

**Meeting Date:** May 6, 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.

**Status of Rulemaking before the 2021 Legislature:**

Agency Omnibus Fee Rulemaking

- Fee rules in IDAPA 13 are currently in place as temporary rules.
- Rule Docket 13-0000-2000F is a Pending Rule docket before this Legislature to take these rules final.
- This docket has passed in both House and Senate Resource Committees but must pass by concurrent resolution of the full Legislature for rules to become final.
- In the event this does not happen, the Division of Financial Management instructed agencies to initiate Temporary Rulemaking. The Commission conditionally adopted omnibus temporary fee rules at their February 25, 2021 meeting. These new Temporary Fee Rules will take effect sine die (once again, assuming the Legislature adjourns without concurrently adopting them).

Agency Non-Fee Rulemaking

- The Commission's four Non-Fee Rule dockets are before the Legislature.
- These rules will become final sine die unless there is a concurrent resolution created and adopted by the full Legislature to reject these dockets.
- These rules represent a very minor fraction of IDAPA 13, Fish and Game rules.
- If the Legislature does not concurrently adopt all other standing non-fee rules this Session through the traditional "going home bill" all agency non-fee rules will expire June 30, 2021 (except the specific rule dockets that were approved this session).
- To avoid having rules expire, the DFM is expected to initiate a process for temporary rulemaking to ensure there is no "rule gap." At a future Commission meeting, staff will review Commission actions needed to address rulemaking needs for agency non-fee rules.

## Temporary Rules

- The Commission has five temporary rules in place (limit nonresident Disabled American Veteran deer and elk tags, early two day waterfowl opportunity for veterans and active military, mandatory swan validation/check in, turkey permits, and increase outfitter elk tag set-aside from 2,400 to 2,800).
- These temporary rules will expire sine die.
- Four of these temporary rules will be replaced at sine die with final rules presented in dockets addressed in the above paragraph for Agency Non-Fee Rulemaking.
- The temporary rule docket to raise the outfitter set-aside will expire sine die and no pending rule docket is under consideration before this Legislature to transition this rule to final status.
- At a future Commission meeting, staff will review Commission actions needed for outfitter set-aside rulemaking.

## Governor's Zero-Based Regulation Rulemaking

- This rulemaking continues efforts to clean-up agency rules initiated in 2019 as part of the Governor's Red Tape Reduction Act.
- The Commission provided direction to staff to initiate Negotiated Rulemaking for year-one efforts.
- IDAPA 13 chapters (1, 7 & 9) were selected for review and clean-up in year one.
- Negotiated rulemaking meetings were held on March 12, 2021 (chapter 1) and March 25, 2021 (chapters 7 and 9).
- At a future Commission meeting, staff will review the outcome of negotiated rulemaking meetings, comments received from the public during the 21 day comment period that followed the publication of the Notice of Intent to Promulgate Rules – Negotiated Rulemaking and Commission actions needed to move rulemaking forward for year-one Zero-Based rulemaking.

## Petitioned Rulemaking

- 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).
- A negotiated rulemaking meeting was held on March 31, 2021.
- At a future Commission meeting, staff will review the outcome of this negotiated rulemaking meeting, comments received from the public during the 21 day comment period that followed the publication of the Notice of Intent to Promulgate Rules – Negotiated Rulemaking and Commission options regarding “next steps” for this petitioned rulemaking idea.