

Meeting Date: January 28, 2021

Agenda Item No. 7

Agenda Item: Rulemaking update

Bureau Chief Approval: ES

Prepared by: Paul Kline

Background:

Staff will provide a summary of the different classifications of rulemaking the Commission has approved the Department to advance to the 2021 Legislative Session. This agenda item is informational.

1. Rulemaking Year-at-a-Glance Illustration (review).
2. Commission Approved Agency Rulemaking (2021 Legislative Session)
3. Commission Approved Agency Fee Rulemaking (2021 Legislative Session)
4. Commission Approved Agency Temporary Rulemaking (2021 Legislative Session)
5. Zero-based Regulation Rulemaking (E. O. 2020-01) (2022 Legislative Session)
6. Other Potential rulemaking ideas (2022 Legislative Session)

Statutory Authority and/or Policy Issues:

The Commission has rulemaking authority. The Idaho Administrative Procedure Act (Title 67, Chapter 52, Idaho Code) governs rulemaking in Idaho. Annually, the Commission considers ideas for rulemaking that may be driven by enactment of a new or amended statute by our state Legislature, enactment of a new law or regulation by the federal government, a citizen’s petition to amend or adopt a new rule, a change in an agency’s process or procedure requirements or a need to simply update a rule. Typically, the Commission discusses rulemaking ideas early in the calendar year and provides direction to staff to initiate rulemaking no later than their regularly scheduled March meeting so proper and timely notice can be given to the public with opportunity to participate in the rulemaking process (e.g., initiated with a notice of intent to promulgate rules published in the Idaho Administrative Bulletin).

Public Involvement Process:

Public involvement would occur through the negotiated rulemaking process and the Commission’s public input opportunity.

Justification:

This addresses Commission interest in rulemaking.

Staff Recommendation:

This agenda item is informational. Staff will request Commission direction to advance the year-one strategy for “Zero-based Regulation Rulemaking” (#5 of this agenda item).

2. Commission Approved Agency Rulemaking

The following agency non-fee rules were published as “Pending Rules” in the December 2, 2020 Administrative Bulletin and are now pending review by the 2021 Legislature for final approval:

- a. Docket 13-0104-2002 (Rules Governing Licensing)
 - i. Establish earlier date for LAP Tag application period)
 - ii. Establish limits on nonresident Disabled American Veteran tag numbers for deer and elk.
- b. Docket 13-0108-2001 (Rules Governing Taking of Big Game)
 - i. Establish 1-year wait period for successful pronghorn controlled hunt applicants.
- c. Docket 13-0109-2002 (Rules Governing Taking of Game Birds)
 - i. Establish consistent requirements for use of game bird tags authorized by statute (I.C. 36-409(c)) and establish mandatory check requirements for swan (prompted by legislation adopted to support federal approval of swan seasons, combined with Department-initiated changes to meet executive order requirements for simplification; game tags currently authorized for turkey, crane, swan, could encompass grouse or other species if game tags authorized in future).
 - ii. Designate two special waterfowl hunting days for veterans and active military (prompted by 2019 federal legislation allowing states to make such designations).
 - iii. Delay opening date for pheasant season for all nonresident license holders (citizen-petitioned change by residents of Franklin/Oneida Counties; would expand by rule the statutory (I.C. 36-407(e)) 5-day delayed opener for nonresident small game license holders).
 - iv. Simplify turkey tags (Department-initiated proposed for simplification, consistent with Executive Order 2020-01).
- d. Docket 13-0116-2002 (Rules Governing Trapping of Predatory and Unprotected Wildlife and Taking of Furbearing Animals).
 - i. Establish additional restrictions on use of body-gripping traps (citizen petition by Idaho Trappers Association and others).
 - ii. Simplify rules associated with use of bait for trapping furbearing, predatory and unprotected animals (citizen petition by Idaho Trappers Association and others, based on consistency with allowances for wolf trapping; proposed language acknowledges statutory restrictions related to use of game parts for trapping furbearing animals).

3. Commission Approved Agency Fee Rulemaking

Since agency rules were not adopted by both bodies of the Legislature upon sine die of the 2020 Idaho State Legislature, they expired. Accordingly, IDAPA fee rule chapter sections containing fee references were republished in the November 18,

2020 volume of the Administrative Bulletin and are now pending review by the 2021 Legislature for final approval under one Omnibus docket.

- a. Docket 13-0000-2000F
 - i. 13.01.02 Rules Governing Mandatory Education and Mentored Hunting.
 - ii. 13.01.04 Rules Governing Licensing.
 - iii. 13.01.08 Rules Governing the Taking of Big Game Animals.
 - iv. 13.01.10 Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife.
 - v. 13.01.19 Rules for Selecting, Operating, Discontinuing, and Suspending Vendors.

4. Commission Approved Agency Temporary Rulemaking

At their July 23, 2020 and December 22, 2020 meetings, the Commission adopted temporary rules to take effect prior to this Legislative Session. In effect now, temporary rules a, b, and c (below) are advancing as pending rules to come before the 2021 Legislature for final approval. Pending rules were reviewed in item 2 for this agenda item (above). Temporary rule d (below) is being advance for consideration before the 2021 Legislature to renew as a temporary rule through sine die of the 2022 Legislative Session. Formal rulemaking must occur for this rule to become final.

- a. Establish limits for nonresident Disabled Veteran deer and elk tags (to align with nonresident tag sales for 2021, with sales beginning on December 1, 2020).
- b. Establish tagging and harvest report requirements to support a fall 2020 swan season, needed for consistency with federal approval.
- c. Designate two special waterfowl hunting days for veterans and active military (prompted by 2019 federal legislation allowing states to make such designations).
- d. Increase the number of general hunt elk tags set aside for outfitters from 2,400 to 2,800 on a statewide basis and reserve them for sale to persons who have entered into an agreement with a licensed outfitter.

5. Zero-based Regulation Rulemaking (Five-Year Rulemaking)

Consistent with the Governor’s Order for Zero-Based Rulemaking and related direction from the Division of Financial Management, IDFG seeks Commission direction before proceeding to negotiated rulemaking for of the following 3 Chapters.

Year 1 (2021 rulemaking, with 2022 Legislative Review)

Review 3 Chapters:

- a. 13.01.01 (Commission Practice & Procedure)

The Department recommends negotiated rulemaking based on re-adoption of this chapter with only minor revisions.

In addition to non-substantive edits for clarity and word reduction, potential changes include:

- i. Include for clarification that regional supervisor have delegated authority from the director for depredation hunts and authorizations for wildlife removal in response to depredations.
 - ii. Clarify/update the “sign up card” rule as a provision for name and mailing or email address.
- b. 13.01.07 (Upland Game) to become 13.01.07 (General Rules for Taking of Wildlife)

The Department recommends negotiated rulemaking to address: (1) repeal of this chapter, with integration of upland game rules into the re: adoption of IDAPA 13.01.09 (described below), and (2) adoption of a new chapter 13.01.07, with rulemaking to include the following:

- i. Universal wildlife closure areas: assess existing closures repeated in various chapters and combine them into a single chapters universal closures [current IDAPA 13.01.07.200 (upland game) 13.01.08.500 (big game); 13.01.09.400 (game birds); 13.01.16.650 (trapping and furbearers); 13.01.17.505 (gray wolf closures)].
 - ii. Game Management Units (current IDAPA 13.01.08 Sections 600-650 (big game management units; and 13.01.09.600 (game birds), consolidate references and re-adopt unit descriptions, addressing any outdated geographic references or inconsistencies in boundaries.
 - iii. Combine references to seasons, bag and possession limits by proclamation repeated in various chapters [Current DAPA 13.01.04.401 (LAP seasons); 13.01.07.400 (upland game); 13.01.08.700 (Big Game Season, Limits, Controlled hunts and Tag Numbers); 13.01.09.600 (game birds); 13..01.14.500 (falconry); 13.01.16.750 (furbearer)].
 - iv. Combine wounding-retrieving language repeated in various IDAPA Chapters [Current IDAPA 13.01.07.300 (Upland Game); 13.01.08.401 (big game); 13.01.09.450 (game birds); 13.01.16.300 (furbearer)].
- c. 13.01.09 (Game Birds) to become 13.01.09 (Rules Governing Taking of Game Birds and Upland Game Animals)

In addition to non-substantive edits for clarity and word reduction, the Department recommends negotiated rulemaking to address rules for upland game animals (currently IDAPA 13.01.07) and Game Birds in a consolidated Chapter 13.01.09, with potential rule changes to consider the following:

- i. Integrate upland game animal provisions, including definitions, methods of take, and shooting hours into provisions for game birds.
- ii. Develop controlled hunt provisions that give Commission flexibility to have general or controlled hunts for all game birds requiring game tags (currently crane, turkey, and swan, and pending legislative proposal for sage grouse) and evaluate potential simplification of application/eligibility rules for such hunts.
- iii. Consider simpler presentation for youth seasons.
- iv. Clarify that nonresident veterans/active military are included in two-day waterfowl season held concurrently with youth season (amending rule pending 2021 legislative review).
- v. Consider additional simplification to turkey tags (some rules for simplification pending 2021 legislative review).
- vi. Assess combining or cross-referencing game bird tag designation provisions with big game tag designation provisions).
- vii. Review need for continued/modified closures for migratory birds, and geese.
- viii. Review use of airguns for the taking of upland game birds.

6. Other Potential Rulemaking Ideas for 2022 Legislative Session

Additional rulemaking ideas may come before the Commission for their consideration and potential action decision to direct Department staff to initiate rulemaking. Requests for the Commission to consider instructing the Department to initiate rulemaking are presented to the Commission early in the calendar year to provide the public the opportunity to participate in the rulemaking process and to meet associated rulemaking deadlines outlined by the Idaho Division of Financial Management.