

Meeting Date: March 18, 2021

Agenda Item No. 7

Agenda Item: Rulemaking update (informational)

Bureau Chief Approval: ES

Prepared by: Paul Kline

Background:

This is a summary of rulemaking the Commission has directed the Department to initiate.

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.

Public Involvement Process:

Public involvement occurs through the negotiated rulemaking process and the Commission’s public input opportunities.

Current Rulemaking

1. Pending Non-Fee Rules (2021 Legislative Session)
2. Pending Omnibus Fee Rules (2021 Legislative Session)
3. Temporary Rules (2021 Legislative Session)
4. Rulemaking for 2022 Legislative Session
 - a. Zero-based Regulation Rulemaking
 - b. Outfitter Set-Aside Tag numbers (IOGA petitioned rulemaking)
 - c. Other rulemaking

1. Pending Non-Fee Rules

These non-fee Pending Rule Dockets are before the 2021 Legislature for consideration:

| <u>Docket 13-0104-2002</u> | <u>Docket 13-0108-2001</u> | <u>Docket 13-0109-2002</u> | <u>Docket 13-0116-2002</u> |
|--|-------------------------------------|--|---|
| Senate & House Committees approved. | Senate & House Committees approved. | Senate Committee approved; House Committee approved except for Section 100. | Senate Committee approved; House Committee will not consider. |
| LAP application period | 1 yr. wait for pronghorn | Game bird tag val. & swan mandatory check <i>(temporary rule in effect)</i> | Body grip trap restrictions |
| NR DAV deer/elk tag limit <i>(temporary rule in effect)</i> | | 2-day vet/military waterfowl <i>(temporary rule in effect)</i> | Use of bait - furbearers |
| | | Delay nonres pheasant | |
| | | Simplify turkey tags | |

The House Resources & Conservation Committee did not approve the following section of 13-0109-2002:

13.01.09.100 SAGE AND SHARP-TAILED GROUSE TAGS AND PERMITS ~~AND VALIDATIONS~~.

No person may hunt sage or sharp-tailed grouse anywhere within the state, except licensed shooting preserves, without having in possession the appropriate

hunting license with tag (if required under Section 36-409, Idaho Code) or permit validation for sage grouse and sharp-tailed grouse whose fee is specified in Section 36-416, Idaho Code.

Unless rejected by concurrent resolution (rejection by both House and Senate floor votes), all Pending Non-fee Rules will become Final Rules upon adjournment of the 2021 legislative session and remain in effect through June 30, 2022.

Agency rules that took effect in prior years will expire June 30, 2021 unless the Legislature passes a bill to extend the rules for another year (referred to as the “going home bill”). Because it appears the Legislature may not act to extend rules beyond June 30, 2021, the Governor’s Office is prepared to support agency temporary rulemaking to ensure rule continuity in the next fiscal year (beginning July 1, 2021).

2. Pending Omnibus Fee Rules

Pending fee rules require adoption by concurrent resolution to become final rules. Agency fee rules expired at the end of the 2020 Legislative Session in the absence of legislative action. Accordingly, the Governor’s Office authorized Temporary & Proposed Omnibus Rulemaking for fee rules. The Commission’s Pending Fee Rules are before the Legislature this Session as Docket 13-0000-2000F, and both Senate and House Resource Committees have approved the Omnibus Fee Rules.

However, unless approved by concurrent resolution of the full House and Senate, these Fee Rules will expire again upon adjournment of this Legislative Session. Consistent with Governor’s Office direction, on February 25, 2021, the Commission conditionally adopted Temporary Fee Rules to ensure rule continuity in case the Legislature does not act to approve the Pending Fee Rules as Final Rules.

3. Commission Temporary Rule

At their December 22, 2020 meeting the Commission adopted a Temporary Rule to increase the number of general hunt elk tags set aside for outfitters from 2,400 to 2,800 for sale to persons who have entered into an agreement with a licensed outfitter.

Senate and House Resource Committees have approved extending the temporary rule through the 2022 Legislative session. However, temporary rules require approval by concurrent resolution of the full House and Senate to remain in effect upon adjournment *sine die*. If the Legislature fails to adopt a concurrent resolution to extend this temporary rule, additional temporary rulemaking will be needed for the rule to remain in effect.

4. Rulemaking for 2022 Legislative Session

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

The Governor’s Office directed Executive Agencies to conduct a five-year review of all rules and continue efforts to eliminate outdated or unnecessary language and eliminate restrictions. This directive (E.O. 2020-01) is a continuation of work initiated under the Governor’s Red Tape Reduction Act (E.O. 2019-02).

Consistent with Governor’s Office and Commission Direction, the Department is beginning negotiated rulemaking for three IDAPA 13 Chapters for year-one of Zero-based Regulation Rulemaking (2021 rulemaking, with 2022 Legislative Review). The

March 3 Administrative Bulletin includes notices of negotiated rulemaking for these chapter reviews with a 21-day response period, and the Department website will include additional supporting content.

The Department has the following schedule for initial negotiated rulemaking meetings at the Southwest Regional Office:

- **13.01.01 (Commission Practice & Procedure)**
Meeting: March 12, 2021 at 11 am MST
- **13.01.07 (Upland Game) to become 13.01.07 (General Rules for Taking of Wildlife)**
Meeting: March 25, 2021 at 6 pm MDT
- **13.01.09 (Game Birds) to become 13.01.09 (Rules Governing Taking of Game Birds and Upland Game Animals)**
Meeting: March 25, 2021 at 6:30 pm MDT

At a subsequent Commission meeting, staff will update the commission on rulemaking as part of the process of developing Proposed Rule language.

b. Outfitter Elk and Deer Tags Set-aside (Rulemaking petition by Idaho Outfitter and Guides Association).

At their December 22, 2020 meeting, the Commission directed the Department to conduct Negotiated Rulemaking in response to a petition from the Idaho Outfitter and Guides Association. The petition requested increases to the number of tags the Commission sets-aside for use by outfitted hunters (Idaho Code 36-408 allows a maximum of 25% of the nonresident quotas for deer and elk tags to be set-aside for hunters using licensed outfitter services).

The March 3 Administrative Bulletin includes a notice of negotiated rulemaking for this chapter review with a 21-day response period, and the Department website will include additional supporting content.

The Department has the following schedule for an initial negotiated rulemaking meeting at the Southwest Regional Office:

Meeting: March 31, 2021 at 6:00 pm MDT

At a subsequent Commission meeting, staff will review results of the public comment period as part of the process of developing Proposed Rule text.