

Meeting Date: July 27, 2023

Agenda Item No. 5D

Agenda Item: Administrative Rules: Adoption of
Proposed and Temporary Rules (Action)

Bureau Chief Approval: JF

Prepared by: Deputy Director Amber Worthington

Background:

Consistent with Executive Order 20-01 for Zero-Based Regulation, the Commission is reviewing four chapters of IDAPA rules this year:

- **13.01.06** - Rules Governing Classification and Protection of Wildlife
- **13.01.11** - Rules Governing Fish
- **13.01.12** - Rules Governing Commercial Fishing
- **13.01.15** - Rules Governing the Use of Dogs

In addition to ZBR rulemaking, the Commission authorized rulemaking for one proposal originating from Commission-directed rulemaking:

- **13.01.08, Section 406** - Rules Governing Taking of Big Game Animals: Special Weapons Season - Muzzleloader

Following opportunity for negotiated rulemaking, staff prepared proposed rule language for the Commission's consideration for the four ZBR chapters and the individual rule proposal.

Staff also prepared a temporary rule regarding outfitter tag allocation set-aside to be effective upon adoption by the Commission. The changes to the temporary rule will remove the set-aside limit from rule and create a provision to allow the Commission to set the set-aside limit by proclamation. A proposed rule with the same language is up for the Commission's consideration also and upon approval will progress through the rulemaking process to be heard and approved by the legislature in Session 2024 with the other proposed rules shown above.

Statutory Authority and/or Policy Issues:

Idaho Code 36-104 grants authority to the Commission to set seasons and promulgate IDAPA rules. Idaho Code 67, Chapter 52 (Idaho Administrative Procedure Act) governs the process for considering, adopting, and implementing IDAPA rules. Idaho Code 67-5220 provides for negotiated rulemaking, and Idaho Code 67-5221 provides for adoption of proposed rules for additional public notice and comment.

Public Involvement Process:

Notices of Intent to Promulgate Rules via Negotiated Rulemaking for the four ZBR Chapter reviews and additional rule proposal (listed in the Background Section above) were published in the [April 5, 2023 Administrative Bulletin](#). The Notices indicated the subjects of the rulemakings and identified opportunities for the public to express interest in negotiated rulemaking.

A representative from Idaho Sportsmen attended the negotiated rulemaking meeting held for Chapter 6 on April 17, 2023, Chapter 15 on April 18, 2023 and Chapter 12 on April 26, 2023. Meeting attendees had the opportunity to provide input on the Department's draft proposed rules 13.01.06, 13.01.12, and 13.01.15.

Two individuals (one member of public and a representative from Idaho Sportsmen) attended the negotiated rulemaking meeting held on June 19, 2023 regarding special weapons season - muzzleloader. Meeting attendees had the opportunity to provide input on the Department's draft proposed rule (revising the word lead and lead alloy to metal and metal alloy).

Representatives from Trout Unlimited, Idaho Sportsmen and Aire (Outcast Sporting Gear) attended the negotiated rulemaking meeting held for Chapter 11 on April 25, 2023. Meeting attendees had the opportunity to provide input on the Department's draft propose rule 13.01.11. During the 21-day comment period, the Department received 44 written comments pertaining to fishing contests and a request to add an exemption to allow certain rules to be waived during a tournament (mostly around fish in possession limits). Due to the volume of responses, the Department held another meeting to discuss administration of fishing tournaments and contests. The meeting was poorly attended with just a few tournament organizers showing, however, consensus was reached around the additional modifications the Department made.

Justification:

Idaho Code (Idaho Administrative Procedure Act) governs the process for considering, adopting, and implementing IDAPA rules.

Staff Recommendation: The staff recommendation for proposed rule language is presented by chapter in the following pages. These include proposed rules for:

- 13.01.04 - Rules Governing Licensing (section 500)
- 13.01.06 - Rules Governing Classification and Protection of Wildlife
- 13.01.11 - Rules Governing Fish
- 13.01.12 - Rules Governing Commercial Fishing
- 13.01.15 - Rules Governing the Use of Dogs
- 13.01.08, Section 406 - Rules Governing Taking of Big Game Animals: Special Weapons Season - Muzzleloader

Staff recommends consolidating chapters 13.01.11 and 13.01.12 into one chapter, 13.01.11.

As the Administrative Procedures Act allows for concurrent promulgation of a temporary and proposed rule when the text of the two rulemakings is the same, the staff recommendation for the 13.01.04 temporary rule and the proposed rule is the same.

Sample Motions:

Temporary and Proposed Rules: I move the Commission adopt the temporary rule as presented, with the Governor's finding pursuant to Idaho Code Section 67-5226 that adoption of a temporary rule is appropriate to confer a benefit on Idaho citizens, and to adopt the temporary and proposed rules as presented, with authority for the Department to make non-substantive edits in the proofreading process that do not alter the sense, meaning or effect of the rules.