

**Meeting Date:** July 28, 2022

**Agenda Item No. 5E**

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

**Bureau Chief Approval: ES**

**Prepared by:** Deputy Director Amber Christofferson  
& Deputy Attorney General Kathleen Trever

**Background:**

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

- **13.01.02**, Rules Governing Mandatory Education and Mentored Hunting
  - ZBR review includes Commission direction to consider a requirement for mandatory gender identification for mountain goat hunters
- **13.01.10**, Rules Governing Wildlife Importation, Possession, Release, Sale, or Salvage
- **13.01.14**, Rules Governing Falconry
- **13.01.18**, Rules Governing Feeding of Pronghorn, Elk, and Deer

In addition to ZBR rulemaking, the Commission authorized rulemaking for two proposals originating from petitioned rulemaking:

- 13.01.04, Rules Governing Licensing (rule change to support outfitter tag allocation in general deer and elk hunts limited for non-residents only)
- 13.01.04 , Rules Governing Licensing (rule change for exception from method of take restriction for big game hunting to allow attached electronic camera device for a sighted assistant to help a blind hunter line up on a target)

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

Staff also prepared a temporary rule regarding outfitter tag allocation to be effective for tag allocation occurring in 2022 for general deer and elk hunts in 2023 that are limited for nonresidents only (residents unlimited). The temporary rule language differs from the proposed rule. This difference is because allocation in the proposed rule relies on two years of outfitter hunter use data verified under Idaho Code 36-408, which will not be available at the time of allocation in 2022. Data verification began through the Department’s licensing system in 2021. The temporary rule will use verified 2021 use data and 2020 data reported to the Idaho Outfitters and Guides Licensing Board. The 2020 use data is less precise, in part because it preceded the Commission’s restriction of nonresident general deer tags by unit and may identify use based on species of deer hunted versus the IDFG regular/white-tailed tag designation.

**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 two additional rule proposals (listed in the Background Section above) were published in the [April 6, 2022 Administrative Bulletin](#). The Notices indicated the subjects of the rulemakings and identified opportunities for the public to express interest in negotiated rulemaking.

The Idaho Falconers Association (three representatives) attended the negotiated rulemaking meeting held for Chapter 14 on May 16. Meeting attendees had the opportunity to provide input on the Department's draft revised 13.01.14.

Four individuals (representing Idaho Outfitters and Guides Association, Idaho Sportsmen, and Boulder Creek Outfitters) attended the negotiated rulemaking meeting held on June 15, 2022 regarding outfitter tag allocation in general elk/deer general hunts limited to nonresidents only. Meeting attendees had the opportunity to provide input on the Department's draft proposed rule (involving new/revised section of IDAPA 13.01.04) and a modified version for a draft temporary rule (for 2022 tag allocation in 2023 hunts).

No one identified interest in ZBR negotiated rulemaking meetings for chapters 13.01.02, 13.01.10, or 13.01.18. The petitioner for an exception for method of take for blind hunters under 13.01.04 had an opportunity to provide input on the Department's draft proposed rule language.

**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:

- 13.01.02, Rules Governing Mandatory Education and Mentored Hunting
- 13.01.04, Rules Governing Licensing (individual rule sections)
- 13.01.10, Rules Governing Wildlife Importation, Possession, Release, Sale, or Salvage
- 13.01.14, Rules Governing Falconry
- 13.01.18, Rules Governing Feeding of Pronghorn, Elk, and Deer
- 13.01.04, Rules Governing Licensing (individual rule sections)

The staff recommendation for temporary rule language regarding outfitter tag allocation is separately presented for chapter 13.01.04.

**Sample Motions:**

Proposed Rules: I move the Commission adopt 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.

Temporary Rule: 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 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.