of the provisions of chapters 2, 3, 4, 6 and 37, title 25, Idaho Code, applicable to domestic cervidae.” § I.C. 25-3704. The current rule language is consistent with the authorizing statute.

#### **Negotiated Rulemaking**

The ISDA facilitated public negotiated rulemaking meetings in May and June 2022. There was broad participation with the IWF, multiple cervidae producers from across the state, the Idaho Conservation League (ICL), the Theodore Roosevelt Conservation Partnership, and the North American Elk Breeders Association. The rulemaking process is meant to facilitate stakeholder input and development of consensus-based recommendations. Rulemaking participation is summarized in this analysis, and full rulemaking information is available on the ISDA website.

The IWF and the ICL commented in favor of the requested rule change. They are very concerned about the detection of CWD in wild Idaho cervids and see cervidae operations as a risk to wild cervid populations. They are concerned about the importation of cervids, especially those imported from other states or countries that are known to have CWD. ICL indicated that the proposed rule change presented a “relatively low cost on the whole,” and “an ounce of prevention is worth a pound of cure” to address the spread of CWD.

Producers and elk industry representatives were against the proposed change. They expressed a concern about the level of testing that the Idaho Department of Fish and Game (IDFG) is performing on wild cervids. Some in the industry expressed the opinion that CWD is likely more prevalent in the wild than has been identified. Second, producers argued that it would be an unfair imposition for producers to test 100% of their animals because of the geographic proximity to CWD in wild populations. They argued that this would cause significant cost to be borne by the producers for a problem in wild populations. Third, the industry sees the 25-mile radius as arbitrary and not founded on a science-based standard or operational logic. They also stated that surveillance and testing for CWD by producers is above what is being done in wild populations.

IDFG participated in the rulemaking. Tricia Hebdon, IDFG Assistant Wildlife Chief, answered questions and offered technical information throughout the discussion. IDFG surveillance in wildlife populations has been ongoing since 1999, with IDFG collecting over 25,000 samples. In the last several years, IDFG started a rotational surveillance plan, with a focus on certain geographic areas. The current plan has focused on Idaho's eastern borders with Montana and Wyoming. IDFG believes that surveillance is working, and the disease has been identified to have a very low prevalence in Idaho, likely below two percent. In states where CWD prevalence increased, declines in wildlife populations were observed. This year, mandatory testing for all harvested wild cervids is in place for Game Management Units 14 and 15. IDFG is encouraging surrounding areas to be sampled voluntarily. IDFG is expecting over 5,000 samples from animals harvested in those two units.

### Analysis

Through amendments to Idaho Code, the Legislature has provided direction on and requirements for CWD testing in domestic cervidae. The current CWD requirements in Idaho Code were enacted in 2014 with passage of H.B. 431. Prior to that, CWD testing was required on 100 percent of domestic cervidae 16 months or older that died on an Idaho operation. H.B. 431 decreased that to "no less than 10 percent." Hearings on the bill brought together a very similar stakeholder group to what ISDA had with this rulemaking. During the 2014 hearings, legislators discussed other CWD testing thresholds. In House Agricultural Affairs, a substitute motion was made to amend the bill's language from a 10 percent requirement to 70 percent. That motion failed on a voice vote, and the committee sent the bill to the House floor with a Do Pass recommendation. It passed the Legislature, was signed by the Governor, and went into effect on March 6, 2014. The "no less than 10 percent of harvested animals" language was adopted into the current Rules Governing Domestic Cervidae and remains the standard today.

CWD testing also was considered during 2022 Idaho Legislature. ISDA presented ZBR amendments to the Rules Governing Domestic Cervidae before the House and Senate Agriculture Affairs Committees. ISDA did not propose changes to the rule's threshold for CWD testing, but the agency finalized the rulemaking prior to the discovery of CWD in wild Idaho cervids. CWD was detected in Idaho prior to when the 2022 Legislature heard the ISDA's rule, and both committees approved the rule as presented. CWD detection and testing also was discussed outside of committee hearings through stakeholder discussions with lawmakers. No new legislation was introduced.

During this current rulemaking, all stakeholders shared concern about the detection of CWD in wild Idaho cervids and about the potential impact for wild and domestic populations alike. However, they have very different views about the risk posed by Idaho's domestic cervidae industry and about the burden that should be assigned to producers.

Cervidae producers voiced concerns about being singled out again as a primary threat for CWD when they feel they already do a significant amount of testing and observation for CWD. Wildlife advocates and conservation groups are concerned about domestic cervidae operations being a potential threat to wild cervid populations, especially if those operations import cervids from areas outside of Idaho known to have endemic CWD.

During the rulemaking discussion, producers expressed concerns that IWF did not seek out discussions with the cervidae industry before requesting a rule change. Producers indicated there may be some common ground, but they stated they were not consulted prior to this rulemaking. This remains an area to be explored outside of the rulemaking process.

While the meeting had good participation and strong discussion, stakeholders did not reach any consensus-based recommendations. Additionally, the agency did not receive new direction from the Legislature in 2022 through new legislation or rejection of the agency's rules.

### **Conclusion**

ISDA has reviewed the requested change, stakeholder positions, and existing regulatory authority. With a careful balance of all factors, the ISDA is not moving forward with additional negotiated rulemaking, and the agency will not propose changes to the current Rules Governing Domestic Cervidae.

ISDA appreciates the diligence, professionalism, and courteousness shown by all stakeholders throughout the rulemaking process. We also understand that stakeholders have deep concerns about CWD and potential risks. ISDA remains committed to providing technical information if this issue is taken up by policymakers in the future.